retain the proposed residence situation guidance for overseas military personnel (Sections C.4.a–b and C.13.1–g). This guidance makes a distinction between personnel who are deployed overseas and those who are stationed or assigned overseas. Deployments are typically short in duration, and the deployed personnel will be returning to their usual residence where they are stationed or assigned in the United States after their temporary deployment ends. Personnel stationed or assigned overseas generally remain overseas for longer periods of time and often do not return to the previous stateside location from which they left. Therefore, counting deployed personnel at their usual residence in the United States follows the standard interpretation of the residence criteria to count people at their usual residence if they are temporarily away for work purposes.

The Census Bureau will use administrative data from the Department of Defense to count deployed personnel at their usual residence in the United States for apportionment purposes and for inclusion in the resident population counts. The Census Bureau will count military and civilian employees of the U.S. government who are stationed or assigned outside the United States, and their dependents living with them, in their home state, for apportionment purposes only, using administrative data provided by the Department of Defense and the other federal agencies that employ them.

The Census Bureau has been communicating with stakeholders from various military communities and plans to work closely with military stakeholders to plan and carry out the enumeration of military personnel. As the planning process moves forward, there will be continued testing of our process for integrating DOD data on deployed personnel into the resident population counts.

3. Comments on Health Care Facilities

Four comments were related to health care facilities. One commenter simply stated that they agree with the Census Bureau’s proposal regarding how to count people in health care facilities. One commenter suggested that the Census Bureau add residence guidance specifically regarding memory care centers as a separate category from nursing facilities because the nature of Alzheimer’s disease and Dementia necessitates that these patients be enumerated through administrative records in order to ensure the accuracy of the data. One commenter suggested that people in psychiatric facilities should be counted at the residence where they were living before they entered the facility because they will most likely return to their prior community, which is where they would normally vote. This commenter also stated that these people should be counted in their prior communities in order to ensure that those communities receive the proper allocation of representatives and resources.

One commenter similarly suggested that people living in psychiatric hospitals on Census Day should be counted at the residence where they sleep most of the time, and only counted at the facility if they do not have a usual home elsewhere. They stated that the Census Bureau misunderstands the functioning of state and private psychiatric hospitals, which today provide primarily acute and short-term treatment (e.g., less than two weeks, in most cases). They also stated that most patients in these facilities are likely to have a permanent residence elsewhere. The same commenter also stated that the Census Bureau’s proposal for how to count people in nursing/skilled-nursing facilities does not best capture the experience of people with disabilities who are in the process of transitioning from group housing to more independent housing. Therefore, the commenter suggested that the Census Bureau should alter the proposed guidance in order to allow people in nursing/skilled-nursing facilities to be counted at a residence to which they are actively preparing to transition.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for health care facilities (Section C.11). Separate residence guidance was not added for memory care centers because these types of facilities would be considered subcategories of assisted living facilities and nursing facilities/skilled nursing facilities (Section C.11), and the guidance provided for these types of facilities is sufficient. Patients in mental (psychiatric) hospitals and psychiatric units in other hospitals (where the primary function is for long-term non-acute care) will be counted at the facility because the facilities or units within the facility are primarily serving long-term non-acute patients who live and sleep at the facility most of the time. Because people must be counted at their current usual residence, rather than a future usual residence, the residence guidance for patients in nursing/skilled-nursing facilities will not be revised to allow some people to be counted at a residence to which they are actively preparing to transition.

Comments on health care facilities not addressed in this section were considered out of scope for this document.

4. Comments on Foreign Citizens in the United States

Three comments were related to foreign citizens in the United States. One commenter simply stated that they agree with the Census Bureau’s proposal regarding how foreign citizens are counted. One commenter suggested that the Census Bureau should add wording to clarify whether foreign “snowbirds” (i.e., foreign citizens who stay in a seasonal residence in the United States for multiple months) are considered to be “living” in the United States or only “visiting” the United States. In order to more accurately reflect the impact of foreign snowbirds on local jurisdictions in the United States, this commenter suggested defining those who are “living” in the United States as those who are “living or staying in the United States for an extended period of time exceeding months.” One commenter expressed concern about the impact of including undocumented people in the population counts for redistricting because these people cannot vote, and they stated that this practice encourages gerrymandering. This commenter suggested collecting data to identify the citizen voting age population (CVAP), so that the data could be used to prevent gerrymandering in gateway communities during the redistricting process.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for foreign citizens in the United States (Section C.3). Foreign citizens are considered to be “living” in the United States if, at the time of the census, they are living and sleeping most of the time at a residence in the United States. Section C.5 provides sufficient guidance for foreign citizens either living in or visiting the United States. Section C.5 provides additional guidance regarding “snowbirds.” Comments on foreign citizens in the United States not addressed in this section were considered out of scope for this document.

5. Comments on Juvenile Facilities

Three comments were related to juvenile facilities. One commenter simply stated that they agree with the Census Bureau’s proposal regarding how to count juveniles in non-correctional residential treatment centers. One commenter stated that
juvinatles in all three types of juvenile facilities (i.e., correctional facilities, non-correctional group homes, and non-correctional residential treatment centers) should be counted at their usual residence. One commenter similarly stated that people in juvenile facilities should be counted at their usual residence outside the facility, but the context of the comment showed that this commenter was referring mostly to correctional facilities for juveniles (rather than non-correctional group homes and non-correctional residential treatment centers).

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for juvenile facilities (Section C.17). People in correctional facilities for juveniles and non-correctional group homes for juveniles will be counted at the facility because the majority of people in these types of facilities live and sleep there most of the time. People in non-correctional residential treatment centers for juveniles will be counted at the residence where they live and sleep most of the time (or at the facility if they do not have a usual home elsewhere) because these people typically stay at the facility temporarily and often have a usual home elsewhere to return to after treatment is completed.

6. Comments on People in Shelters and People Experiencing Homelessness

Three comments were related to people in shelters and people experiencing homelessness. One expressed agreement with the Census Bureau's proposal regarding how to count people in all of the subcategories of this residence situation except for the subcategories of people in domestic violence shelters. This commenter suggested that people in domestic violence shelters should be allowed to be counted at their last residence address prior to the shelter, due to the temporary nature of their stay and the confidentiality of that shelter's location. One commenter suggested that the Census Bureau add residence guidance specifically regarding "temporarily moved persons due to emergencies" (e.g., displaced from their home by a hurricane or earthquake). This commenter stated that these people should be counted "in their normal prior residential locations" (if they state the intention to return to that prior location after their home is repaired/rebuilt) so that accurate decisions can be made regarding funding for rebuilding and infrastructure restoration in those locations. One commenter requested that the Census Bureau publish national and/or state level population counts for

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for college students (Section C.10.a-e) and boarding school students (Section C.9.a). The Census Bureau has historically counted boarding school students at their parental home, and will continue doing so because of the students' age and dependency on their parents, and the likelihood that they will return to their parents' residence when they are not attending their boarding school (e.g., weekends, summer/winter breaks, and when they stop attending the school).

8. Comments on Non-Correctional Adult Group Homes and Residential Treatment Centers

Two comments were related to adult group homes and residential treatment centers. One commenter suggested that all people in adult group homes and adult residential treatment centers should also be counted at their usual residence other than the facility, because counting them at the facility is not consistent with their state's definition of residence. One commenter stated that the Census Bureau's proposal for how to count people in adult group homes does not best capture the experience of people with disabilities who are in the process of transitioning from group housing to more independent housing. Therefore, the commenter suggested that the Census Bureau should alter the proposed guidance in order to allow people in adult group homes to be counted at a residence to which they are actively preparing to transition. The same commenter also requested that the Census Bureau publish national and/or state level population counts for the subcategories of people in adult group homes and adult residential treatment centers. This commenter stated that these data are important to both housing advocates trying to assess the housing needs of people with disabilities, and to legal advocates working to enforce the community integration mandates of the Americans with Disabilities Act.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for people in non-correctional adult group homes and residential treatment centers (Section C.16). People in non-correctional group homes for adults will be counted at the facility because the majority of people in these types of facilities live and sleep there most of the time. People in non-correctional residential treatment centers for adults will be counted at the residence where they live and sleep.
most of the time (or at the facility if they do not have a usual home elsewhere) because those people typically stay at the facility to temporarily and often have a usual home elsewhere to return to after treatment is completed.

The residence guidance for people in adult group homes will not be revised to allow some people to be counted at a residence to which they are actively preparing to transition but often have a current usual residence, rather than a future usual residence. Comments on non-correctional adult group homes and residential treatment centers not addressed in this section were considered out of scope for this document.

9. Comments on Transitory Locations

Two comments were related to transitory locations. One commenter simply stated that they agree with the Census Bureau's proposal regarding how to count people in transitory locations. One commenter stated that the proposed residence guidance for transitory locations is acceptable because it is consistent with the concept of usual residence. However, they were concerned that the procedures used in the 2010 Census may have caused certain types of people to not be counted in the census because these people typically move seasonally from one transitory location (e.g., RV park) to another throughout the year, but the location where they are staying on Census Day may not be the location where they spend most of the year. This commenter stated that, during the 2010 Census, if the transitory location where a person was staying on Census Day was not where they stayed most of the time, then they were not enumerated at that location because the assumption was that they would be enumerated at their usual residence. Therefore, the commenter was concerned that people who stayed in one RV park for a few months around Census Day were not counted at that RV park if they indicated that they usually lived elsewhere (e.g., another RV park), and they would also not have been counted at other RV parks when they were there later that year (after the census enumeration period ends). The commenter suggested that we add procedures to account for people who spend most of their time in a combination of multiple transitory locations.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for people in transitory locations (Section C.18). Sufficient guidance for people in transitory locations, including those living in recreational vehicles, is provided in Section C.18. Comments on transitory locations not addressed in this section were considered out of scope for this document.

10. Comments on Visitors on Census Day

Two comments were related to visitors on Census Day. One commenter simply stated that they agree with the Census Bureau's proposal regarding how to count visitors on Census Day. One commenter asked whether the Census Bureau would count all vacationers in a specific state as residents of that state.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for visitors on Census Day (Section C.2). People who are temporarily visiting a location on Census Day will be counted where they live and sleep most of the time. If they do not have a usual residence to return to, they will be counted where they are staying on Census Day.

11. Comments on People Who Live or Stay in More Than One Place

Two comments were related to people who live or stay in more than one place. One commenter simply stated that they agree with the Census Bureau's proposal regarding how to count people who live or stay in more than one place. One commenter suggested that the Census Bureau add more clarification to the residence guidance regarding where "snowbirds" (i.e., seasonal residents) are counted.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for people who live or stay in more than one place (Section C.5). People who travel seasonally between residences (e.g., snowbirds) will be counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they will be counted where they are staying on Census Day.

12. Comments on Merchant Marine Personnel

Two comments were related to merchant marine personnel, and both commenters simply stated that they agree with the Census Bureau's proposal regarding how to count merchant marine personnel.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for merchant marine personnel (Section C.14).

13. Comments on Religious Group Quarters

Two comments were related to religious group quarters. One commenter simply stated that they agree with the Census Bureau's proposal regarding how to count people in religious group quarters. One commenter expressed agreement with the proposal because most religious group quarters are long-term residences that align with the concept of usual residence.

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed residence situation guidance for religious group quarters (Section C.20).

14. Comments on Other Residence Situations

There was one letter that included a comment on every residence situation, and each of those topic-specific comments was included as appropriate among the comments regarding the corresponding residence situations discussed above. However, for each of the other residence situations not already discussed above, the commenter stated that they agreed with how the Census Bureau proposed to count people in the following residence situations.

- People away from their usual residence on Census Day (e.g., on vacation or business trip) (Section C.1).
- People living outside the United States (Section C.4).
- People moving into or out of a residence around Census Day (Section C.6).
- People who are born or who die around Census Day (Section C.7).
- Relatives and nonrelatives (Section C.8).
- Residential schools for people with disabilities (Section C.9.b.c).
- Housing for older adults (Section C.12).
- Stateside military personnel (Section C.13.a.e).
- Workers' residential facilities (Section C.19).

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the proposed guidance for the residence situations listed in this section (B.14).

15. Comments on the Concept of Usual Residence or the General Residence Criteria

There was one comment on the concept of usual residence, in which the commenter expressed agreement with
the definition of “usual residence” as being the place where a person lives and sleeps most of the time.

There were seven comments on the general residence criteria. One commenter simply supported the entire residence criteria and residence situations documentation. Two commenters stated that they specifically agreed with the three main principles of the residence criteria. One commenter disagreed with “this method of tallying the U.S. population,” but did not refer to any specific residence situation. One commenter stated that every resident should be counted in the census. One commenter suggested that the Census Bureau count people who are away from their homes at the time of the census, using a code to indicate the reason why they are away (e.g., travel, work, incarceration, etc.).

Census Bureau Response: For the 2020 Census, the Census Bureau will retain the three main principles of the residence criteria (see introduction portion of section C). The goal of the decennial census is to count all people who are living in the United States on Census Day at their usual residence. Comments on the concept of usual residence or general residence criteria not addressed in this section were considered out of scope for this document.

16. Other Comments

There were 18 comments that did not directly address the residence criteria or any particular residence situation.

Census Bureau Response: Comments that did not directly address the residence criteria or any particular residence situation are out of scope for this document.

C. The Final 2020 Census Residence Criteria and Residence Situations

The Residence Criteria are used to determine where people are counted during the 2020 Census. The Criteria say:

- Count people at their usual residence, which is the place where they live and sleep most of the time.
- People in certain types of group facilities on Census Day are counted at the group facility.
- People who do not have a usual residence, or who cannot determine a usual residence, are counted where they are on Census Day.

The following sections describe how the Residence Criteria apply to certain living situations for which people commonly request clarification.

1. People Away From Their Usual Residence on Census Day

People away from their usual residence on Census Day, such as on a vacation or a business trip, visiting, traveling outside the United States, or working elsewhere without a usual residence there (for example, as a truck driver or traveling salesperson)—Counted at the residence where they live and sleep most of the time.

2. Visitors on Census Day

Visitors on Census Day—Counted at the residence where they live and sleep most of the time. If they do not have a usual residence to return to, they are counted where they are staying on Census Day.

3. Foreign Citizens in the United States

(a) Citizens of foreign countries living in the United States—Counted at the U.S. residence where they live and sleep most of the time.

(b) Citizens of foreign countries living in the United States who are members of the diplomatic community—Counted at the embassy, consulate, United Nations' facility, or other residences where diplomats live.

(c) Citizens of foreign countries visiting the United States, such as on a vacation or business trip—Not counted in the census.

4. People Living Outside the United States

(a) People deployed outside the United States on Census Day (while stationed or assigned in the United States) who are military or civilian employees of the U.S. government—Counted at the U.S. residence where they live and sleep most of the time, using administrative data provided by federal agencies.19

(b) People stationed or assigned outside the United States on Census Day who are military or civilian employees of the U.S. government, as well as their dependents living with them outside the United States—Counted as part of the U.S. federally affiliated overseas population, using administrative data provided by federal agencies.

(c) 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—Not counted in the state/city/census.

5. People Who Live or Stay in More Than One Place

(a) People living away most of the time while working, such as people who live at a residence close to where they work and return regularly to another residence—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(b) People who live or stay at two or more residences (during the week, month, or year), such as people who travel seasonally between residences (for example, snowbirds)—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

(c) Children in shared custody or other arrangements who live at more than one residence—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

6. People Moving Into or Out of a Residence Around Census Day

(a) People who move into a new residence on or before Census Day—Counted at the new residence where they are living on Census Day.

(b) People who move out of a residence on Census Day and do not move into a new residence until after Census Day—Counted at the old residence where they were living on Census Day.

(c) People who move out of a residence before Census Day and do not move into a new residence until after Census Day—Counted at the residence where they are staying on Census Day.

19In this document, “Outside the United States” and “foreign port” are defined as being anywhere outside the geographical area of the 50 United States and the District of Columbia. Therefore, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Pacific Island Areas (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands), and all foreign countries are considered to be “outside the United States.” Conversely, “stateside,” “U.S. homeport,” and “U.S. port” are defined as being anywhere in the 50 United States and the District of Columbia.

Military and civilian employees of the U.S. government who are deployed or assigned outside the United States (and their dependents living with them outside the United States) are counted using administrative data provided by the Department of Defense and other federal agencies that employ them. If they are deployed outside the United States (while stationed/assigned in the United States), the administrative data are used to count them at their usual residence in the United States. Otherwise, if they are stationed/assigned outside the United States, the administrative data are used to count them (and their dependents living with them outside the United States) in their home state for apportionment purposes only.
7. People Who Are Born or Who Die Around Census Day
(a) Babies born on or before Census Day—Counted at the residence where they will live and sleep most of the time, even if they are still in a hospital on Census Day.
(b) Babies born after Census Day—Not counted in the census.
(c) People who die before Census Day—Not counted in the census.
(d) People who die on or after Census Day—Counted at the residence where they were living and sleeping most of the time as of Census Day.

8. Relatives and Nonrelatives
(a) Babies and children of all ages, including biological, step, and adopted children, as well as grandchildren—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day. (Only count babies born on or before Census Day.)
(b) Foster children—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.
(c) Spouses and close relatives, such as parents or siblings—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.
(d) Extended relatives, such as grandparents, nieces/nephews, aunts/uncles, cousins, or in-laws—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.
(e) Unmarried partners—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.
(f) Housemates or roommates—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.
(g) Roomers or boarders—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.
(h) Live-in employees, such as caregivers or domestic workers—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

9. People in Residential School-Related Facilities
(a) Boarding school students living away from their parents’ or guardians’ home while attending boarding school below the college level, including Bureau of Indian Affairs boarding schools—Counted at their parents’ or guardians’ home.
(b) Students in residential schools for people with disabilities on Census Day—Counted at the school.
(c) Staff members living at boarding schools or residential schools for people with disabilities on Census Day—Counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they are counted at the college/university student housing.

10. College Students (and Staff Living in College Housing)
(a) College students living at their parents’ or guardians’ home while attending college in the United States—Counted at their parents’ or guardians’ home.
(b) College students living away from their parents’ or guardians’ home while attending college in the United States (living either on-campus or off-campus)—Counted at the on-campus or off-campus residence where they live and sleep most of the time. If they are living in college/university student housing (such as dormitories or residence halls) on Census Day, they are counted at the college/university student housing.
(c) College students living away from their parents’ or guardians’ home while attending college in the United States (living either on-campus or off-campus) but staying at their parents’ or guardians’ home while on break or vacation—Counted at the on-campus or off-campus residence where they live and sleep most of the time. If they are living in college/university student housing (such as dormitories or residence halls) on Census Day, they are counted at the college/university student housing.
(d) College students who are U.S. citizens living outside the United States while attending college outside the United States—Not counted in the state-wide census.
(e) College students who are foreign citizens living in the United States while attending college in the United States (living either on-campus or off-campus)—Counted at the on-campus or off-campus U.S. residence where they live and sleep most of the time. If they are living in college/university student housing (such as dormitories or residence halls) on Census Day, they are counted at the college/university student housing.
(f) Staff members living in college/university student housing (such as dormitories or residence halls) on Census Day—Counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they are counted at the college/university student housing.

11. People in Health Care Facilities
(a) People in general or Veterans Affairs hospitals (except psychiatric units) on Census Day—Counted at the residence where they live and sleep most of the time. Newborn babies are counted at the residence where they live and sleep most of the time. If patients or staff members do not have a usual home elsewhere, they are counted at the hospital.
(b) People in mental (psychiatric) hospitals and psychiatric units in other hospitals (where the primary function is for long-term non-acute care) on Census Day—Patients are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.
(c) People in assisted living facilities where care is provided for individuals who need help with the activities of daily living but do not need the skilled medical care that is provided in a nursing home—Residents and staff members are counted at the residence where they live and sleep most of the time.
(d) People in nursing facilities/skilled-nursing facilities (which provide long-term non-acute care) on Census Day—
Patients are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(e) People staying at in-patient hospice facilities on Census Day—Counted at the residence where they live and sleep most of the time. Staff patients or staff members do not have a usual home elsewhere, they are counted at the facility.

12. People in Housing for Older Adults

People in housing intended for older adults, such as active adult communities, independent living, senior apartments, or retirement communities—Residents and staff members are counted at the residence where they live and sleep most of the time.

13. U.S. Military Personnel

(a) U.S. military personnel assigned to military barracks/dormitories in the United States on Census Day—Counted at the military barracks/dormitories.

(b) U.S. military personnel (and dependents living with them) living in the United States (living either on base or off base) who are not assigned to barracks/dormitories on Census Day—Counted at the residence where they live and sleep most of the time.

(c) U.S. military personnel assigned to U.S. military vessels with a U.S. homeport on Census Day—Counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel’s homeport.

(d) People who are active duty patients assigned to a military treatment facility in the United States on Census Day—Patients are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(e) People in military disciplinary barracks and jails in the United States on Census Day—Prisoners are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(f) U.S. military personnel who are deployed outside the United States (while stationed in the United States) and are living on or off a military installation outside the United States on Census Day—Counted at the U.S. residence where they live and sleep most of the time, using administrative data provided by the Department of Defense.

(g) U.S. military personnel who are stationed outside the United States and are living on or off a military installation outside the United States on Census Day, as well as their dependents living with them outside the United States—Counted as part of the U.S. federally affiliated overseas population, using administrative data provided by the Department of Defense.

(h) U.S. military personnel assigned to U.S. military vessels with a homeport outside the United States on Census Day—Counted as part of the U.S. federally affiliated overseas population, using administrative data provided by the Department of Defense.


(a) Crews of U.S. flag maritime/merchant vessels docked in a U.S. port, sailing from a U.S. port to another U.S. port, sailing from a U.S. port to a foreign port, or sailing from a foreign port to a U.S. port on Census Day—Counted at the onshore U.S. residence where they live and sleep most of the time. If they have no onshore U.S. residence, they are counted at their vessel. If the vessel is docked in a U.S. port, sailing from a U.S. port to a foreign port, or sailing from a foreign port to a U.S. port, crewmembers with no onshore U.S. residence are counted at the U.S. port. If the vessel is sailing from one U.S. port to another U.S. port, crewmembers with no onshore U.S. residence are counted at the port of departure.

(b) Crews of U.S. flag maritime/merchant vessels engaged in U.S. inland waterway transportation on Census Day—Counted at the onshore U.S. residence where they live and sleep most of the time.

15. People in Correctional Facilities for Adults

(a) People in federal and state prisons on Census Day—Prisoners are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(b) People in local jails and other municipal confinement facilities on Census Day—Prisoners are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time.

(c) People in residential treatment centers for juveniles (non-custodial) on Census Day—Counted at the residence where they live and sleep most of the time. If juvenile residents do not have a usual home elsewhere, they are counted at the facility.

(d) People in correctional residential facilities on Census Day, such as halfway houses, restitution centers, and prerelease, work release, and study centers—Residents are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

16. People in Group Homes and Residential Treatment Centers for Adults

(a) People in group homes intended for adults (non-custodial) on Census Day—Residents are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(b) People in residential treatment centers for adults (non-custodial) on Census Day—Counted at the residence where they live and sleep most of the time. If residents or staff members do not have a usual home elsewhere, they are counted at the facility.

17. People in Juvenile Facilities

(a) People in correctional facilities intended for juveniles on Census Day—Juvenile residents are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(b) People in group homes for juveniles (non-custodial) on Census Day—Juvenile residents are counted at the facility. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the facility.

(c) People in residential treatment centers for juveniles (non-custodial) on Census Day—Counted at the residence where they live and sleep most of the time. If juvenile residents or
staff members do not have a usual home elsewhere, they are counted at the facility.

18. People in Transitory Locations

People at transitory locations such as recreational vehicle (RV) parks, campgrounds, hotels and motels, hostels, marinas, racetracks, circuses, or carnivals—Anyone, including staff members, staying at the transitory location is counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, or they cannot determine a place where they live most of the time, they are counted at the transitory location.

19. People in Workers' Residential Facilities

People in workers' group living quarters and job Corps Centers on Census Day—Counted at the residence where they live and sleep most of the time. If residents or staff members do not have a usual home elsewhere, they are counted at the facility.

20. People in Religious-Related Residential Facilities

People in religious group quarters, such as convents and monasteries, on Census Day—Counted at the facility.

21. People in Shelters and People Experiencing Homelessness

(a) People in domestic violence shelters on Census Day—People staying at the shelter (who are not staff) are counted at the shelter. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the shelter.

(b) People who, on Census Day, are in temporary group living quarters established for victims of natural disasters—Anyone, including staff members, staying at the facility is counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they are counted at the facility.

(c) People who, on Census Day, are in emergency and transitional shelters with sleeping facilities for people experiencing homelessness—People staying at the shelter (who are not staff) are counted at the shelter. Staff members are counted at the residence where they live and sleep most of the time. If staff members do not have a usual home elsewhere, they are counted at the shelter.

(d) People who, on Census Day, are at soup kitchens and regularly scheduled mobile food vans that provide food to people experiencing homelessness—Counted at the residence where they live and sleep most of the time. If they do not have a usual home elsewhere, they are counted at the soup kitchen or mobile food van location where they are on Census Day.

(e) People who, on Census Day, are at targeted non-sheltered outdoor locations where people experiencing homelessness stay without paying—Counted at the outdoor location where they are on Census Day.

(f) People who, on Census Day, are temporarily displaced or experiencing homelessness and are staying in a residence for a short or indefinite period of time—Counted at the residence where they live and sleep most of the time. If they cannot determine a place where they live most of the time, they are counted where they are staying on Census Day.

Dated: February 1, 2018.
Ron S. Jarmin,
Associate Director for Economics, Programs, Performing the Non-Exclusive Functions and Duties of the Director, Bureau of the Census.

BILLSING CODE: 3810-07-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS THOMAS HUDNER (DDG 116) is a vessel of the Navy which, due to its special construction and purpose, cannot comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to exempt mariners in waters where 72 COLREGS apply.

DATES: This rule is effective February 8, 2018 and is applicable beginning January 25, 2018.


SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706. This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the secretary of the Navy, has certified that USS THOMAS HUDNER (DDG 116) is a vessel of the Navy which, due to its special construction and purpose, cannot comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(d)(ii), pertaining to the vertical placement of task lights; Rule 23(a), the requirement to display a forward and aft masthead light under way; and Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

Notes:
1. The authority citation for part 706 continues to read:
Mike, Stephanie, Sapna,

Attached please find the official deposition transcript.

I have copies of the exhibits separately, but they are too big to send over email. I will get you a copy on a disc.

Thanks,
Aleks
Deposition of:
30(b)(6) Karen R. Battle

January 16, 2020

In the Matter of:

State Of Alabama, Et Al. Vs. United States Department Of Commerce, Et Al.

Freedom Court Reporting
877.373.3660 | calendar-al@veritext.com | 205.397.2397
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

-----------------------------------------:

STATE OF ALABAMA; and,

MORRIS J. BROOKS, JR.,

Representative for Alabama's
5th Congressional District,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

-----------------------------------------:

Rule 30(b)(6) Deposition of
U.S. BUREAU OF THE CENSUS
Washington, D.C.
Thursday, January 16, 2020
9:00 a.m.

Job No. AL-3846101
Pages 1 - 179

Reported by: Robert M. Jakupciak, RPR
Deposition of KAREN R. BATTLE, held at the offices of:
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Pursuant to Notice, before Robert Michael Jakupciak, RPR, a Notary Public in and for the District of Columbia, when were present on behalf of the respective parties:

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U.S. Department of Justice

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2 (Pages 2 - 5)
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Also Present:
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Stephanie Olson, Esquire

Also Present by phone:
Edmund Gerard LaCour
Winfield Sinclair
Bryan Kusmin
Ming Ming Yang
Don Lewis
Julia Gomez
Sean Brebbia

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Exhibit 3 2020 Census Program Internal Memorandum Series: 2018.08.1, dated 3/26/18
Exhibit 4 Document titled Congressional Apportionment - Frequently Asked Questions
Exhibit 5 Memorandum from John M. Abowd dated 1/19/18

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Exhibit 10 Memorandum of Understanding - Agreement No. 2064-FY20-NFE-0324
Exhibit 11 Memorandum of Agreement - Agreement No. 2064-FY20-NFE-0335
Exhibit 12 Existing Administrative Records Data Available at Census for Early Evaluation of Use for Citizenship Project
Exhibit 13 Statement of the Director of the Bureau of the Census dated 9/18/85

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(Q Have you ever given a deposition before?
A Yes.

A How many times? More than five?
A Once.
Q Once. Okay. How long ago was that?
A Three months ago.

Q What kind of case was that?
A A human resources case.
Q I have some questions about the lawsuit
today. If at any point you don’t understand my
question, let me know. If you need a break, let me
know. Where do you work?
A I work in the Population Division at the
U.S. Census Bureau.
Q What is your title?
A Division Chief, Chief of the Population
Division.

Q How long have you held that position?
A I have been the Division Chief for five
years.
Q Did you have any positions in the Division
before you were Chief?

Proceedings

Whereupon,

KAREN R. BATTLE,
called as a witness, and having been first duly
sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. DAVIS:

Q Good morning.
A Good morning.
Q Would you state your name, please?
A My name is Karen Battle.
Q Ms. Battle, my name is Jim Davis. First
off, is it Ms., Mrs., Doctor?
A Mrs.
Q I represent the State of Alabama in a
lawsuit against the Department of Commerce. You are
familiar with that litigation, correct?
A Yes.
Q And you have been identified as a
representative of the Department of Commerce for
purposes of that deposition, correct?
A Yes.
the Western Michigan University.

Q Did you work – did you have any employment before you were employed by the Bureau of Census?
A I held research positions at universities.
Q Which universities?
A The Western Michigan University, and after leaving Western Michigan University, I spent several years working at the University of Wisconsin in Madison in a research position.
Q I have a notebook here, Mrs. Battle, with some documents that we are going to be discussing during the deposition. They are behind tabs so that everyone can find it easily, but the ones we will be marking as an exhibit probably won't correspond to the tab numbers.
Would you look at Tab 18 in the notebook, please?
MR. DAVIS: And we will mark that as Exhibit 1, if you please.
(Battle Exhibit Number 1 was marked for identification.)

BY MR. DAVIS:
Q Have you reviewed this Notice of Deposition that has been marked as Exhibit 1, Mrs. Battle?
MR. SVERDLOV: Objection. Vague.

BY MR. DAVIS:
Q Have you seen it before this morning?
A Yes.
Q Are you familiar with the topics that are listed?
A Yes.
Q And there have been discussions following issuing of the deposition between counsel, some of these topics have been narrowed. But are you prepared today to speak on behalf of the Department of Commerce for the topics listed on this deposition notice as narrowed through further discussions by counsel?
MR. SVERDLOV: Objection. Misleading.
The deposition notice is for a representative of the Census Bureau to testify, not the Department of Commerce.
example, young black males or the Hispanic population or the American Indian or Alaskan Native population.

Q Are there over-counts in the census?
A Yes.

Q How does that work? Who is over-counted?
MR. SVERDLOV: Objection. Vague and compound.

A Well, our analyses have showed that there may be populations, such as the white population, that may be over-counted.

(Joining the phone conference is Congressman Mo Brooks.)

A So there are some populations that might be over-counted. For example, it could be the white population or some different components along those lines.

Q The Census Bureau again knows that when it releases a count say of the total population for the State of Alabama, would that total population count, could that be characterized as an estimate?

MR. SVERDLOV: Objection. Vague, compound and misleading.

A The decennial census publishes enumerated population counts, not estimates.

Q Okay. Say after the 2010 census the population for the State of Alabama was reported to be 4,779,736. Is that as of a particular date?


A Yes. The decennial census reference date is April 1st of the census year.

Q But your assessments following the census have shown that some populations are under-counted; is that correct?
A Yes.

Q And there may be over-counts as well; is that correct?
A Yes.

Q So the total population of the State of Alabama, assuming its 4,779,000 and change, that may not mean that there were exactly that number of residents in Alabama as of April 1, 2010?

MR. SVERDLOV: Objection.

BY MR. DAVIS:
Q Would you agree with that?

MR. SVERDLOV: Objection. Compound and argumentative.

A The state population counts that come out from the decennial census represent the population that was enumerated as of that census reference date.

Q Okay. Let's talk, Mrs. Battle, about how the Bureau gets to that number. The decennial census starts with questionnaires; correct?
A Yes.

Q Okay. And how do you know who to send the questionnaires too?
A The Census Bureau maintains what's called a master address file which contains the addresses for all of the housing units and group quarters facilities in the United States.

Q And you send a questionnaire to all of those addresses?
A There are different types of enumeration approaches for different areas within the United States, but about 95 percent of the housing units do receive a mailing to either instruct them to go online to respond to the decennial census or they can fill out a paper response. There are other sections of the country where the Census Bureau may go out and just enumerate those areas that may be more rural or hard to enumerate, for example.

Q Okay. And when you say that they go out and enumerate those areas, what do you mean?
A I mean that an enumerator will have their device to be able to collect the information on the decennial census form and will go out to the housing unit or location and attempt to collect the data at that point.

Q For people to whom the Bureau sends a questionnaire, I assume you don't get a hundred percent response rate from those questionnaires; is that correct?

MR. SVERDLOV: Objection. Compound.

A That is correct.

Q What happens then? What does the Census Bureau do if you do not receive a response from a
1. The Census Bureau has a contact strategy where there are a series of attempts to contact a household through mailings. If those contacts do not result in a returned questionnaire, then the Census Bureau will have that particular housing unit that has not responded go into what's called the non-response follow-up universe, and then the Census Bureau will actually have enumerators go out and start knocking on the doors to try to collect the data.

Q. And if you reach the point where you are sending enumerators to go to the household to try to collect the data, let's say they go once and no one is there, they get no response; are there follow-up visits?

A. Well, for the 2020 census the Census Bureau is employing a new strategy for the non-response follow-up operation. And what we are doing is using statistical models to determine if the housing units within the non-response follow-up universe are indeed occupied. And if we have information that indicates that that housing unit is indeed occupied, and we also have administrative records available that are associated or linked to that particular housing unit, then we would only make one attempt to have an individual out there knocking on the door to try to collect that information. And if they are not successful, then we would utilize the administrative records to enumerate that household.

Q. Okay. What administrative records would you use to enumerate that household?

A. We actually have a reference sheets.

Q. Sure. Your counsel gave us some documents before the deposition. Would one of those documents help you respond to this question?

A. Yes.

Q. I'm going to just give you the stack and tell me which one would be helpful to you.

A. This one.

MR. DAVIS: Then let's mark this as our next exhibit, please.

1. (Battle Exhibit Number 2 was marked for identification.)

BY MR. DAVIS:

Q. All right. Mrs. Battle, as I understand your testimony, you said if there is a household you have administrative records related to that household that suggests that household is occupied, you would send a enumerator only a single time; is that correct?

A. The Census Bureau will be using statistical models that incorporate data from administrative records to identify households in the non-response follow-up universe that are occupied, and if we have administrative records that have information on the characteristics of those individuals, then we can use that to enumerate the household after one attempt.

Q. Okay. I want to come back to the statistical models, but first deal with the question I asked previously. If you get to the point where you use administrative records to enumerate that household, what administrative records does the Census Bureau use? And at this point you are referring to Exhibit 2.

A. Yes. So what you'll see in this chart, in the left column are data sources that are used. We have administrative records from the Internal Revenue Service, the 1040, 1099 returns; we have data on the Medicare enrollment, we have data from the Census Numident, which is actually the numerical identification file that we receive from the Social Security Administration that contains data on every Social Security Number that's ever been issued. We also have information from the Census Household Composition Key, we have information from HUD which reflects data on public and Indian housing, as well as tenant rental assistance information. We have data from the Indian Health Service Patient Registration. We have data from the United States Postal Service. They have information on addresses that where they attempt to deliver but they are undeliverable as addressed. That's the
UAA.

So for the NRFU or the non-response follow-up portion of things we focus on that information. We also have data down below where it says Best Rates and Ethnicity, we have data on Medicaid enrollment, as well as data from the TANF program, the Temporary Assistance for Needy Families.

And we also use CoreLogic Black Knight, which provides information on property taxes and deeds of, along those lines.

So we are able to utilize some of this information to help us determine if this household is occupied and how many people are living there, and we can also use some data from these administrative records to determine age, sex, race, ethnicity and tenure, whether they own or rent that property, and that's what we utilize to help do the enumeration.

Q. What is the last item listed, Group Quarters Records?
A. Well, the Group Quarters Records, it's not part of the non-response follow-up universe, but we have an operation to enumerate individuals who are residing in group quarters, like prisons and college dormitories and nursing homes.

And in those instances much of the data that we collect for those residing in group quarters come from the office's administrative records, as opposed to the census going out to interview each resident in a prison cell or someone who might be in a nursing home that's not cognitively functioning.

Q. Okay.
A. So we use administrative records in that sense.

Q. All right. So if this -- say you are trying to enumerate a nursing home. Would you get records from the group or organization that operates that nursing home, a list of residents, for example?

MR. SVERDLOV: Objection. Compound.

A. The Census Bureau works with a, an administrator for that particular nursing home.

Q. Okay.
the edit and -- edit and imputation characteristics
operation, and at that point we will make another
attempt to see if we have administrative records
that can be used to fill in the missing
characteristics.
And if we are not able to, then we utilize
what's called a hot deck methodology where you are
basically looking for the nearest neighbor and they
will be donating their characteristics to the
household.
Q Let's go back, Mrs. Battle, to the
statistical modeling. What do you mean by
statistical modeling?
MR. SVERDLOV: Objection. Vague.
A Yes, when I say statistical models, what I'm
basically saying is that there is a mathematical
approach where you are developing an equation that
is trying to assess the relationship amongst a group
of variables to help you predict an outcome.
So in this case the Census Bureau would be
utilizing administrative records for the NRFU, a
non-response follow-up, to assess different data
sources to help us predict whether that household is
occupied. So using data from the Postal Service,
using data from the IRS, using data from the Social
Security Administration to help us predict whether
that household is occupied.
Q And we are talking about a household
where, that did not respond to the questionnaire;
A Yes.
MR. SVERDLOV: Objection. Vague.
BY MR. DAVIS:
Q So you got no response, you use the
statistical model to determine the likelihood that
that household is occupied. So when you say that,
are you looking at records from the Postal Service
as an example that suggests that mail isn't being
returned as undeliverable that's addressed to that
household?
A Yes. That's exactly right. That's one of
the components into the model. When we have data
from the Postal Service, do they have this address
marked as undeliverable as addressed. So that's a
piece of information that goes into helping us
determine whether or not we think that household is
occupied, for example.
Q And you mentioned IRS records if I
understood you correctly. What type of information
might you receive from the Internal Revenue Service
to be a clue as to whether or not that household is
occupied?
MR. SVERDLOV: Objection. Compound.
A Well, definitely the address and just
understanding that there has been someone who filed
taxes recently from that address again provides more
information to help us determine whether or not that
household is occupied.
Q Okay. Tell me -- look, if you would, Mrs.
Battle, at the document that's behind Tab 7 of the
notebook.
MR. DAVIS: Let's mark that as Exhibit 3,
please.
(Battle Exhibit Number 3
was marked for identification.)

BY MR. DAVIS:
Q Are you familiar with the document that's
been marked as Exhibit 3, Mrs. Battle?
A I believe I have seen this document.
Q Does it describe the process that we were
just discussing of the steps that the Census Bureau
goes through?
MR. SVERDLOV: Objection. Vague.
A It does talk about the steps that we
follow for the 2018 End-to-End Test in terms of
non-response follow-up, it talks about different
administrative records that could be utilized, it
talks about the imputation of the count of the
household as well as the characteristics of the
household. So, yes, it is similar to what we were
just discussing.
Q Okay. What did you mean, Mrs. Battle,
when you discussed the editing process?
A So after the census data has been
collected, we know that not everyone answers every
question, and so we have a process that we create
where we specify how we are to fill in missing data.
And so that's our edit and imputation process.
And so we begin by taking a look at an
individual record for a particular housing unit and
we assess are there missing responses? And, for
example, if there is a missing race response, the
first thing we would do is then look to the other
questions for that particular individual and see if
responses to those other questions might help us
fill in the race information.

So, for example, if race is blank, but
they reported they are Hispanic origin and wrote in
something like white or along with their Hispanic
ethnicity, we can use that to help us fill in their
race and make their race white, for example.

Q Okay.
A So we look to see if there is other
information provided in that form to help us fill in
missing information.
If there is no other information provided
in that form to help us, then our next effort to try
to fill in missing data is to see are we able to
link up that household with our administrative
records, which would include the 2010 census
responses. Did this household respond to the 2010
Census? If so, was information provided for this
person and can bring forward and assign for 2020?
We also are going to be checking
administrative records such as the Numident file,
the Social Security Administration file. That file
might be able to provide data on age or date of
birth or sex for that individual.

So but if we are not able to match up with
administrative records, then the next attempt to try
to fill in missing information involves taking a
look at others in that same household.

So if there is a child of the household
who is missing data, let's say race, and we know
that their parent is in that household and they do
have a race, then we can use that and assign that to
their biological child. So we are looking within
the household to see if there is anywhere else we
can grab information to fill in.

And if that fails, then one of our last
resorts is to use this hot deck methodology where we
then look for the nearest neighbor and try to match
up the household on certain characteristics and then
the nearest neighbor can donate that missing
information. So there is a series of business tools
and steps we go through.

Q I see. Let's say you get to the point
where you use the hot deck methodology. What does
"hot deck" mean?
A Really it's a statistical procedure where
as we are collecting data through the decennial
census and people are reporting fully their
information, we store that fully-reported
information up in this, it's called a hot deck. And
then as we come across households that are missing
information and we aren't able to fill it in
anywhere else, we take from that deck and assign
data from the nearest neighbor. So that's the idea
behind this.

Q Why is it called hot deck?
A Well, just that you are using live data on
the spot and you are trying to use as fresh of
information as possible to fill in the missing
information.

Q Okay. And give me an example of what type
of characteristic might be imputed using the hot
deck methodology.
A Race, ethnicity, and age and sex.

Q Would you use hot deck imputation to
assign a count to a household?
A Earlier on when we were talking about
count imputation, if there is a household where we
don't really have any information available to us
from administrative records to help us determine how
many people are in that household to start, because
we have zero information and we are not able to
utilize any administrative records, so the last
resort, similar to the characteristics, is to use a
hot deck methodology where again you are pulling
information from the nearest neighbors to assign a
count, a population count.

Q Okay. Why does the Census Bureau believe
that that would make the census more accurate; if
you have no information about a household, to impute
characteristics from a neighboring household?

A This has been a standard methodology that the Census Bureau has relied on for a number of decades and has relied on this methodology. This is the chosen methodology.

But, again, as we are experimenting with administrative records, and again that's a huge focus for the 2020 census, we are working to use administrative records as our, kind of one of our first attempts. But if we are not able to do that, then we do need to rely on other statistical methods to fill in characteristics, et cetera.

Q I assume that the Census Bureau uses this methodology because it believes that to result in a more accurate census?

MR. SVERDLOV: Same objection.

BY MR. DAVIS:

Q Do you agree?

A Yes. We need to provide information and we need to make sure that we have complete information for every housing unit counted in the decennial census.

Q Please.

A For the non-response follow-up operation for those housing units where I mentioned earlier where we determine that those housing units are occupied and that we have administrative records that we can use to assign their characteristics, that's one type of housing unit outcome.

However, there are going to be other housing units where again we don't have that information, and so the Census Bureau will continue to visit that housing unit up to six times trying to get the information.

For the 2020 census, after the third visit if we still are not able to get information, then the Census Bureau will tell the enumerator to attempt to get a proxy interview, which means the enumerator will then try to reach out to a neighbor to see if they have information about how many people are living there and if they have any information on the characteristics. If the proxy interviews are not possible, then we move to the imputation aspect of it.

Q Okay. And how does the Census Bureau determine what type of household to don characteristics to this other hypothetical household about which you have no information?

MR. SVERDLOV: Objection. Vague.

A I would need to examine the detailed methodology to answer that, but the general approach is that the Census Bureau will rely on the nearest neighbor, information that we have been collecting from the nearest neighbor to try to fill in information for that housing unit.

Q I'm thinking of my neighborhood, and you have in our household, my wife and I are empty nesters, I have an across the street neighbor who is a single retired man, a next door neighbor who is a very young single man, another next door neighbor who is an African-American woman who is living with her extended family, including both grandparents and young children. It's a very diverse neighborhood.

So if you went through all these steps, the Census Bureau went through all these steps and could not get any information about my household, who would donate characteristics to my household?


BY MR. DAVIS:

Q It may be -- I'm just trying to understand, Mrs. Battle. It may be that it would be easier for you to simply describe the steps that the Bureau would go through under those circumstances.

A Well, again I would need to examine the detailed methodology to explain exactly how that would transpire.

Q Okay. Where would you go to examine the
detailed methodology? Is there a particular manual or document in the Census Bureau that you would use to educate yourself on that point?

A I would need to first consult with the area that's responsible for developing that operation.

Q What would that area be?

A That would be the Decennial Statistical Studies Division.

Q Is there a particular person in that division that you would speak to to better understand the process?

A I would start with the Division Chief, Patrick Cantwell.

Q And do you know, Mrs. Battle, why the Census Bureau uses hot deck imputation to assign characteristics to a household instead of just writing down a zero for that household?

MR. SVERDLOV: Objection. Vague.

A Well, the Census Bureau does determine through the use of staff whether they believe a household to be non-existent, the address is, you know, it's not a habitable address, and those, of course, are deleted.

But if we can tell that this is a habitable address, the Census Bureau will then want to take further steps to make sure that they are, that household is included in the decennial census.

Q Does using imputation then help to ensure that as many inhabitants as possible are counted?

MR. SVERDLOV: Objection. Vague.

A Imputation helps us to ensure that if there is a housing unit where we believe there are people living there but we do not have information for them, that we are including those units in the decennial census.

Q And the goal of the Census Bureau is to have as accurate a census as possible. Would you agree?

MR. SVERDLOV: Objection. Form.

A The Census Bureau strives to have a complete and accurate count.

Q Of course. And in this case the Census Bureau has determined that imputation results in a more accurate census than not using imputation.

Q Would you agree with that?

MR. SVERDLOV: Objection. Argumentative.

A The Census Bureau is continually working to develop statistical approaches and other types of approaches to improve upon our methodology.

Q Of course.

A And while we are making improvements through the use of administrative records, we still need to rely on traditional methods when we need to assign characteristics, if there is nothing else that we can utilize to help.

Q Would you look, please, Mrs. Battle, at the document that is behind Tab 11 of the notebook?

MR. DAVIS: And let's mark this as Exhibit 4, please.

(Battle Exhibit Number 4 was marked for identification.)

BY MR. DAVIS:

Q This is a list of frequently asked questions, Mrs. Battle, from the Bureau's website. And I'll represent to you that it may not be in this exact form on the website today, but it serves our purposes to help me understand the process a little better.

Q Have you reviewed this document before today?

A Yes.

Q A lot of these deal with apportionment, and I want to understand the process of apportionment and the role that the Census Bureau plays in apportionment.

First, would you agree with the first question and response there on the first page; that apportionment is the process of dividing the 435 memberships or seats in the U.S. House of Representatives among the 50 states?

A Yes.

Q And who is included in the apportionment counts?

A So the apportionment population counts contain two components. First, we include what's called the resident population. This reflects the population that was residing in a particular state.

12 (Pages 42 - 45)
as of census day. That's their usual residence.

The second component of the apportionment population count includes the federally affiliated overseas. These are military and civilian employees of the federal government whose home state of record is that particular state.

So for a state you have the resident population and then the federally affiliated population, and together that equals the apportionment population counts.

Q. Okay. After the 2020 census the Census Bureau will release a total population count for the United States of America; correct?

A. Yes.

Q. The count for apportionment purposes will differ from that, will it not?

MR. SVERDLOV: Objection. Vague.

A. The results of the decennial census, the first results from a decennial census include the apportionment population counts, which includes the resident pop, people enumerated as usually residing in these states, plus the federally affiliated. So that is the only data product that comes out of a decennial census where you have the federally affiliated population included.

Q. Okay.

A. All remaining data products from the redistricting data file, the PL-94171, all the remaining data products only include the resident population, not the federally affiliated.

Q. And the PL-94 --

A. 171.

Q. -- 171 file, tell me what that is.

A. That is a data product that the Census Bureau publishes that is for the use of states in their redistricting process.

Q. And that data product does not include people, this population living overseas that you described; correct?

A. That is correct.

Q. Okay. In the apportionment count, and that's -- let me start over. Does the apportionment count, for example, include residents of the District of Columbia or Puerto Rico?
Question: Did I understand you correctly?

A: Yes. The State Department will then provide to us the home state of record, they will take a look at for all of their employees the home state of record and give us a count; for all of their employees who have a home state of record of Alabama, a count for all of their employees that had a home state of record of California, and so on.

Question: Okay. And so for the state of Alabama you have a count for the residents of the state of Alabama and you add in all of these other overseas people who are reported by the various agencies as having Alabama as their home state of record and you add that to Alabama's total for apportionment purposes; is that right?

A: That information results in the federally affiliated overseas count for a state, yes, and that is added to the state's resident population and that equals the apportionment population.

Question: And this apportionment population count is something the Census Bureau provides to the President; correct?

A: Yes.

Question: And when does that happen?

A: The Census Bureau is mandated to deliver the apportionment population counts to the President within nine months of the census day, which turns out to be before December 31st of census year.

Question: So that will be provided no later than December 31st of 2020 to the President?

MR. SVERDLOV: Objection.

BY MR. DAVIS:

Question: Is that right?

A: That is correct.

Question: Okay. Does the apportionment count provided to the President include non-U.S. citizens?

A: The apportionment population counts that we develop includes the resident population as enumerated in the decennial census as well as the federally affiliated overseas, and both of those will include citizens and non-citizens.

Question: Obviously then if it includes both citizens and non-citizens, it includes non-citizens who are lawfully present and non-citizens who are not lawfully present?


A: It includes all types of people who are non-citizens.

Question: Yes. It includes everyone regardless of citizenship and regardless of lawful presence; is that correct?

MR. SVERDLOV: Objection. Vague.

A: Yes.

MR. DAVIS: We haven't been going that long, but this actually might be a good time for a breather.

MR. SVERDLOV: Okay.

MR. DAVIS: Do you want to take 15 minutes? Is that okay with you, Mrs. Battle?

THE WITNESS: Yes.

(Recessed at 10:03 a.m.)

(Reconvened at 10:26 a.m.)

BY MR. DAVIS:

Question: Mrs. Battle, going back to the hot deck.
characteristics and then take what we need to have donated.

Q And do you have a division that tries to determine which household is the best source of the donated information?

MR. SVERDLOV: Objection. Vague.

A Again when it comes to the characteristic imputation using a hot deck, there is this standard approach, and I would have to look at the details of the methodology to --

Q Okay.

A -- address that further.

Q Okay. Is the Census Bureau trying to enumerate the total number of people who are physically present within the State of Alabama on April 1, 2020 or residents of the State of Alabama?

MR. SVERDLOV: Objection. Compound.

A The core concept that the Census Bureau utilizes in doing its enumeration is the concept of usual residence, so we are looking to enumerate individuals where they usually reside, where they live and sleep most of the time.

Q Okay. So someone simply driving through the state on that date would not be counted if their usual residence is in some other state; correct?

A Yes.

Q Okay. And a tourist who happens to be within the state on April 1 wouldn't necessarily be included in the population count if their usual residence is some other state; is that correct?

A The idea is, yes, we want to count people at their usual residence where they live and sleep most of the time.

Now, I need to say that the residence criteria is based on three core principles. So the first one is that of usual residence, where we want to count people where they reside and live and sleep most of the time.

Secondly, there are people who are in certain types of facilities on census day that will be counted at that facility, such as prisons, etc.

And then, thirdly, if we cannot determine the usual residence for an individual or they don't know, they don't have one, then we count them where they are on census day. So those are the three principles.

Q Okay. Will the Bureau report a count of U.S. citizens as a result of the 2020 census?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau is working to develop what's called the citizen voting age population by race and ethnicity special tabulation, which would be based on data from the decennial census. And as you can tell by the name, it will include citizen information; citizenship voting age population.

Q Okay. So will there be within any of the products that the census releases after the 2020 census, will there be a total count of United States citizens?

MR. SVERDLOV: Objection. Vague.

A The specific data product that I mentioned for citizen voting age population by race and ethnicity will be limited to citizens that are 18 years and older. So that would be the extent of the publication of citizens.

Q Does the Census Bureau have any intention of attempting to count the citizens who are under the age of 18?

MR. SVERDLOV: Same objection.

A Well, all usual residents are to be counted in a decennial census.

Q I see the problem with the question I just asked. Okay. You are certainly going to try to count everyone, all residents who, regardless of age; correct?

A Yes.

Q Okay. Of those who are under 18, does the Census Bureau intend to attempt to determine how many of those people are U.S. citizens?

MR. SVERDLOV: Objection. Vague.

A In terms of the publication of statistics, the Census Bureau is finalizing the exact format of the citizen voting age by race and ethnicity special product, but in the efforts to develop that information and using administrative records, I am -- the information on citizenship for those who are under the age of 18 would be involved in the
<table>
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<td>1 process. While we have not finalized the specific methodology to produce those data, we will be utilizing information on citizenship status for the population.</td>
<td>1 final methodology hasn't been determined, have you at least determined that, for example, yes, we will use this particular set of administrative data?</td>
</tr>
<tr>
<td>2 Q Okay. How does the Census Bureau currently plan to develop the citizen voting age population data?</td>
<td>4 MR. SVERDLOV: I'm not convinced that that cures my objection, but if you can answer in a general way, please do.</td>
</tr>
<tr>
<td>3 MR. SVERDLOV: Objection. Vague.</td>
<td>7 A So the Census Bureau is looking to utilize administrative records in combination with decennial census data, so that is the general idea, but in terms of specifically which administrative records, that has not been determined yet.</td>
</tr>
<tr>
<td>4 Well, the Census Bureau has not finalized the specific methodology and approach or the final tabulation, but of course the Census Bureau does produce a citizen voting age population special tabulation annually currently, but it's not based on the decennial census, it's based on the American Community Survey. So they are still determining that final methodology for the citizen voting age population product based on the decennial census.</td>
<td>12 Q Will you attempt for each person that you count, and let's start first with people who are voting age and older. Will the Census Bureau attempt to determine whether or not that individual is a citizen or a non-citizen?</td>
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<tr>
<td>5 Q So in the past the Census Bureau has released citizen voting age population data based on the American Community Survey; correct?</td>
<td>17 MR. SVERDLOV: Objection. Vague.</td>
</tr>
<tr>
<td>6 A Yes.</td>
<td>18 A The Census Bureau is developing methodologies that would help us determine the citizenship status for everyone counted in the decennial census.</td>
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<td>18 Q For everyone regardless of age?</td>
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<tr>
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<tr>
<td>1 understand you right that the Census Bureau intends to release citizen voting age population based on the 2020 census itself?</td>
<td>1 A For the purposes of developing the data product in and of itself, the methodology is not finalized, but the Census Bureau will be collecting information on, through administrative records and that information will be utilized to help us produce the final product which is focused on the population 18 years and older. It's because the methodology is not determined, I cannot say for sure at this time exactly to what extent we would be collecting the data on citizenship.</td>
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<tr>
<td>2 A For the product that we are planning to release in year 2021, the citizen voting age population data product would be based on the decennial census.</td>
<td>11 Q Would you look at the document that is behind Tab Number 8 in the notebook, please, Mrs. Battle?</td>
</tr>
<tr>
<td>3 Q And when it comes to how exactly the Bureau plans to do that, is that what you say is still under consideration?</td>
<td>14 MR. SMITH: Can you repeat the tab number?</td>
</tr>
<tr>
<td>4 A Yes.</td>
<td>15 MR. DAVIS: Tab Number 8.</td>
</tr>
<tr>
<td>5 Q Okay. Has the Census Bureau determined that whatever the final method is, that it will use any particular subsets of data?</td>
<td>16 MR. SMITH: Thank you.</td>
</tr>
<tr>
<td>6 MR. SVERDLOV: Objection. Vague. And I will also say that as you can tell from the witness' answer, the methods haven't been determined, so we are sort of veering into areas where we might assert deliberative process privilege. So instruct the witness to answer in general terms.</td>
<td>17 MR. DAVIS: Can we mark this? (Battle Exhibit Number 5 was marked for identification.)</td>
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<tr>
<td>7 BY MR. DAVIS:</td>
<td>18 MR. SVERDLOV: Can you state for the record what you've marked?</td>
</tr>
<tr>
<td>8 Q The way I phrased the question is although</td>
<td>19 MR. DAVIS: Yes. We've marked as Exhibit</td>
</tr>
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5 this January 19, 2018 memorandum from John M.
2 Abowd to Wilbur Ross. And it's Bates marked as
3 P-001.
4 BY MR. DAVIS:
5 Q Have you seen this memorandum before
6 today, Mrs. Battle?
7 A Yes.
8 Q Can you summarize the recommendations in
9 the memorandum? Let me see if I can make that
10 quicker.
11 Do you understand the author to be
12 discussing three different methods for attempting to
13 determine citizenship or imputing citizenship for
14 the people that they count and making a
15 recommendation as to which of those three methods
16 would be better?
17 MR. SVERDLOV: Objection. Vague and
18 compound.
19 A Yes.
20 Q Okay. And am I reading it correctly that
21 they recommended that, as it says in the second
22 paragraph, we consider three alternatives in
1 and it says the mail response rate in 2000 was 66.4
2 percent for the short form and 53.9 percent for the
3 long forms.
4 Do you know what the response rate was for
5 surveys for the 2010 census?
6 A I do not know that off the top of my head.
7 Q Okay. In the 2010 census there was no
8 long and short form, there was just one form;
9 correct?
10 A Correct.
11 Q And is that going to be true for the 2020
12 census as well?
13 A Yes.
14 Q Do you know where I could go to look up
15 the response rate for the 2010 census?
16 MR. SVERDLOV: Objection. Vague.
17 A That information must be in an assessment
18 report on our website.
19 Q Okay. Do you think that's likely to be
20 something that was publicly reported?
21 A Yes.
22 Q A few pages over on the page that's Bates

Numbered P-15, question 12 asked about other data
that may be available, other administrative data
that may be available to impute citizenship.
The response says the Census Bureau is in
discussion with the U.S. Citizen and Immigration
Services, USCIS, staff to acquire additional
citizenship data. Do you know the status of the
discussions with the U.S. Citizen and Immigration
Services to acquire administrative data?
A This might be a good time to use our
additional reference sheet. We have reference
sheets.
Q Yes. You are looking at some of the
documents that your counsel brought today?
A Uh-huh.
Q If at any point a document would help you
respond to the question, please just refer to it.
A Background sheet number 2. Background
sheet number 2.
MR. DAVIS: And before we continue, let's
go ahead and mark it as an exhibit so that after the
fact we will all know which document we are talking

17 (Pages 62 - 65)
BY MR. DAVIS:

Q. And what is this document that's been marked as Exhibit 6, Mrs. Battle?

A. Well, the first page of the document lays out the members of the Interagency Working Group that the Census Bureau created per Executive Order 13880 and lists the departments who are participants as well as the representatives.

The second page begins the listing of the administrative records that the Census Bureau has received from a number of agencies, and it actually provides some information on the status.

Your question was about data from the Citizen and Immigration Services?

Q. Correct.

A. And so if you look on page 2, what you will see is a listing of the types of data that we have requested from the, received from the Department of Homeland Security, and you will see it mentions that the lawful permanent resident file and naturalization data have been obtained from the Citizen and Immigration Services.

Q. Okay. Okay. So I see in that row of the document, page 2 of Exhibit 6?

A. Yes.

Q. The source agency is the Department of Homeland Security, and you finalized an agreement with the Department of Homeland Security on December 23, 2019. Am I reading that correctly?

A. Yes.

Q. You began negotiations with the Department of Homeland Security on January 2018?

A. Yes.

Q. And data type I see there, the rows begins to be broken down into two different rows. So you have the lawful permanent resident file and naturalization data, parent, Citizen and Immigration Services; correct?

A. Yes.

Q. Okay. And under Variables it says: "46 variables consisting of person identifiers and

citizenship status. All variables will potentially be used for the citizenship project."

So do I understand this to mean that what you received is a database, and so for each person there are 46 fields in that database?


A. We requested a data file from the Department of Homeland Security, and so the expectation is that each of the records for individuals will contain data in each of those 46 variables.

Q. Okay.

A. Yeah.

Q. And under Status it says: "Fitness for use determination." What does that mean?

A. So the Census Bureau is acquiring new sources of administrative records, and once those new sources arrive, the first thing we have to do is evaluate those data to help us determine if we can use the data, and if we can use the data, then we begin to think through how best can we use the data to comply with the executive order.

So the first thing that has to happen is when we acquire these data sets, we need to make sure we can read the files that have been given to us and we need to make sure that all 46 of those variables are present in the data, just to make sure nothing went awry in the agency developing the data for us.

But once we have that covered, we then need to dig deeper and start taking a look at the variables that we have requested. We want to take stock of how complete are those data. If we have one of those variables that says address, well, is address missing for 60 percent of the records in the file? And for addresses that are reported, are they complete addresses, are they partial? So we need to evaluate the kind of data that we have in each of those variables.

And that's really important because we need to be able to assess if we can make record linkages, and so we need identifiers like name, age, date of birth, sex, address. And, of course, the
citizenship variable itself, we need to assess how complete are those data, et cetera.

Q Okay. And you are trying to -- if you --
   if you get this database from Homeland Security,
   just stick with that example, you are trying to link
   it to some other database, is that right? To
   connect it so that you can compare the two
   databases?

MR. SVERDLOV: Objection. Vague and
   misleading.

A Yes.

Q Okay. And what is the other database? Is
   it -- what is the other database?

A So the Census Bureau, number one, has
   reference files, and the primary source of these
   reference files include the Numident file, the
   numerical identification file that we get from the
   Social Security Administration.
   That's a huge database that has all of
   these data, data on all Social Security numbers ever
   issued. In addition to that we have a file that
   contains what's called CITI, income tax

identification numbers. These are unique
   identifiers that are assigned by the Internal
   Revenue Service to individuals who are not eligible
   for a Social Security Number.
   So we have this database that has all of
   this unique identifiable information. So our goal
   is to see if these newly acquired administrative
   records, if we can match individuals up, whereas we
   have in the Social Security Administration
   information on citizenship. So that's one way that
   we are doing linkages.
   In addition to that, we also want to see
   if we can link people across these different
   administrative record data sets that we are
   acquiring to compare and see what information do we
   have, are they differing for individuals, have
   people updated their addresses. So there is an
   element of that to it.
   So we are really looking to see how we can
   make linkages, not only with our internal reference
   files, but across the newly acquired data sets as
   well.

Q If I look at this chart on Exhibit 6 and I
   see the words under, "Status; Fitness for use
   determination," does that mean that the Census
   Bureau has already determined that the data is
   usable?

MR. SVERDLOV: Objection.

BY MR. DAVIS:

Q Or that it has not made a determination
   yet?

A It has not made a determination yet. It's
   in that process.

Q Okay. What group or division in the
   Census Bureau has the responsibility of determining
   whether a database or performing the fitness for use
   determination?

A Well, most of this work is going to be
   done through the Research and Methodology
   Directorate, as well as utilizing staff from the
   Center for Economic Studies.

Q I'm sorry, Mrs. Battle. You said the
   Center of Economic Studies, but you also said the
   research?

A The Research and Methodology Directorate.

Q And is the Research and Methodology
   Directorate a division of the Census Bureau?

A It is an organizational unit that contains
   multiple divisions.

Q Okay. Does it -- is it part of the Census
   Bureau?

A Yes.

Q Okay. And who heads the Research and
   Methodology?

A John Abowd. Dr. John Abowd.

Q Now, back at Exhibit 6, and I see under
   Department of Homeland Security that there is a
   second data set, which is under Data Type it says
   Arrival Departure Information System and Visa Data.
   And there under Status it says, "Awaiting
   Data Transfer from DHS." I take it that just means
   you haven't received the data yet from Homeland
   Security?

A That particular data, that's correct, we
   are waiting to receive that.

Q Yeah. Is there any data where the fitness
for use determination process has been completed?

MR. SVERDLOV: Objection. Vague.

A For the administrative records that we've acquired we are still in the process, either we are waiting for the data or we are beginning to do that evaluation.

Q Okay. Is there any administrative data that you are aware of that the Census Bureau has requested for these purposes that is not listed on this chart that's been marked as Exhibit 6?

MR. SVERDLOV: Objection. Vague.

A One thing I call your attention to is on page 5. At the bottom you'll see the source agency is Nebraska.

Q Yes.

A So what I would say is that we have put out requests to all 50 states to obtain driver's license data, but the only one listed here is Nebraska as we have received those data. So I will mention that.

MR. SVERDLOV: Counsel, can I pause for one second?

MR. DAVIS: Yes.

MR. SVERDLOV: I want to go back to my prior objection. The reason I objected is because it was unclear whether the question asked for the witness to testify on behalf of the Census Bureau or in her personal capacity when you said whether she is aware.

MR. DAVIS: Fair. But let me clear that up. I could and almost certainly will get sloppy with some of the language I use. That's not intentional. I recognize Mrs. Battle is produced as a representative of the department. Unless I very clearly state otherwise, I'm intending to seek the department's knowledge and information.

MR. SVERDLOV: Thank you.

BY MR. DAVIS:

Q So there is data, Mrs. Battle, that the Census Bureau has requested that is not on the chart. At least we know that it's requested driver's license data from all other states; correct?

A Correct.
objection. Mrs. Battle, if the Census Bureau has requested administrative data from another federal agency and that federal agency initially said no, is it the intention of the Department of Census to continue to seek that information through negotiations?

MR. SVERDLOV: I'm going to raise the same objection and instruct the witness not to answer.

BY MR. DAVIS.

Q  Let me ask it this way. Has the Census Bureau requested information from any federal agency, and by information I mean administrative data that it intends to use to impute citizenship status, and that other federal agency has responded with a refusal to provide the information?

MR. SVERDLOV: Counsel, I'm not sure how that question is materially different.

MR. DAVIS: How is -- this is a fact of something that happened in the past, whether an agency has responded with a yes or a no. That's not a deliberation.

MR. SVERDLOV: I think if we can answer it in a general way, the witness can try to do so. But I think we are very close, as I've indicated, we are very close to the line of those, the negotiations that the Department of Commerce and the Census Bureau is having with other agencies, and we would view that as subject to privilege. So if you can answer in a general way, perhaps it would be helpful to you to restate your question.

BY MR. DAVIS:

Q I'm not waiving this issue, but tell me what you can.

MR. SVERDLOV: Objection. Vague.

A  I would say that the Census Bureau has established an interagency working group and we do have members from the, across the federal government. And the purpose of that working group is to facilitate the Census Bureau acquiring administrative records to help us comply with the executive order.

Q  Thank you. That doesn't really help with what I'm looking for, but I appreciate that.

Now, this working group, that is what is listed on the first page of Exhibit 6; correct?

A  Yes.

Q  Okay. And they have had one meeting to date?

A  Yes.

Q  Are any further meetings planned?

MR. SVERDLOV: Objection. Vague.

A  At this point the work that's happening is really involving the points of contact. So the Census Bureau has a point of contact who is working with points of contacts at all of the member agencies to work through any issues with interagency agreements, to talk through the data and the variables that we are requesting to acquire.

So there is a lot of back and forth, and not in formal meetings with full membership, but there is a lot of back and forth between the Census and individual agencies to continue working through issues to make sure we can acquire the data that we have requested.

Q  Is there any administrative data that the Census Bureau has determined that it will request but it simply has not made that request yet?

MR. SVERDLOV: Objection. Vague.

A  At this time I am not aware that the Census Bureau has any other remaining requests outstanding.

Q  Let's look back at Exhibit 5, and that's the document that's behind Tab 8 in your notebook, Mrs. Battle. We are still in the back with the Q and As.

A  All right.

Q  Q&A 20, which is on page P-17, as I read it, you tell me if I'm wrong, please, the question posed is whether the Alternative C approach, the use of administrative data, has been used before on other data collection projects. And the response says the approach in Alternative C has been routinely used in processing the economic censuses for several decades.

First off, I read at that correctly; right?

A  I'm sorry. Which number are you on?

Q  It's Q&A 20 on page P-17.
A: Okay. Okay.
Q: Okay. First tell me what it means by economic censuses.
A: So the Bureau not only conducts a census of the population, but it also conducts a census of organizations, businesses, et cetera. And so they are referring to those economic censuses.
Q: Okay. Administrative data has been used, was used in the 2010 census, was it not, to impute characteristics and for other purposes?
A: There were administrative records used to impute characteristics used in the 2010 census.
Q: Okay. So the use of administrative records is not limited in the past to economic censuses. Am I right about that?
A: Correct.
Q: Okay. And if you turn to the page of that same exhibit where the Bates Number at the bottom is P-30, please? Do you see the chart there that's labeled Figure 1, Mrs. Battle?
A: Yes.
Q: Can you explain this to me, what the terms are; Linked, Adrec, A-D-R-E-C, and then on the other side Not Linked and Model?
MR. SVERDLOV: Counsel, really quick, I'm also going to raise an objection because I think this line of questioning is starting to veer somewhat outside of the topics that we have negotiated.
MR. DAVIS: I believe this Figure 1 refers to the use of administrative data in general and the memo is about citizenship. That seems to fall under the umbrella.
MR. SVERDLOV: Yes. And as you will recall -- my yes was not me acceding to your premise.
As you recall, we narrowed those topics in our December 27th, 2019 letter, which stated that we will produce a witness who can testify about these topics to the extent they concern the feasibility and utility of collecting and using administrative records in the manner directed by Executive Order 13880, and I believe the document you are referring to is part of Topic 5.
MR. DAVIS: Okay. Well, is the witness allowed to explain to me, for example, what modeling is?
MR. SVERDLOV: I think we can pursue some general questions along those lines, but I do want to flag that, you know, questions about like the general background of this document and it's preparation was one of the things that we specifically limited.
MR. DAVIS: I'm not asking about that. I want to explain the terms. I asked her to explain the terms.
BY MR. DAVIS:
Q: First, Mrs. Battle, what is A-D-R-E-C? Do you know?
A: Yes. That refers to administrative records.
Q: Okay. And what is model?
A: Model refers to developing a statistical model.
Q: Okay. So after the 2020 census if you are able to link records, you will use the administrative records to impute citizenship for a person; is that correct?
A: The basic idea is that the Census Bureau will combine multiple sources of citizenship from different sources of administrative records and use that information to determine citizenship status.
Q: Okay.
A: Linked records can then, we can then utilize those administrative records to determine citizenship.
Q: Okay. And in the 2020 census if you are not able to link administrative records, does the Census Bureau intend to use statistical modeling to impute citizenship?
MR. SVERDLOV: Objection. Vague.
A: This diagram shows that initial thinking is that if we are not able to link administrative records to respondents or individuals counted in the census and we need to determine their citizenship status, that a statistical model would be utilized.
MR. SVERDLOV: Objection. As you might have surmised from the nature of that question, the work in this area is still ongoing, so we view the specifics of that work to be covered by the deliberative process privilege. I will instruct the witness to answer in general terms if she can, but not the specifics.

MR. DAVIS: But it's a fair question and if the answer is that they don't know yet, then that's the answer.

MR. SVERDLOV: Sure.

Q: So if the Census Bureau is not able to link administrative data and you will use statistical modeling, the question is how will that happen?

A: So at this point in time the Census Bureau has not finalized its methodology about exactly how that will take place.

Q: Okay. Who is working on making the final determination of how that will work?


BY MR. DAVIS:

Q: Well, did I understand you correctly? You said no final determination had been made. Is anyone in the Census Bureau thinking about that and working on making a final solution?

MR. SVERDLOV: Objection. Vague and compound.

A: The Census Bureau staff who are evaluating the administrative records that the Census Bureau acquires are going to be involved in the process of working with Dr. John Abowd to determine the statistical modeling. So -- so the first step is really to evaluate the incoming data, and then we can turn to specifically how to develop the modeling.

Q: Okay. And to the best of your knowledge, is that going -- will these decisions be made by Dr. Abowd and his group?

MR. SVERDLOV: Objection. Vague.
Q. Does the Census Bureau have a goal for a deadline for determining, number one, what of this data is usable? And by this data I mean the administrative records that are listed on Exhibit 6?

MR. SVERDLOV: Objection. Vague and compound.

A. The Census Bureau has set a goal of the spring of 2020 to complete or at least complete initial evaluations of the data to try to determine specifically which sources could be utilized in continuing to develop a CVAP file.

Q. Is there any plan that you are aware of, Mrs. Battle, to report publicly that the Census Bureau has determined that, for example, the records from Department of Homeland Security are usable and will be part of this imputation process?

MR. SVERDLOV: Objection. Vague and once again verges into deliberative process. So to the extent -- to the extent the witness can answer in general terms about whether there are plans, that would be acceptable.

BY MR. DAVIS:

Q. So has a decision been made about what to do if there is conflicting information about citizenship among the different administrative records?

A. The methodology to be used to address that issue has not been determined as of yet.

Q. Thank you.

MR. SVERDLOV: Are you okay? Do you need a break.

THE WITNESS: I'm good.

BY MR. DAVIS:

Q. You tell me at any time if you need a break.

A. Okay.

Q. Would you please turn, Mrs. Battle, to the document behind Tab 6 of the notebook? Are you familiar with this document, Mrs. Battle?

A. I do not believe I have specifically seen this document, but I understand the general information.

Q. Okay. I have some very general questions, so I don't think a lack of familiarity with the specifics of this individual document will matter.

MR. DAVIS: Let's go ahead and mark this for the record.

(Battle Exhibit Number 7 was marked for identification.)

MR. SVERDLOV: Just to be clear on the record, this is a document that was not one of the ones identified in your list of topics. So to the extent that it falls within some other category, or...
1. you believe it falls within some other category that
2. you have identified, obviously we will let you
3. pursue those questions, but otherwise specific
4. questions about this document I think would be
5. outside the scope.
6. MR. DAVIES: I know that if I ask a
7. question outside the topics, you will object. You
8. don’t have to warn me about that. And I know this
9. wasn’t listed.
10. BY MR. DAVIES:
11. Q. On the Executive Summary, which is the
12. page that’s Bates numbered 6315 --
13. A. Yes.
14. Q. -- the first sentence says:
15. "Characteristic imputation in the 2010 Census
16. Coverage Measurement program imputed values when
17. missing values occurred for relationship, race,
18. Hispanic origin, age, sex, and tenure."
19. I want to know do you know what the 2010
20. Census Coverage Measurement Program is?
21. A. Yes. This is the program that is
22. conducted after the decennial census to assess the

---

1. coverage of the population. It's one of two methods
2. the Census Bureau uses to assess the coverage in the
3. decennial census, whether there is an over-count or
4. under-count.
5. Q. Okay. And do I understand this memo
6. correctly that characteristic imputation is a part
7. of that process?
8. A. Yes.
9. Q. Okay. So you are using imputation when
10. you are assessing the coverage of a past census?
11. A. Uh-huh. So with the Census Coverage
12. Measurement Program they actually go out and conduct
13. a survey. And so what they are doing is collecting
14. the same information that was collected in the
15. decennial census. And not everyone answers all of
16. those questions even in this survey.
17. So this is, the same method, the same
18. approach is used to fill in the missing data.
20. On page 3, the first full paragraph begins
21. as follows. It says: "Editing was a fundamental
22. part of the census characteristic imputation

---

1. system."
2. I’m not sure I understood what, what the
3. difference is between editing and imputation.
4. MR. SVERLOV: Objection. Assumes facts
5. not in evidence.
6. A. So the difference here is that editing is
7. when you are trying to resolve inconsistencies that
8. may exist between the data or utilize data that’s
9. been provided to help you determine a value.
10. So, for example, if someone only provides
11. their date of birth, but they don’t provide their
12. age, what we will do then is calculate age based on
13. the date of birth. So that’s the editing.
14. Q. Okay.
15. A. As opposed to using administrative records
16. to bring in and fill in missing information. So
17. that’s, you know, another example of editing would
18. be if we have a situation where a household responds
19. that there is a same sex couple household, but then
20. when we look at the sex data for the variables, they
21. are opposite sex. So we have to figure out how do
22. we handle this inconsistency. So we are using

---

1. reported data, but we have to resolve
2. inconsistencies.
3. Another example would be if someone
4. reported their date of birth and gave an age, but
5. when you calculate age and date of birth, it doesn’t
6. match. Some people like to report their age around
7. zeros and fives, you know, 40 instead of 41.
8. So there are things like that that involve
9. editing of the data to try to resolve
10. inconsistencies, and that’s different from
11. imputation where you have let’s say missing data and
12. you need to find a way to bring in other sources to
13. fill in the gaps.
14. Q. Okay. And let’s say that different, a
15. person reports an age and a date of birth that don’t
16. match up. Are there rules that the Census Bureau
17. has that when that happens, these are the steps we
18. will go through?
19. A. Yes. There are business rules for that,
20. yes.
21. Q. Where are those reported?
22. MR. SVERLOV: Objection. Assumes facts
not in evidence.

Q Are they reported?
A The business rules for how to conduct the editing and imputation procedures, they are contained in a specification.

Q Okay. Where are the specifications? Are those something that's publicly reported?
A Those specifications typically are not put out to the public.

Q Okay. Is there a particular group or department or division in the Census Bureau that's responsible for developing and maintaining those business rules?

MR. SVERDLOV: Objection. Vague and compound.

A Yes. For the characteristics related to age, sex, race and Hispanic origin, my division, the Population Division, is responsible for those specifications.

For editing and imputation rules, business rules related to relationship and tenure, our sister division, the Social, Economic and Household Statistics Division produces those specifications.

Q Okay. And related to the methods that the Bureau is developing for citizenship, does the Census Bureau intend to develop business rules that will address those issues?

MR. SVERDLOV: Objection to vague and compound.

A I think that the methodology that will be determined and developed to allow the Bureau to determine citizenship will have to include the information on statistical modeling and any other procedures that are done with the data.

Q I've seen references, Mrs. Battle, to developing or imputing the best citizenship status?
A Yes.

Q What is best citizenship as opposed to just citizenship?

MR. SVERDLOV: Objection. Vague, and misleading, assumes facts not in evidence.

A So this is part of what the Census Bureau needs to do in terms of evaluating the administrative records that have been acquired.

Q Okay.
A There will potentially be different citizenship values reported across different administrative records, so the Census Bureau needs to develop a methodology that will help them take those multiple sources of information into account and then determine what the best citizenship status is for an individual.

Q Okay. So let's say hypothetically for this one person one set of administrative records suggests that this person is a citizen and another set of administrative records suggests that this person is a non-citizen. When you say best citizenship, do you mean that the Census Bureau will try to determine which of the various pieces of information is more likely to be reliable?

MR. SVERDLOV: Objection. Misleading and calls for information that we view as protected by the deliberative process privilege.

MR. DAVIS: I'm asking about what she just told me, trying to understand her previous response.

BY MR. DAVIS:
Q So this was directly related to her past response. Did I understand you correctly, Mrs. Battle, that when the Bureau is referring to best citizenship variable, that you are trying to reconcile which conflicting pieces of information is correct?

MR. SVERDLOV: Objection. Vague. And I think we are still in that category of information where the Census Bureau has not reached the final decision and so it's trying to deliberate. But if you can answer in a general way, go ahead.

A One example that might help that is mentioned in a number of the memos is that, for instance, our primary source of citizenship data comes from the Social Security Administration, and we know that if the sources of data from the Social Security Administration, for example, may list that an individual is not a citizen, but we don't know if that individual's citizenship status has changed over time and they just didn't update the Social Security Administration, and so, again as listed in
some of the memos, that's one of the reasons for
trying to acquire administrative records on
naturalizations, for example, that may have more
current information or updated information that may
not be reflected in our reference file. So we are
trying to gather multiple sources and look at them
together to help us determine the best
citizenship --
Q Okay.
A -- value.
Q Mrs. Battle, have we discussed all of the
records that have been requested for state
governments? As I recall, we have discussed
driver's license data, SNAP, WIC and TANF, four
categories. Are there any other pieces of data or
administrative records that have been requested from
state governments by the Census Bureau?
MR. SVERDLOV: Objection. Vague and
compound.
A I'm not aware of any additional
state-level records that have been requested at this
time.
Q Let's say for a request for driver's
license data, how would that request be made?
MR. SVERDLOV: Objection. Vague.
A The Census Bureau staff reached out to the
heads of the states Department of Motor Vehicles to
request, have a discussion about obtaining those
data.
Q Okay. So somebody from the Census Bureau
would call, like in Alabama there is the Alabama Law
Enforcement Agency which is part of, is the agency
which issues driver's licenses. They would likely
reach out to the head of that department in the
State of Alabama?
MR. SVERDLOV: Objection. Vague and
compound.
BY MR. DAVIS:
Q Is that right?
MR. SVERDLOV: Object.
A Yes.
Q Is there any particular person in the
Census Bureau who is responsible for making the
request for administrative records to the state
governments?
A There is, but I do not recall the name off
the top of my head.
Q Okay. Do you know what that person's
title or what division that person likely works in?
A That person likely works in the section of
the Census Bureau that is responsible for acquiring
administrative records and ingesting those
administrative records.
Q And what would that be?
MR. SVERDLOV: Objection. Vague.
A That -- it's the -- within the Economic
Directorate there is a division called I believe
Economic Reimbursable Surveys Division, and that
houses the staff that are responsible for acquiring
and ingesting the administrative records.
Q I'm sorry, Mrs. Battle. Did you say
Economic Reimbursable Survey?
A That is my -- I would need to double check
on the specific name, but I believe that's correct.
Q I understand you are not sure. But I did
understand you correctly? The word was
"reimbursable," if you are remembering correctly?
A Yes.
Q Would you look, please, Mrs. Battle, at
the document behind Tab 3 of the notebook?
MR. DAVIS: And for the record, I have no
doubt we have the original of this in what you
produced. There simply wasn't time to get that in
every case. So the format of this particular memo
was as it was reformatted for purposes of the United
States Supreme Court record. So let's mark that.
(Battle Exhibit Number 8
was marked for identification.)
BY MR. DAVIS:
Q Are you familiar with this memorandum,
Mrs. Battle?
A Yes.
Q Okay. And this is a reproduction of a
memorandum dated December 22, 2017 prepared for John
M. Abowd prepared by Michael Berning and others?
A Uh-huh.
Q So look at page, it will say 304 at the
top. This has been marked as Exhibit 8.
<table>
<thead>
<tr>
<th>Page 106</th>
<th>Page 108</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 A Uh-huh.</td>
<td>1 their name at this moment; right?</td>
</tr>
<tr>
<td>2 Q This was a couple years ago, but it talks</td>
<td>2 A Well, actually the supervisor, I know his</td>
</tr>
<tr>
<td>3 about, under Table 2, data that is currently in</td>
<td>3 name, but I'm sure his staff -- the supervisor's</td>
</tr>
<tr>
<td>4 census inventory and lists Social Security</td>
<td>4 name is Michael Berning.</td>
</tr>
<tr>
<td>5 Administration Unident, Temporary Assistance to</td>
<td>5 Q Okay.</td>
</tr>
<tr>
<td>6 Needy Families, and Bureau of Prisons; correct?</td>
<td>6 A So...</td>
</tr>
<tr>
<td>7 A Yes.</td>
<td>7 Q But there might be someone on his staff</td>
</tr>
<tr>
<td>8 Q Then is says Potential New Acquisitions.</td>
<td>8 who is better able to answer that question; is that</td>
</tr>
<tr>
<td>9 A Uh-huh.</td>
<td>9 right?</td>
</tr>
<tr>
<td>10 Q Now the USCIS Citizen Data, we talked</td>
<td>10 MR. SVERDLOV: Objection. Vague.</td>
</tr>
<tr>
<td>11 about that because it was listed on one of the other</td>
<td>11 A Well, Michael would know the answer,</td>
</tr>
<tr>
<td>12 documents we reviewed; right?</td>
<td>12 because his staff would be involved in this.</td>
</tr>
<tr>
<td>13 A Yes.</td>
<td>13 Q Okay. And back to this Exhibit 8, under</td>
</tr>
<tr>
<td>14 Q Okay. And Real ID Act Data, is that data,</td>
<td>14 FHA Loan Applications, still under the part of the</td>
</tr>
<tr>
<td>15 Mrs. Battle, that states would have?</td>
<td>15 table that lists Potential New Acquisitions, the</td>
</tr>
<tr>
<td>16 MR. SVERDLOV: Objection. Vague. Calls</td>
<td>16 next item is State Department Expatriates. Do you</td>
</tr>
<tr>
<td>17 for speculation.</td>
<td>17 know of any requests for that information?</td>
</tr>
<tr>
<td>18 BY MR. DAVIS:</td>
<td>18 A I am not aware of the request, but we</td>
</tr>
<tr>
<td>19 Q Driver's license data, for example?</td>
<td>19 would need to talk to Michael Berning's staff to</td>
</tr>
<tr>
<td>20 A I think we would need to turn to a</td>
<td>20 confirm that.</td>
</tr>
<tr>
<td>21 memorandum of understanding regarding exactly what</td>
<td>21 Q All right. And what about the next item</td>
</tr>
<tr>
<td>22 the Census Bureau is requesting from the states</td>
<td>22 listed, Medicare/Medicaid Loan Applications?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 107</th>
<th>Page 109</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 regarding the driver's license data.</td>
<td>1 A Well, we do have on our first reference</td>
</tr>
<tr>
<td>2 Q Okay. And another document listed under</td>
<td>2 sheet that the Census Bureau has both Medicare</td>
</tr>
<tr>
<td>3 Potential New Acquisitions is FHA Loan Applications.</td>
<td>3 enrollment data and Medicaid enrollment data. I</td>
</tr>
<tr>
<td>4 Do you know if those have been requested?</td>
<td>4 know this says specifically &quot;loan applications,&quot; so</td>
</tr>
<tr>
<td>5 MR. SVERDLOV: Objection. Assumes facts</td>
<td>5 we would need to talk with Michael Berning to ensure</td>
</tr>
<tr>
<td>6 not in evidence.</td>
<td>6 that there is a distinction there or not.</td>
</tr>
<tr>
<td>7 BY MR. DAVIS:</td>
<td>7 Q Okay. I'm sorry, Mrs. Battle. Let's go</td>
</tr>
<tr>
<td>8 Q Do you know if those have been requested?</td>
<td>8 back. You said the reference sheet -- would you</td>
</tr>
<tr>
<td>9 A I am not aware of this being requested.</td>
<td>9 refer to that by Exhibit Number, please?</td>
</tr>
<tr>
<td>10 Q Okay. Do you know if there is any</td>
<td>10 A Exhibit Number 2.</td>
</tr>
<tr>
<td>11 intention that the Census Bureau has to request FHA</td>
<td>11 Q Would you point to me where there is</td>
</tr>
<tr>
<td>12 loan application data?</td>
<td>12 information about Medicare and Medicaid?</td>
</tr>
<tr>
<td>13 A I cannot say at this time --</td>
<td>13 A The third row down says CMS MEDB. That's</td>
</tr>
<tr>
<td>14 Q Okay.</td>
<td>14 the Medicare enrollment database. And then where,</td>
</tr>
<tr>
<td>15 A -- if there is an intention to collect</td>
<td>15 towards the bottom where it says Best Race and</td>
</tr>
<tr>
<td>16 that.</td>
<td>16 Ethnicity, the first sub-bullet, CMS MSIS is the</td>
</tr>
<tr>
<td>17 Q Who would know?</td>
<td>17 Medicaid enrollment.</td>
</tr>
<tr>
<td>18 A I think we would turn to the organization</td>
<td>18 Q Okay. Does this suggest to you that this</td>
</tr>
<tr>
<td>19 within the Economic Directorate who is responsible</td>
<td>19 is data on people who are in fact enrolled in</td>
</tr>
<tr>
<td>20 for acquiring administrative records to make that</td>
<td>20 Medicare or Medicaid?</td>
</tr>
<tr>
<td>21 final determination.</td>
<td>21 A The information in Exhibit 2 reflects data</td>
</tr>
<tr>
<td>22 Q And that's a person who you can't remember</td>
<td>22 on those who are enrolled. Whereas, I know on 304</td>
</tr>
</tbody>
</table>

28 (Pages 106 - 109)
it mentions loan application, so if these are the
same things or different things, I need to --
Q  I understand. When you said 304, you are
referring to page 304 of Exhibit 8?
A  Yes.
Q  Okay. And it's Mr. Berning or his group
who could tell us to the best of your knowledge?
A  Yes.
Q  Okay. Would you look now at Tab 4, the
document behind Tab 4, the Executive Order 13880?
A  No. (Battle Exhibit Number 9
was marked for identification.)
BY MR. DAVIS:
Q  Okay. Do you see this is Exhibit 9;
right? And it's a copy of the Executive Order
13880. Have you reviewed this Executive Order
before, Mrs. Battle?
A  Yes.
MR. SVERDLOV: Objection. Vague.
MR. DAVIS: Have you reviewed this
Executive Order before?
MR. SVERDLOV: Vague as to time. Go
ahead.
BY MR. DAVIS:
Q  Would you look at the page -- it's Bates
Number P-169 at the bottom. Do you see that?
A  Yes.
Q  Page? Under Section 3, the Executive
Order says that -- that section is titled Assistance
to the Department of Commerce and Maximizing
Citizenship Data. Do you understand this to be a
list of data that agencies, quote, "shall examine
relevant legal authorities and, to the maximum
extent consistent with law, provide access to the
following records"? These are documents the
President wants the agencies to review and study and
see if they can provide to the Department of
Commerce, correct?
MR. SVERDLOV: Objection. Compound.
A  Yes.
Q  Okay. Walk me through this, Mrs. Battle.
Has the department requested all of this information
listed? And we can refer to the different documents
we've been reviewing. I just want to be able to
match them up.
A  Yes.
Q  Yes.
A  So back in Exhibit Number 9 on page 169,
the first item under Section 3 calls for Department
of Homeland Security, United States Citizenship and
Immigration Services - National-level file of Lawful
Permanent Residents, and Naturalizations. And so if
we refer back to Exhibit 6 on page 2, you will see
that that request was made for Lawful Permanent
Resident file and Naturalization data.
Q  Okay. That's data that in fact we
discussed earlier?
A  Yes.
Q  Okay.
A  And back in Exhibit 9, the second bullet
under Section 3 calls for Department of Homeland
Security, Immigration and Customs Enforcement,
Non-immigrant Visas, and that is reflected on page 2
back in Exhibit 6, the last row where it talks about
Arrival Departure Information System and Visa data,
Customer and Border Protection. That is the data on
temporary lawful residents.
Q  And for that data, according to Exhibit 6,
it's been requested, you are awaiting transfer from
DHS; right?
A  Yes. Yes.
Q  Got it.
A  Okay.
Q  And going back to the Executive Order,
bullet 3 says Department of Homeland Security,
National-level file of Customs and Border
Arrival/Departure transaction data?
A  And that will be fulfilled through the
same role we just talked about.
Q  Okay. Arrival/departure information?
A  Yes.
Q  And on the Executive Order bullet 4,
Department of Homeland Security and Department of
State, Worldwide Refugee and Asylum Processing
System, Refugee and Asylum visas?
A  In Exhibit 6 on page 5, at the very top
you'll see the Department of State and the request
was for Worldwide Refugee Admission Processing System data.

Q Okay. And according to Exhibit 6, that's been requested and you are awaiting data transfer?

A Yes.

Q All right. So item 5 on the Executive Record lists Department of State, National-level passport application data.

A Uh-huh. I need to -- I would need to check on the passport application data from the State Department. I do not see it in the Exhibit Number 6.

Q Okay. Back to the Executive Order, Mrs. Battle, item 6 is Social Security Administration - Master Beneficiary Records. Is that what I see on page 3 of Exhibit 6?

A On page 3 of Exhibit 6, yes. The Master Beneficiary Record, yes. That has been requested and received.

Q Great. And the last item on that particular list on the Executive Order is the, the Department of Health and Human Services - CMS

Medicaid and CHIP Information System. Is that on Exhibit 6?

A Yes. Exhibit 6, page 4. They reference the Medicaid Children's Health Insurance Program there, and that we are awaiting transfer.

Q Okay. Then with your and your counsel's permission, I would like to take just a couple minutes for you to tell me in very general terms what some of these other documents are that you brought today, and then we will break for lunch, and that will give us a chance to look at them and decide what we need to ask about them. Does that work?

A Yes.

MR. DAVIS: Let's mark these as exhibits.

We have got three more it seems.

(Battle Exhibit Number 10 was marked for identification.)

BY MR. DAVIS:

Q So, Mrs. Battle, first I'm marking one of these as Exhibit 10. Would you tell me what this document is?
MR. SVERDLOV: We are at noon now. Let's take about an hour.

MR. DAVIS: Sounds good. See you then.

(Recessed at 11:54 a.m.)

(Reconvened at 1:23 p.m.)

MR. SVERDLOV: Can folks on the phone hear us okay?

PHONE PARTICIPANT: Yes.

BY MR. DAVIS:

Q Mrs. Battle, early in the deposition we talked about some populations that tended to be subject to under-counts in the census. Would you remind me what some of those are?

A Yes. So we know that in the decennial census there tends to be an under-count for young children. Those are children under the age of five. And we also know from research that there are certain racial and ethnic population groups that may be under-counted, such as young black males or American Indians and Alaskan Natives, for example.

Q Okay. Taking the Alaskan Natives as an example, if I understand you correctly, research after the census suggests to the Census Bureau that there is likely an under-count of Alaskan Natives in the census; correct?

A For the 2010 census in recent history there was an under-count, yes.

Q Yes. Okay. Do you know whether that's true for other censuses as well?

A The Census Bureau does publish after the decennial census their assessment of coverage of the decennial census and those reports would have that information.

Q Okay. And the Census Bureau wants to count everyone it can, that are supposed to be counted; correct?


A Yes.

Q Okay. Does the Census Bureau have any efforts planned to reach harder to count populations?

MR. SVERDLOV: Objection. Vague.
please.

(Battle Exhibit Number 13
was marked for identification.)

BY MR. DAVIS:

Q Mrs. Battle, this is a statement of the
Director of the Bureau of the Census before the
Subcommittee on Energy, Nuclear Proliferation, et
cetera, dated September 18, 1985. I'm going to turn
to the page -- the first page is Bates Numbered
1820, produced by the Department of Commerce, and
I'm looking at the page that's Bates Numbered 1827.
And here I'm going to represent to you
that if you see a paragraph towards the bottom that
begins, "because undocumented aliens," et cetera?
On that page and the following page, as I read this,
you can tell me if you disagree, the former
director is talking about efforts addressed to count
as many undocumented aliens as possible.
And I just want to see if this refreshes
your recollection if you review the steps that he
says were taken in the past, I ask you to look at
those and see if this refreshes your recollection,

if you are aware of any such effort that the Census
Bureau intends to make as part of the 2020 census?

MR. SVERDLOV: I'm going to object to that
question on the basis of foundation and on the basis
of scope.

A On page 1828 --

Q Yes, ma'am.

A -- it mentions enumerating migrant farm
camps.

Q Yes.

A And I will say that in the course of the
decennial census the Census Bureau does have a group
quarters enumeration operation that would include
workers dormitories which may be similar to this
type of facility.

Q Okay.

A I would need to check on any conversations
that the Census Bureau has had with law enforcement
agencies.

Q Okay. Because this statement, the
former director said that they discussed with law
enforcement agencies about curtailing law

enforcement on census days to ensure maximum
participation. Do you read it the same way?

MR. SVERDLOV: Objection. Lack of
personal knowledge and foundation and scope. The
document says what the document says and the witness
was neither prepared on this document, nor was this
document something that you indicated you were
interested in pursuing testimony on.

BY MR. DAVIS:

Q Are you aware of any conversations the
Census Bureau has had with law enforcement agencies
seeking perhaps a curtailment of law enforcement
with related to immigration on census day to ensure,
to help ensure maximum participation by undocumented
immigrants?

MR. SVERDLOV: I'm going to object based
on scope and also based on potentially deliberative
process privilege. I will direct the witness not to
answer because at the very least we are far outside
the scope of the topics noticed in this deposition.

BY MR. DAVIS:

Q Has the Census Bureau made any decision of
whether or not to work with law enforcement agencies
to curtail enforcement of immigration laws around
census days in order to ensure greater participation
by undocumented immigrants in the census?

MR. SVERDLOV: To protect the deliberative
process I will direct the witness to answer in a
general way.

A I do not have knowledge regarding that. I
would need to check.

Q Okay. Who would you check with if you
wanted to find out the answer to that question?

A I would talk with the Deputy Director of
the Census Bureau.

Q And who would that be?

A Ron Jarmin.

Q Okay. Has the Census Bureau made any
decision of whether or not to reach out to clergy,
for example, the Conference of Catholic Bishops, to
solicit their support in spreading the word about
the census and the importance of participating in
the census?

MR. SVERDLOV: I will raise the same
objection as before and give a similar instruction to the witness.

A Well, in the National Partnership Program that I mentioned earlier there is a faith-based component there, so I do know that the Census Bureau has partnered with members of the different religious communities to help get the word out about the decennial census.

Q The date of the census is April 1, did you say, 2020? That's the date that you are targeting trying to measure the population on that date?

MR. SVERDLOV: Objection. Compound and not I'm not clear the witness has testified on that, so misstates prior testimony.

A Yes.

Q Okay. That doesn't mean though that everyone who fills out a form fills it out on April 1 though, does it?

A No.

Q Okay. What if I fill out my form on March the 1st and move on the 15th; on March the 1st I report that I live in Prattville, Alabama, but I move to Nebraska on the 15th. Where does the Census Bureau count me for the purposes of the 2020 census if those things were to happen?

A Well --

MR. SVERDLOV: Objection. Vague.

A We do ask people to report as of census day.

Q Okay.

A It could be we collect their data early, earlier than that or even after that, but we always reference it back to the need your information as of census day, the reference date.

Q Okay. Well, let's say that maybe I didn't see that part or I misunderstood, but I nonetheless report my address in Prattville, but I move to Nebraska on the 15th. Does the Census Bureau count me at the state that's on my form?

MR. SVERDLOV: Objection. Vague and misleading.

A The -- could you repeat that question, please?

Q Sure. Let's say in spite of the instructions that you put on my form to reflect my status as of April 1, I fill out my form early, I fill it out on March 1 and say I live in Prattville, which was true on March 1, but on the 15th I moved to Nebraska. Is the Census Bureau going to count me as a resident of Alabama or Nebraska?

MR. SVERDLOV: Same objection.

A I think what would happen is that the data would be collected from that original form and if that individual did not fill out another form in Nebraska, that that information would be held -- in the sense -- I don't know that the Census Bureau would know that this person has moved if they never engaged with the Census Bureau an additional time.

Q Unless it's self-reported, is it possible or even likely that the Census Bureau would not be aware of my move to another state?

MR. SVERDLOV: Objection. Compound and misleading.

A If the only information we have for that household has come in on a census form and we have no need to follow up with that individual, then that would be the information that we have.

Q Okay.

A If we never needed to interact with that person again.

Q Okay. What if just any random person fills out their census form on March 15th, mails it in and the next day passes away; does the Census Bureau have any way that you are aware of to know that someone who filled out a census form in fact was deceased before census day?

MR. SVERDLOV: Objection. Compound.

A Once that census form has been submitted and the individual passes away, the Census Bureau would not have knowledge of that.

Q Okay. I suppose it could also work the other way, a couple could fill out a census form and report two people live in a household and before census day they have a child. In that case that house would likely be under-counted, would it not?

MR. SVERDLOV: Objection. Calls for a legal conclusion.

A The Census Bureau would have access to the
information that that family provided on their
questionnaire, yes.
Q  In that case there may be an additional
resident of that household that the Census Bureau
just has no way of counting; is that correct?
MR. SVERDLOV: Objection. Misleading.
A  If that household provided their
information, they responded to the decennial census,
completed the questionnaire and submitted it, then
that would be their record for the census.
Q  Would you turn back, please, Mrs. Battle
to the document behind Tab 8? It's been previously
marked as an exhibit, but I didn't write down for
this one which Exhibit Number that was.
A  Five.
Q  Exhibit 5. And going back to the Q and As
at the back on the page that's Bates Numbered P-15,
I'm going to refer you to Question Number 13 at the
bottom. The question in this question and answer
section reads as follows:
"Is Census confident that administrative
data will be able to be used to determine

And the response given is: "We are
confident that Alternative C," use of administrative
data, "is viable and that we have already ingested
enough high-quality citizenship administrative data
from SSA and IRS."
A  Does the -- is the Census Bureau still
confident that the use of administrative data to
impute citizenship is viable and that you have
enough high-quality citizenship data to perform
those functions?
MR. SVERDLOV: Objection. One second.
Objection. I think this is verging into the
deliberative process privilege. The question by its
terms calls upon the witness to testify about
efforts that are ongoing, so I will direct the
witness not to answer that question.
A  MR. DAVIS: Okay.
BY MR. DAVIS:
Q  This memo is dated January 19, 2018. Was
it true on January 19, 2018 that the Census Bureau
was confident that Alternative C in this memo,
quote, is viable and that we, meaning the Census
Bureau, have already ingested enough high-quality
citizenship administrative data from SSA and IRS?
A  The Census Bureau knows that, yes, the
Social Security Administration data and the Internal
Revenue Service data are of high quality but there
are still some gaps.
Q  Okay. The next sentence of the response
says: "The USCIS data are not required. They
would, however, make the citizenship voting age
tabulations better." Was that true in 2018?
MR. SVERDLOV: Objection. Vague.
A  What I can tell you is that there are gaps
in the Social Security Administration data, and
acquiring information from the Citizenship and
Immigration Services Agency may be helpful in
filling in those gaps.
Q  Okay. Then I apologize for this, but I
want to make sure I've asked what I need to ask,
Mrs. Battle. I want to try this another way.
BY MR. DAVIS: The statement that Alternative C is
viable, was that statement true when it was made?
MR. SVERDLOV: Objection. Vague.
A  Alternative C was put forward as an option
that the Census Bureau thought should be pursued,
additional research would need to be done,
additional data would need to be collected to see
how that alternative could be then developed to
produce information on citizenship status.
Q  Well, on this day does the Census Bureau
know whether the use of administrative data will
allow it to produce citizen voting age population
after the 2020 census?
MR. SVERDLOV: Objection. Vague as to
time. To the extent that this question concerns a
date other than the date on the memorandum or dates
subsequent to it, I will direct the witness not to
answer based on deliberative process privilege.
BY MR. DAVIS:
Q  The question is as of today's date does
the Census Bureau know whether it will be able to
use the 2020 census to produce citizen voting age
population data using administrative data? I'm not

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34 (Pages 130 - 133)
MR. SVERDLOV: Objection. Vague.
A The Census Bureau has stated that in the
spring of 2020 its goal is to have identified
specific administrative record data sources and
methodology that will permit it to develop the CVAP
data product.
Q When this report or memo dated January 19,
2018 contains the statement that we are confident
that Alternative C is viable, has anything happened
since that date to make the Census Bureau less
confident that Alternative C is viable?
MR. SVERDLOV: Objection on the basis of
deliberative process privilege. To the extent the
witness can answer in general terms, she may try to
do so. But I will direct the witness not to answer
the question to the extent it calls for the internal
deliberations and the substance of those
deliberations of the Census Bureau.
A I am not aware of any conversations that
concluded that administrative records are not viable
to help us with those efforts.
Q Has the Census Bureau made a decision as
to whether any sampling will be involved to measure
or impute citizenship as part of the 2020 census?
MR. SVERDLOV: Objection. Vague and
compound.
A The Census Bureau has not determined its
final methodology for producing the CVAP yet.
Q Has the Census Bureau determined whether
CVAP data will be released as part of the P-4 --
what was the data file? Dash 171?
MR. SVERDLOV: Objection. Vague and
compound.
A You are asking me if CVAP is intended to
be a part of the redistricting data file, the PL.
Q Right. PL dash --
A PL-94171.
Q That's it. Thank you.
A The Census Bureau intends for the CVAP
data product to be a separate special tabulation.
Q Okay. What form will it be released in?
MR. SVERDLOV: Objection. Vague.
A The Census Bureau is working to finalize
the format of the CVAP. I expect that information

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1 asking about deliberations, I'm asking if it knows?
2 MR. SVERDLOV: As of today's date?
3 MR. DAVIS: As we sit here right now.
4 MR. SVERDLOV: So to the extent the
5 question can be answered without going into
6 deliberations and can be answered in a general way,
7 the witness can answer. Otherwise, I will direct
8 the witness not to answer.
9 A The Census Bureau is pursuing and has
10 obtained additional administrative records that will
11 be evaluated to see how those data can be used in
12 conjunction with the Social Security Administration
13 data and the Internal Revenue Service data to help
14 us develop the citizenship status information for
15 the purposes of CVAP.
16 So we are ingesting data, we are
17 evaluating data, and we need to continue that
18 evaluation in order to make a final determination on
19 what data we need to help us develop citizenship
20 status.
21 Q So do I understand that the Census Bureau
22 does not know yet whether it can use administrative

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data to produce citizen voting age population data?
A The Census Bureau is pursuing that, but we
need to continue to evaluate all of the data that we
have requested and then make sure we have developed
the appropriate methodology that will allow us to do
that. So we are still evaluating the data.
Q Okay. Are you aware of any memorandum or
reports from the Census Bureau or perhaps testimony
from prior litigation where the Census Bureau or a
representative said in effect we don't know whether
we can use administrative to do this, but we are
going to look at it and see?
MR. SVERDLOV: Objection. Vague and
misleading. To the extent that -- strike that last
part.
A I am aware of memos that instruct the
Census Bureau to acquire additional administrative
records and with the purpose of developing
methodology to determine citizenship status with the
CVAP data product.
Q Does the Census Bureau expect to know the
answer to that question by spring of 2020?
1 to be ready in the spring of 2020.
2 Q Okay. So you don’t know yet what form it
3 will be released in; is that correct?
4 A The specific format, no.
5 Q Okay. Would you turn now, please, Mrs.
6 Battle, to the document behind Tab 9?
7 A Uh-huh.
8 Q That, for the record, is a March 1, 2018
9 memorandum for Wilbur Ross from John Abowd through
10 others. Let’s mark the first page of that, please,
11 Mrs. Battle, as Exhibit 14.
12 (Battle Exhibit Number 14
13 was marked for identification.)
14 BY MR. DAVIS:
15 Q Are you familiar with that document, Mrs.
16 Battle?
17 A Yes.
18 Q And one of the sections is, it begins on
19 the page that’s Bates Numbered P-38. There is a
20 heading, "What are the weaknesses in Alternative C?"
21 What was the author’s response to that question, if
22 you could just summarize it for me?

1 A So one of the key issues with the Numen
2 ident is whether or not there, the information regarding
3 individuals who are not citizens is up-to-date.
4 Whereas, it could be the case that at the time that
5 someone applied for a Social Security Number they
6 were not a citizen, but subsequently they have
7 achieved naturalization, but then never updated the
8 Social Security Administration. So there is a
9 weakness there, there is a gap there.
10 The -- another issue, a weakness with the
11 Social Security Administration that’s listed is that
12 some people are not required to have a Social
13 Security Number, and so then they would not appear
14 in the Numen data from the Social Security
15 Administration.
16 Q So, I want you to continue, but what you
17 have described so far are groups of people for whom
18 you may not have citizenship information in the
19 administrative data; is that correct?
20 MR. SVERDOLOV: I’m sorry. Hold on one
21 second. I want to read the question. Objection.
22 Vague.
MR. SVERDLOV: Objection. That question calls for information protected by the deliberative process privilege.

MR. DAVIS: Was it a goal of the Census Department to fill as many gaps as possible? That doesn't call for deliberations.

MR. SVERDLOV: It precisely does. It calls for revealing the rationale by which the Census Bureau has been acting on a matter in which the Census Bureau has not yet completed deliberations. So our view is that it is protected by the deliberative process privilege.

MR. DAVIS: Are you instructing the witness not to answer?

MR. SVERDLOV: Let me review the question. I will direct the witness not to answer that particular question. However, there may be general questions that she can answer.

BY MR. DAVIS:

Q Is it the goal of the Census Department to refrain from asking for data that it believes would be helpful?

MR. SVERDLOV: Objection. Argumentative. A Can you please restate that?

Q Sure. Is it a goal of the Census Department to purposely refuse to ask for administrative data from another agency that it believes would be helpful in producing a more accurate citizen voting age population count in the 2020 census?

MR. SVERDLOV: In addition to being argumentative, that question seeks to discover the deliberations of the Census Bureau. I will direct the witness not to answer that question.

BY MR. DAVIS:

Q You can refer to this document if you wish. It's the executive order, Mrs. Battle. What do you understand the executive order behind Tab 4, what do you understand this executive order to direct the Census department to do?

A My understanding is that the Census Bureau is directed to establish an interagency working group with the purpose of meeting with federal departments to discuss acquiring their administrative records that may be helpful in helping the Census Bureau meet and comply with the executive order.

Q And does the Census Bureau intend to do that?

A Yes.

Q Is there in any respect that the Census Bureau does not intend to comply with Executive Order 13880?

A The Census Bureau is working to comply with Executive Order 13880.

Q And you are not aware of any area or any requirement of the Executive Order that the Census Bureau intends to refuse?

MR. SVERDLOV: Objection. Vague, calls for a legal conclusion, calls for speculation.

A I am not aware of any part of the Executive Order that the Census Bureau intends to refuse.

Q Referring, Mrs. Battle, to the efforts of the Census Bureau to obtain administrative data from the various states, let's say there is a case where a particular state has declined to provide requested data. Has the Census Bureau made any decision yet as to what the next steps might or might not be?

MR. SVERDLOV: Objection. Calls for speculation.

A I'm not aware of any next steps that the Census Bureau plans to take regarding states that have refused to share their administrative records.

Q Okay. Well, I have to be clear because of the objections. Has there been a decision made that the Census Bureau is going to take no further steps if a state has declined to provide requested data?

MR. SVERDLOV: Objection to the extent it calls for deliberative information. To the extent that the witness can answer whether or not there has been a decision made, she may answer.

MR. DAVIS: Which is the question that I asked.

A I am not aware of the Census Bureau making any decisions about whether or not next steps need to be taken.
Q: Okay. Look back, please, Mrs. Battle, at the document behind Tab 9. And remind me for the record what Exhibit Number is.

A: 14.

Q: 14. Thank you. And look back at the list of one through seven.

MR. SVERDLOV: For the record, this is the page that's Bates Numbered P-39.

THE WITNESS: Yes.

BY MR. DAVIS:

Q: Does the Census Bureau know how many individuals are in any of these categories one through seven?

MR. SVERDLOV: Objection. Vague.

A: I am not aware of the Census Bureau having quantified how many people are in each of these categories.

Q: To make sure I'm clear, are you aware of any estimates of the number of people in any of these categories?

MR. SVERDLOV: Objection. Vague.

A: I'm not aware of any specific estimates for any of these categories that may have been utilized in the development of this memo.

Q: Would you turn now, please, Mrs. Battle, to the document that is behind Tab 14 of the notebook? And let's mark the first page as Exhibit 15, please.

And I'll represent to you that these are excerpts of a deposition in other litigation. These excerpts are excerpts of a deposition taken in other litigation, the deposition of Dr. John Abowd, on Wednesday, August 29th in the lawsuit New York Immigration Collision, et al., versus U.S. Department of Commerce.

(Battle Exhibit Number 15 was marked for identification.)

MR. SVERDLOV: Just for the record, I will note that this is another document that has not been identified for purposes of the topics that the parties negotiated. So to the extent that the witness can answer in general terms, she may do so.

MR. DAVIS: That's not helpful, because I don't have to tell you what the exhibits are going to be when we negotiate topics. And it --

MR. SVERDLOV: I'm laying groundwork for an objection. I don't know where you are going to go.

MR. DAVIS: Exactly. You don't know. So in my view it's a waste of time. You can still raise the objection after a question if in fact the question is objectionable, instead of taking up our time flagging potential objections.

BY MR. DAVIS:

Q: I will tell you, Mrs. Battle, I find some of the coloring hard to read. This is the form we were able to receive it in. I think it is because different parties designated different portions of the deposition in other litigation.

I'm going to refer you to page 67 of the deposition. Do you see the page I mean? The top line one begins, "in 2000 and 2010 that was accomplished."

A: Yes.

Q: Okay. There is testimony here I'll represent to you, Mrs. Battle, concerning introducing randomness to see that data to ensure protection of privacy, at least that's the way I interpret the testimony.

I would like you to review that and help me understand, if you know and if any decision has been made about this, whether randomness is going to be injected into CVAP data to protect the privacy of individuals?

A: Yes. The Census Bureau has determined that it will use a procedure or methodology called differential privacy that will be used to infuse noise into all estimates that come out from the CVAP as well as all census counts that come out from the decennial census. So all data products from the decennial census will have this noise infusion to protect the privacy of those who are included.

Q: Okay. How does that work? What does it mean to inject -- what I mean by that question is what does it mean to inject noise into the data?

A: The Census Bureau will be using a mathematical approach to determine how to -- a mathematical approach in terms of how to take census
responses and then be able to inject noise is the best way I can describe it, to protect an individual’s information. So it’s a way of preventing an individual from being identified based on their characteristics that they provided in response to the decennial census.

Q. Okay. I’m sure I’m just slow, but I don’t understand that. Let me try to give you an example.

Let’s say the Census Bureau reports for a particular census block that there are 100 people living here, there are 90 citizens and ten non-citizens. Is that going to be true or will this noise mean that you are reporting some different number?


A. The Census Bureau is going to take the as-enumerated information and will use a mathematical approach to take those data and the data will then reflect the population in that area, but some of the specific details may be altered, changed, so that you cannot identify an individual.

Q. What is an example of details that my might be altered or changed?

A. In particular, we have information on age, information on race, information on Hispanic origin, for example.

Q. So I understand you can’t look at the CVAP data for a census block and tell from that who individually is a citizen and who is not. But will the totals for that census block be reported accurately?

MR. SVERDLOV: Objection. Vague.

Compound.

A. The Census Bureau has determined that the only population data coming out of the decennial census that will not have differential privacy or noise injection will be the state-level population totals. All other totals will have this differential privacy applied to it, at least that’s as of today the Census Bureau’s position.

Q. And when states are using this CVAP data to draw districts and it looks at a census block and it says we add this census block to this district,

we are adding 100 additional white voters, white voting age citizens and 42 additional African-American voting age citizens, are those numbers going to be true?

MR. SVERDLOV: I’m going to object based on scope and I’m also going to object -- first, I’m going to object to the question as vague and I will also object to it on the basis of scope, because redistricting is explicitly not one of the things that we have agreed to proffer a witness to testify about, nor is it something that the Census Bureau performs.

MR. DAVIS: Well, this is not really about redistricting, it’s about the accuracy of the CVAP data that will be important, and I’m just having trouble understanding what injecting noise does to accuracy.

MR. SVERDLOV: Is that a question?

MR. DAVIS: Yes.

BY MR. DAVIS:

Q. What does injecting noise have to do with accuracy? How does it affect it?

MR. SVERDLOV: Objection. Compound.

A. So the Census Bureau has talked publicly about the differential privacy methodology and the fact that the data will become more accurate as you aggregate levels of geography. So data at the block level may have noise in it that’s more pronounced, but as you group those blocks into block groups and take those block groups and create census tracks and take those census tracts and build up to counties, the accuracy improves as you aggregate data and build larger geographic areas.

Q. And is there any difference in the process that you described as injecting noise in what otherwise may have been referred to as injecting randomness? Or are those the same thing?

MR. SVERDLOV: Objection. Calls for speculation.

A. You are referring to a statement on page 67 about randomness?

Q. Right.

A. Let’s see.

Q. And that’s in Exhibit 15. I’m trying to
understand if you and this witness are describing
the same procedure.
A Because on the top of page 67 the
testimony talks about differential privacy, then we
are talking about the same thing.
Q Okay.

MR. SVERDLOV: Counsel, I think we would
benefit from a little bit of clarification. The
document in Tab 14, you've designated the excerpt of
testimony from Dr. John Abowd, do you know whether
that was a 30(b)(6) deposition? It does not appear
to be one on its face.

MR. DAVIS: I do not know the answer to
that question. And if I intended -- if I
represented this as being the testimony of the
department itself, that was not intentional.

MR. SVERDLOV: Okay.

MR. DAVIS: With your permission, counsel,
and, Mrs. Battle, this would be a good time for a 10
or 15-minute break to get organized. I think the
rest of the time would proceed more efficiently if
you allow me to do that.

MR. SVERDLOV: That makes sense.

MR. DAVIS: Thank you, Mrs. Battle.

(Recessed at 2:15 p.m.)

(Reconvened at 2:40 p.m.)

BY MR. DAVIS:

Q Mrs. Battle, the Executive Order -- you
are free to turn to it if you want -- but it is
behind Tab 4. In Executive Order 13880 it says on
the page that's been marked, that's Bates Numbered
P-169, it says, before it lists the different
categories of administrative records it says: "The
following agencies shall examine relevant legal
authorities and, to the maximum extent consistent
with law, provide access to the following records."

MR. SVERDLOV: I'm sorry, counsel. Can
you direct me?

MR. DAVIS: It's under Section 3 just
before the list of documents, small little Roman
one.

MR. SVERDLOV: Okay.

BY MR. DAVIS:

Q My question to you, Mrs. Battle, is this:
plans?
A The Census Bureau is acquiring administrative records that it will evaluate and the Census Bureau will then finalize their plans about how they specifically will determine citizenship for those enumerated in the census.
Q Okay. What does it mean you'll produce a probability of being a U.S. citizen?
A In this general approach the probability would be a value between zero and one.
Q Okay. Well, what if the probability is .5; is that person counted as a citizen or a non-citizen?
MR. SVERDLOV: Objection. Vague and misleading, assumes facts not in evidence.
A The final methodology for how the Census Bureau will use administrative records and to actually develop the citizenship status for individuals in the census has not been finalized yet to be able to tell you that information.
Q Okay. Let me make sure I understand you by asking you a different way. Has the Census...
while I have the opportunity to speak with you.

So the first step is if you measure X number of
Caucasian voting age citizens in a census block, is
that X in fact going to be released for that census
block, or because of noise, will it be changed to
some other number?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau will take enumerated
counts for a block and those data, along with all
the other census data collected in the decennial
census, will go through the disclosure avoidance
process and noise will be injected.

Q Okay. And after -- how will the numbers
for a block look different after noise is injected?

MR. SVERDLOV: Objection. Calls for
speculation.

BY MR. DAVIS:

Q I'm going to break that down with
different questions to see if maybe I can make it
make sense a little more for me.

After you inject noise, would the total
population of the block change?

MR. SVERDLOV: Objection. Vague.

A The current plans for using disclosure
avoidance in the decennial census holds that only
the state's population totals will be as enumerated
in the census and other population totals may change
because of noise that's been injected.

Q Okay. So the numbers reported for a
particular census block may not be accurate then if
I understand you correctly?

MR. SVERDLOV: I'm going to object based
on scope once again and this time I'm going to
direct the witness not to answer. I do not see how
this bears on the question of state apportionments,
which is the nature of your claims in this lawsuit
and therefore the predicate for --

MR. DAVIS: We will come back to that. We
will just skip that for now.

BY MR. DAVIS:

Q But from what you described, Mrs. Battle,
voting age population at the state level will be
correct?

MR. SVERDLOV: Objection. Vague.

A The state population totals will be as
evernumetated in the decennial census.

Q Okay. Will you be releasing citizen
voting age population at the state level?

A That level of geography traditionally has
been published with the CVAP data file. The final
specifications for the 2020 CVAP are not finalized
yet.

Q Is there any doubt that the Census Bureau
will in fact release CVAP data after the 2020
census?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau plans to release the
CVAP data after the census. The goal is to produce
that by March 31st of 2021.

Q Does the Census Bureau have any intention
that you are aware of to seek information concerning
delayed action for childhood arrivals program?

MR. SVERDLOV: Objection. I will direct
the witness not to answer both on the basis of scope
and deliberative process privilege.
MR. SVERDLOV: Objection. Misleading.
2 A Yes.
3 MR. DAVIS: Do you all need a break?
4 MR. ROSENBERG: Are you done?
5 MR. DAVIS: Not quite. But close.
6 BY MR. DAVIS:
7 Q Would you look at Tab 17 of your notebook, please, Mrs. Battle?
8 MR. SVERDLOV: I'm sorry? What tab?
9 MR. DAVIS: Tab 17.
10 BY MR. DAVIS:
11 Q And, Mrs. Battle, take all the time you want. I really just want to know if you can identify that document for me just so I can get on the record if you know what that document is. Let's mark it as Exhibit 18. For the record, I made a mistake. This document will be marked as Exhibit 16 to Mrs. Battle's deposition. (Battle Exhibit Number 16 was marked for identification.)
18 BY MR. DAVIS:
19 Q Can you identify the document that's been marked as Exhibit 16, Mrs. Battle?
20 A This is the Department of Homeland Security Immigration-Related Information Sharing with U.S. Census Bureau, December 20th, 2019.
21 Q And how is that different from the document we marked as Exhibit 11, the Memorandum of Agreement between the Department of Commerce and the U.S. Department of Homeland Security?
22 MR. SVERDLOV: Objection. Vague and misleading and assumes facts not in evidence. And to the extent you are asking the witness to testify about a Department of Homeland Security document that you have marked as Exhibit 16, it is outside the scope of this deposition because the witness is testifying on behalf of the U.S. Census Bureau, not the Department of Homeland Security.
23 BY MR. DAVIS:
24 Q Have you reviewed the document that's been marked Exhibit 16 before?
25 A I am not familiar with this particular document.
26 Q That's all. That's fine. Then I will have no other questions about it.
27 Q Mrs. Battle, does the Census Bureau know yet whether it is feasible to produce high-quality citizen voting age population data using administrative records?
29 A The Census Bureau will need to continue evaluating the administrative records that we have recently acquired before being able to make that statement.
30 Q So the answer is the Bureau just doesn't know yet? Is that true?
31 A Yes.
32 Q Okay. If it didn't know now, then it didn't know the answer to that question in 2019 or 2018 or 2017, did it?
38 MR. SVERDLOV: Objection. Argumentative.
39 A The Census Bureau needs to get access to the data and be able to evaluate that to make that final decision.
40 Q So if someone said in 2019 that, yes, the Census Bureau can use administrative data and use that to produce high-quality citizen voting age population data, that would have been incorrect?
41 MR. SVERDLOV: Objection. Vague and misleading.
42 A The goal of the Census Bureau is to use administrative records to produce high-quality data on citizenship for the population. But we need to access the data that we believe may be helpful to us and just make sure that it will be of the quality that we need for the purposes that we need.
43 Q After the 2020 census, Mrs. Battle, does the Census Bureau intend to release a total population count for each state?
44 A After the decennial census the Census Bureau intends to publish an apportionment population count for the state, which would include a resident population count for the state as well as the federal affiliated overseas population for the state.
45 Q Okay. Will it produce as a part of any product a count of the number of U.S. citizens...
residing in each state?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau in the development of the citizen voting age population file would include data on the number of citizens of voting age. The final format of other information that would be in that CVAP file has to be finalized.

Q The numbers released for citizenship, if I understood you correctly, will be the number of citizens of voting age; is that correct?

A Yes. That would be in the citizen voting age population data product.

Q But does the Census Bureau also intend to count each person, even those not of voting age, as a citizen or a non-citizen?

MR. SVERDLOV: Objection. Vague and misleading.

A The Census Bureau through the use of administrative records will be determining a citizenship value for all those counted in the decennial census.

Q Does the Census Bureau plan to count the number of non-citizens who are lawfully present in each state?

MR. SVERDLOV: Objection. Vague and misleading.

A The Census Bureau plans to count in the decennial enumeration all of those who are usual residents of the state regardless of citizenship status.

Q Do you know and does the Census Bureau know whether any of the administrative data that it has sought or obtained would contain administrative data on lawful residents?

Let me say by that I mean do you know whether any of the data from any of these other agencies will contain information to let you impute whether or not a person counted is a non-citizen counted is a lawful resident of the United States?

MR. SVERDLOV: Objection. Vague and misleading.

A I can't speak to whether the Census Bureau will impute a particular legal status to someone in a decennial census. The Census Bureau is acquiring administrative records that will have some of that information.

Q Okay. What are some of those? And I will refer you, Mrs. Battle, to the document that's been marked as Exhibit 6. I'm not limiting you to that exhibit, but it may be a place to start. And again what I'm asking you is to tell me which of these records either have or may have information related to the lawful status of a non-citizen.

A So in Exhibit 6 on page 2, in the bottom part of the table we see data that either has been acquired or we are waiting to acquire from the Department of Homeland Security, which would include information on lawful permanent residents and naturalized citizens, as well as temporary lawful migrants, people with student visas or temporary work visas, et cetera.

And page 3, at the top the Department of State, we are waiting to acquire those records on data regarding the refugee population.

Q Any other sources of data listed on Exhibit 6 that may have information about lawful residency?

A I would need to defer back to the Memorandum of Understanding with all of these agencies which lists the variables specifically that are being requested to determine that.

Q If a state agrees to release information to the Census Bureau, and by information I mean administrative data requested as part of the effort to comply with the Executive Order, is the Census Bureau entering into agreements with those states or memorandums of understanding?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau will need to have a memorandum of understanding or enter transfer agreements to document exactly what the Census Bureau is requesting, yes.

Q Look. Nebraska is listed on here and providing you some information; correct?

A Yes.

Q Does that mean that Nebraska has entered into a memorandum of understanding with the Census Bureau?
A. In order for the Census Bureau to acquire those data there needs to be a memorandum of understanding.

Q. Gotcha.

MR. DAVIS: This is off the record.

(Discussion off the Record.)

BY MR. DAVIS.

Q. Back on, Mrs. Battle, if the Census Bureau determined that it was going to make a count of non-citizens who were lawfully present in each state, is there additional administrative data that the Census Bureau would need in order to accomplish that?

MR. SVERDLOV: Objection. I will skip the form objection and just object on the basis of deliberative process privilege and instruct the witness not to answer.

BY MR. DAVIS.

Q. Mrs. Battle, has the Census Bureau made any decision that should it determine to make a count of persons who were unlawfully present non-citizens in each state, that it would need additional administrative data to do that?


A. The Census Bureau has not made any determination at this point as to additional information that could be produced or published regarding lawful immigrants.

Q. We discussed earlier, Mrs. Battle, the different steps that the Census Bureau goes through when it's attempting to make an enumeration. You send out the form, sometimes enumerator, sometimes in certain cases you might ask a neighbor, sometimes these hot deck imputations.

My question is this: Are each of these steps, each of these efforts, are they part of the Census Bureau's efforts to make the census as accurate as possible?

MR. SVERDLOV: Objection. Vague, calls for a legal conclusion.

A. The Census Bureau strives to conduct as accurate and as complete a count as possible and utilizes many different operations and techniques to help us meet that goal.

Q. Certainly. And imputation, for example, is it true that at least one of the reasons why the Census Bureau uses characteristic imputation for the use of administrative records is that because it results in a more accurate census?

MR. SVERDLOV: Objection. Vague.

A. Yes.

MR. DAVIS: Can we go off the record so I can talk to my colleagues? We can take a break, let us chat and we will be right back.

MR. SVERDLOV: Why don't you chat and then we will figure out next.

(Recessed at 3:13 p.m.)

(Rconvened at 3:31 p.m.)

MR. DAVIS: I think I'm up and I can say we have no further questions. We really appreciate counsel hosting Mrs. Battle. We thank you for taking time to speak to us and helping with these issues. Before I close I would say that there is still documents to be produced or documents that we received a new copy of today.

If in the course of reviewing those documents there is something that we need additional testimony about, I reserve the right to speak with counsel and seek additional testimony. Although we would in those circumstances most certainly try to exhaust other ways of getting the information that we need.

MR. SVERDLOV: We understand your position and we certainly do not consent to anything at this time, but we are happy to work with you to resolve any issues that may arise.

MR. DAVIS: Thank you.

MR. SVERDLOV: We don't have -- I don't have any questions for Mrs. Battle. We will reserve the right to read and sign the transcript.

MR. DAVIS: Certainly.

MR. SVERDLOV: And otherwise we have nothing further.

MR. DAVIS: Thank you all.
(Whereupon, at 3:33 p.m., the
deposition of KAREN R. BATTLE
was concluded.)

* * * * *

To: ALEXANDER V. SVERDLOV, ESQ.
Re: Signature of Deponent 30(b)(6) Karen R. Battle
Date Errata due back at our offices: 2/20/2020

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That the witness whose deposition is
hereinbefore set forth, was duly sworn and that the
within transcript is a true record of the testimony
given by such witness.
I further certify that I am not related to
any of these parties to this action by blood or
marriage and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 21st:

My Commission Expires:
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I, the undersigned, do hereby certify that I have read the
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46 (Pages 178 - 181)
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(e) Submission to witness; changes; signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty (30) days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the
court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(F) Certification and filing by officer; exhibits; copies; notice of filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the court, the officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked “Deposition of [here insert name of witness]” and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

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Deposition of:
30(b)(6) Karen R. Battle

January 16, 2020

In the Matter of:

State Of Alabama, Et Al. Vs. United States Department Of Commerce, Et Al.

Freedom Court Reporting
877.373.3660 | calendar-al@veritext.com | 205.397.2397
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

----------------------------------:

STATE OF ALABAMA; and, : 
MORRIS J. BROOKS, JR., : 
Representative for Alabama's : 
5th Congressional District, : 
Plaintiffs, : 

vs. : Civil Action No.: 
UNITED STATES DEPARTMENT : 2:18-cv-00772-RDP 
OF COMMERCE, et al., : 
Defendants. : 

----------------------------------:

Rule 30(b)(6) Deposition of 

U.S. BUREAU OF THE CENSUS 

Washington, D.C. 

Thursday, January 16, 2020 

9:00 a.m. 

Job No. AL-3846101 

Pages 1 - 179 

Reported by: Robert M. Jakupciak, RPR
Deposition of KAREN R. BATTLE, held at the

offices of:

U.S. Department of Commerce

1401 Constitution Avenue, N.W.

Washington, D.C. 20230

Pursuant to Notice, before Robert Michael

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Julia Gomez  
Sean Brebbia
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(Exhibits attached to transcript.)
Whereupon,

KAREN R. BATTLE,
called as a witness, and having been first duly
sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. DAVIS:

Q    Good morning.
A    Good morning.

Q    Would you state your name, please?
A    My name is Karen Battle.

Q    Ms. Battle, my name is Jim Davis. First
off, is it Ms., Mrs., Doctor?
A    Mrs.

Q    I represent the State of Alabama in a
lawsuit against the Department of Commerce. You are
familiar with that litigation; correct?
A    Yes.

Q    And you have been identified as a
representative of the Department of Commerce for
purposes of that deposition; correct?
A    Yes.
Q Have you ever given a deposition before?
A Yes.
Q How many times? More than five?
A Once.
Q Once. Okay. How long ago was that?
A Three months ago.
Q What kind of case was that?
A A human resources case.
Q I have some questions about the lawsuit today. If at any point you don't understand my question, let me know. If you need a break, let me know. Where do you work?
A I work in the Population Division at the U.S. Census Bureau.
Q What is your title?
A Division Chief, Chief of the Population Division.
Q How long have you held that position?
A I have been the Division Chief for five years.
Q Did you have any positions in the Division before you were Chief?
A Yes.

Q What were those, and approximately for what term?

A Prior to becoming the Division Chief I served as the Assistant Division Chief for Special Population Statistics, and I served in that position from 2007 to 2014.

Prior to that I served as the Branch Chief over the Sex and Age Statistics Branch, and I served in that position from 2004 to 2007.

Prior to that I served as the Special Assistant to the Division Chief from approximately 2004 -- 2000 to 2004. And prior to that I served as a Data Analyst in the Racial Statistics Branch and the Ethnicity and Ancestry Branch. And prior to that I was a summer intern in 1998.

Q So have you been employed by the Census Bureau since 1998?

A Yes.

Q Tell me about your education background, please.

A I have a Master's Degree in Sociology from
the Western Michigan University.

Q  Did you work -- did you have any employment before you were employed by the Bureau of Census?

A  I held research positions at universities.

Q  Which universities?

A  The Western Michigan University, and after leaving Western Michigan University, I spent several years working at the University of Wisconsin in Madison in a research position.

Q  I have a notebook here, Mrs. Battle, with some documents that we are going to be discussing during the deposition. They are behind tabs so that everyone can find it easily, but the ones we will be marking as an exhibit probably won't correspond to the tab numbers.

Would you look at Tab 18 in the notebook, please?

MR. DAVIS: And we will mark that as Exhibit 1, if you please.

(Battle Exhibit Number 1 was marked for identification.)
BY MR. DAVIS:

Q Have you reviewed this Notice of Deposition that has been marked as Exhibit 1, Mrs. Battle?

MR. SVERDLOV: Objection. Vague.

BY MR. DAVIS:

Q Have you seen it before this morning?
A Yes.

Q Are you familiar with the topics that are listed?
A Yes.

Q And there have been discussions following issuing of the deposition between counsel, some of these topics have been narrowed. But are you prepared today to speak on behalf of the Department of Commerce for the topics listed on this deposition notice as narrowed through further discussions by counsel?

MR. SVERDLOV: Objection. Misleading. The deposition notice is for a representative of the Census Bureau to testify, not the Department of Commerce.
MR. DAVIS: You are correct. I misspoke.

BY MR. DAVIS:

Q  Same question, except substitute "census bureau" for "commerce"?
A  Could you repeat that?
Q  Yes, ma'am. Are you prepared today to speak on behalf of the Census Bureau for the topics listed on this deposition notice as those topics have been narrowed through discussions between counsel?

MR. SVERDLOV: Objection. Compound.

A  Yes.

Q  Mrs. Battle, just some preliminaries. There is a census every ten years; correct?
A  Yes.

Q  And after each census the Bureau of Census releases population statistics?

MR. SVERDLOV: Objection. Vague.

A  Yes.

Q  Okay. And part of the data the Census Bureau releases is population totals for the United States and for each state; is that correct?
MR. SVERDLOV: Objection. Vague.

A Yes.

Q Are there known under-counts in the census?

MR. SVERDLOV: Objection. Vague.

A Yes.

Q Are any particular populations more likely to be subject to under-counts than other populations in the country?

A The Census Bureau does assess the coverage on the population after the decennial census, and there are two methods that the Census Bureau uses to do that, and those methods have identified certain subpopulations that are under-counted.

Q What subpopulations tend to be under-counted?

MR. SVERDLOV: Objection. Vague.

A We know from our analyses that young children, children under the age of five, tend to be under-counted in the decennial census. In addition, there are other racial and ethnic populations that may be under-counted in the decennial census; for
example, young black males or the Hispanic population or the American Indian or Alaskan Native population.

Q   Are there over-counts in the census?
A   Yes.

Q   How does that work?  Who is over-counted?
MR. SVERDLOV:  Objection.  Vague and compound.

A   Well, our analyses have showed that there may be populations, such as the white population, that may be over-counted.

(Joining the phone conference is Congressman Mo Brooks.)

A   So there are some populations that might be over-counted.  For example, it could be the white population or some different components along those lines.

Q   The Census Bureau again knows that when it releases a count say of the total population for the State of Alabama, would that total population count, could that be characterized as an estimate?

MR. SVERDLOV:  Objection.  Vague, compound
and misleading.

A The decennial census publishes enumerated population counts, not estimates.

Q Okay. Say after the 2010 census the population for the State of Alabama was reported to be 4,779,736. Is that as of a particular date?


A Yes. The decennial census reference date is April 1st of the census year.

Q But your assessments following the census have shown that some populations are under-counted; correct?

A Yes.

Q And there may be over-counts as well; is that correct?

A Yes.

Q So the total population of the State of Alabama, assuming its 4,779,000 and change, that may not mean that there were exactly that number of residents in Alabama as of April 1, 2010?

MR. SVERDLOV: Objection.
BY MR. DAVIS:

Q Would you agree with that?

MR. SVERDLOV: Objection. Compound and argumentative.

A The state population counts that come out from the decennial census represent the population that was enumerated as of that census reference date.

Q Okay. Let's talk, Mrs. Battle, about how the Bureau gets to that number. The decennial census starts with questionnaires; correct?

A Yes.

Q Okay. And how do you know who to send the questionnaires too?

A The Census Bureau maintains what's called a master address file which contains the addresses for all of the housing units and group quarters facilities in the United States.

Q And you send a questionnaire to all of those addresses?

A There are different types of enumeration approaches for different areas within the United
States, but about 95 percent of the housing units do receive a mailing to either instruct them to go online to respond to the decennial census or they can fill out a paper response. There are other sections of the country where the Census Bureau may go out and just enumerate those areas that may be more rural or hard to enumerate, for example.

Q     Okay. And when you say that they go out and enumerate those areas, what do you mean?

A     I mean that an enumerator will have their device to be able to collect the information on the decennial census form and will go out to the housing unit or location and attempt to collect the data at that point.

Q     For people to whom the Bureau sends a questionnaire, I assume you don't get a hundred percent response rate from those questionnaires; is that correct?

MR. SVERDLOV: Objection. Compound.

A     That is correct.

Q     What happens then? What does the Census Bureau do if you do not receive a response from a
particular household?

A The Census Bureau has a contact strategy where there are a series of attempts to contact a household through mailings. If those contacts do not result in a returned questionnaire, then the Census Bureau will have that particular housing unit that has not responded go into what's called the non-response follow-up universe, and then the Census Bureau will actually have enumerators go out and start knocking on the doors to try to collect the data.

Q And if you reach the point where you are sending enumerators to go to the household to try to collect the data, let's say they go once and no one is there, they get no response; are there follow-up visits?

A Well, for the 2020 census the Census Bureau is employing a new strategy for the non-response follow-up operation. And what we are doing is using statistical models to determine if the housing units within the non-response follow-up universe are indeed occupied. And if we have
information that indicates that that housing unit is indeed occupied, and we also have administrative records available that are associated or linked to that particular housing unit, then we would only make one attempt to have an individual out there knocking on the door to try to collect that information. And if they are not successful, then we would utilize the administrative records to enumerate that household.

Q  Okay. What administrative records would you use to enumerate that household?

A  We actually have a reference sheets.

Q  Sure. Your counsel gave us some documents before the deposition. Would one of those documents help you respond to this question?

A  Yes.

Q  I'm going to just give you the stack and you tell me which one would be helpful to you.

A  This one.

Q  Okay.

MR. DAVIS: Then let's mark this as our next exhibit, please.
(Battle Exhibit Number 2 was marked for identification.)

BY MR. DAVIS:

Q    All right. Mrs. Battle, as I understand your testimony, you said if there is a household you send a questionnaire and you get no response, if you have administrative records related to that household that suggests that household is occupied, you would send a enumerator only a single time; is that correct?

A    The Census Bureau will be using statistical models that incorporate data from administrative records to identify households in the non-response follow-up universe that are occupied, and if we have administrative records that have information on the characteristics of those individuals, then we can use that to enumerate the household after one attempt.

Q    Okay. I want to come back to the statistical models, but first deal with the question I asked previously. If you get to the point where you use administrative records to enumerate that
household, what administrative records does the
Census Bureau use? And at this point you are
referring to Exhibit 2.

A    Yes. So what you'll see in this chart, in
the left column are data sources that are used. We
have administrative records from the Internal
Revenue Service, the 1040, 1099 returns; we have
data on the Medicare enrollment, we have data from
the Census Numident, which is actually the numerical
identification file that we receive from the Social
Security Administration that contains data on every
Social Security Number that's ever been issued.

We also have information from the Census
Household Composition Key, we have information from
HUD which reflects data on public and Indian
housing, as well as tenant rental assistance
information.

We have data from the Indian Health
Service Patient Registration. We have data from the
United States Postal Service. They have information
on addresses that where they attempt to deliver but
they are undeliverable as addressed. That's the
So for the NRFU or the non-response follow-up portion of things we focus on that information. We also have data down below where it says Best Rates and Ethnicity, we have data on Medicaid enrollment, as well as data from the TANF program, the Temporary Assistance for Needy Families.

And we also use CoreLogic Black Knight, which provides information on property taxes and deeds of, along those lines.

So we are able to utilize some of this information to help us determine if this household is occupied and how many people are living there, and we can also use some data from these administrative records to determine age, sex, race, ethnicity and tenure, whether they own or rent that property, and that's what we utilize to help do the enumeration.

Q What is the last item listed, Group Quarters Records?

A Well, the Group Quarters Records, it's not
part of the non-response follow-up universe, but we have an operation to enumerate individuals who are residing in group quarters, like prisons and college dormitories and nursing homes.

And in those instances much of the data that we collect for those residing in group quarters come from the office's administrative records, as opposed to the census going out to interview each resident in a prison cell or someone who might be in a nursing home bed that's not cognitively functioning.

Q  Okay.
A  So we use administrative records in that sense.
Q  All right. So if this -- say you are trying to enumerate a nursing home. Would you get records from the group or organization that operates that nursing home, a list of residents, for example?
MR. SVERDLOV: Objection. Compound.
A  The Census Bureau works with a, an administrator for that particular nursing home.
Q  Okay.
A And that administrator will pull upon their records from their office to provide us with a listing of the residents and their demographic characteristics; age, date of birth, sex and race and ethnicity if possible.

Q Okay. And still looking at Exhibit 2, could you tell me what these columns indicate?

A Yes. So the first two columns describe the non-response follow-up administrative records enumeration. So this is the instance where we have used statistical models to determine that a housing unit is occupied, and if we are not able to get a response via the enumerator, then we are able to utilize data from these administrative records to determine how many people are in that household and then to fill in their characteristics. So that's really what the NRFU AR Enumeration columns reflect.

Next to that we have Count Imputation, and this may take into, occur when we do not have information that would allow us to do a NRFU actual enumeration. So we don't have administrative records that could provide necessarily at first
glance characteristics, so we have a special operation for count imputation where we utilize administrative records to help us determine the count of people in that household, similar to the NRFU.

And then later in the processing we will work to assign the characteristics. So it's a similar process, but the count imputation takes place when at first we don't know that we have the information, the characteristics for that household, but we do have information on the count.

Q Okay. So in that case there may be a household where you have administrative records suggesting that four people reside in that household, but you don't have administrative records that tell you their age, gender, those sorts of things? Am I understanding you correctly?

A We would have to do further processing to try to determine that.

Q Okay. And what further processing would you do?

A That is when we have an operation called
the edit and -- edit and imputation characteristics
operation, and at that point we will make another
attempt to see if we have administrative records
that can be used to fill in the missing
characteristics.

And if we are not able to, then we utilize
what's called a hot deck methodology where you are
basically looking for the nearest neighbor and they
will be donating their characteristics to the
household.

Q  Let's go back, Mrs. Battle, to the
statistical modeling. What do you mean by
statistical modeling?

MR. SVERDLOV: Objection. Vague.

A  So when I say statistical models, what I'm
basically saying is that there is a mathematical
approach where you are developing an equation that
is trying to assess the relationship amongst a group
of variables to help you predict an outcome.

So in this case the Census Bureau would be
utilizing administrative records for the NRFU, a
non-response follow-up, to assess different data
sources to help us predict whether that household is occupied. So using data from the Postal Service, using data from the IRS, using data from the Social Security Administration to help us predict whether that household is occupied.

Q And we are talking about a household where, that did not respond to the questionnaire; correct?

A Yes.

MR. SVERDLOV: Objection. Vague.

BY MR. DAVIS:

Q So you got no response, you use the statistical model to determine the likelihood that that household is occupied. So when you say that, are you looking at records from the Postal Service as an example that suggests that mail isn't being returned as undeliverable that's addressed to that household?

A Yes. That's exactly right. That's one of the components into the model. When we have data from the Postal Service, do they have this address marked as undeliverable as addressed. So that's a
piece of information that goes into helping us
determine whether or not we think that household is
occupied, for example.

Q And you mentioned IRS records if I
understood you correctly. What type of information
might you receive from the Internal Revenue Service
to be a clue as to whether or not that household is
occupied?

MR. SVERDLOV: Objection. Compound.

A Well, definitely the address and just
understanding that there has been someone who filed
taxes recently from that address again provides more
information to help us determine whether or not that
household is occupied.

Q Okay. Tell me -- look, if you would, Mrs.
Battle, at the document that's behind Tab 7 of the
notebook.

MR. DAVIS: Let's mark that as Exhibit 3,
please.

(Battle Exhibit Number 3
was marked for identification.)
BY MR. DAVIS:

Q    Are you familiar with the document that's been marked as Exhibit 3, Mrs. Battle?

A    I believe I have seen this document.

Q    Does it describe the process that we were just discussing of the steps that the Census Bureau goes through?

MR. SVERDLOV: Objection. Vague.

A    It does talk about the steps that we follow for the 2018 End-to-End Test in terms of non-response follow-up, it talks about different administrative records that could be utilized, it talks about the imputation of the count of the household as well as the characteristics of the household. So, yes, it is similar to what we were just discussing.

Q    Okay. What did you mean, Mrs. Battle, when you discussed the editing process?

A    So after the census data has been collected, we know that not everyone answers every question, and so we have a process that we create where we specify how we are to fill in missing data.
And so that's our edit and imputation process.

And so we begin by taking a look at an individual record for a particular housing unit and we assess are there missing responses? And, for example, if there is a missing race response, the first thing we would do is then look to the other questions for that particular individual and see if responses to those other questions might help us fill in the race information.

So, for example, if race is blank, but they reported they are Hispanic origin and wrote in something like white or along with their Hispanic ethnicity, we can use that to help us fill in their race and make their race white, for example.

Q Okay.

A So we look to see if there is other information provided in that form to help us fill in missing information.

If there is no other information provided in that form to help us, then our next effort to try to fill in missing data is to see are we able to link up that household with our administrative
records, which would include the 2010 census responses. Did this household respond to the 2010 Census? If so, was information provided for this person and can bring forward and assign for 2020?

We also are going to be checking administrative records such as the Numident file, the Social Security Administration file. That file might be able to provide data on age or date of birth or sex for that individual.

So but if we are not able to match up with administrative records, then the next attempt to try to fill in missing information involves taking a look at others in that same household.

So if there is a child of the householder who is missing data, let's say race, and we know that their parent is in that household and they do have a race, then we can use that and assign that to their biological child. So we are looking within the household to see if there is anywhere else we can grab information to fill in.

And if that fails, then one of our last resorts is to use this hot deck methodology where we
then look for the nearest neighbor and try to match
up the household on certain characteristics and then
the nearest neighbor can donate that missing
information. So there is a series of business tools
and steps we go through.

Q  I see. Let's say you get to the point
where you use the hot deck methodology. What does
"hot deck" mean?

A  Really it's a statistical procedure where
as we are collecting data through the decennial
census and people are reporting fully their
information, we store that fully-reported
information up in this, it's called a hot deck. And
then as we come across households that are missing
information and we aren't able to be fill it in
anywhere else, we take from that deck and assign
data from the nearest neighbor. So that's the idea
behind this.

Q  Why is it called hot deck?

A  Well, just that you are using live data on
the spot and you are trying to use as fresh of
information as possible to fill in the missing
Q Okay. And give me an example of what type of characteristic might be imputed using the hot deck methodology.

A Race, ethnicity, and age and sex.

Q Would you use hot deck imputation to assign a count to a household?

A Earlier on when we were talking about count imputation, if there is a household where we really don't have any information available to us from administrative records to help us determine how many people are in that household to start, because we have zero information and we are not able to utilize any administrative records, so the last resort, similar to the characteristics, is to use a hot deck methodology where again you are pulling information from the nearest neighbors to assign a count, a population count.

Q Okay. Why does the Census Bureau believe that that would make the census more accurate; if you have no information about a household, to impute characteristics from a neighboring household?

A This has been a standard methodology that the Census Bureau has relied on for a number of decades and has relied on this methodology. This is the chosen methodology.

But, again, as we are experimenting with administrative records, and again that's a huge focus for the 2020 census, we are working to use administrative records as our, kind of one of our first attempts. But if we are not able to do that, then we do need to rely on other statistical methods to fill in characteristics, et cetera.

Q I assume that the Census Bureau uses this methodology because it believes that to result in a more accurate census?

MR. SVERDLOV: Same objection.

BY MR. DAVIS:

Q Do you agree?

A Yes. We need to provide information and we need to make sure that we have complete information for every housing unit counted in the
decennial census.

Q  Okay. And if you get to a household where even using administrative records and questionnaires and enumerators the Bureau just has no information about that household, you will use hot deck imputation and a neighbor will donate characteristics to the household; correct?

A  There is one other step I need to talk about.

Q  Please.

A  For the non-response follow-up operation for those housing units where I mentioned earlier where we determine that those housing units are occupied and that we have administrative records that we can use to assign their characteristics, that's one type of housing unit outcome.

However, there are going to be other housing units where again we don't have that information, and so the Census Bureau will continue to visit that housing unit up to six times trying to get the information.

For the 2020 census, after the third visit
if we still are not able to get information, then
the Census Bureau will tell the enumerator to
attempt to get a proxy interview, which means the
enumerator will then try to reach out to a neighbor
to see if they have information about how many
people are living there and if they have any
information on the characteristics. If the proxy
interviews are not possible, then we move to the
imputation aspect of it.

Q Okay. And how does the Census Bureau
determine what type of household to donate
characteristics to this other hypothetical household
about which you have no information?

MR. SVERDLOV: Objection. Vague.

A I would need to examine the detailed
methodology to answer that, but the general approach
is that the Census Bureau will rely on the nearest
neighbor, information that we have been collecting
from the nearest neighbor to try to fill in
information for that housing unit.

Q I'm thinking of my neighborhood, and you
have in our household, my wife and I are empty
nesters, I have an across the street neighbor who is
a single retired man, a next door neighbor who is a
very young single man, another next door neighbor
who is an African-American woman who is living
withing extended family, including both grandparents
and young children. It's a very diverse
neighborhood.

So if you went through all these steps,
the Census Bureau went through all these steps and
could not get any information about my household,
who would donate characteristics to my household?

MR. SVERDLOV: Objection. Calls for
speculation. Vague.

BY MR. DAVIS:

Q It may be -- I'm just trying to
understand, Mrs. Battle. It may be that it would be
easier for you to simply describe the steps that the
Bureau would go through under those circumstances.

A Well, again I would need to examine the
detailed methodology to explain exactly how that
would transpire.

Q Okay. Where would you go to examine the
detailed methodology? Is there a particular manual
or document in the Census Bureau that you would use
to educate yourself on that point?
    A    I would need to first consult with the
area that's responsible for developing that
operation.
    Q    What would that area be?
    A    That would be the Decennial Statistical
Studies Division.
    Q    Is there a particular person in that
division that you would speak to to better
understand the process?
    A    I would start with the Division Chief,
Patrick Cantwell.
    Q    And do you know, Mrs. Battle, why the
Census Bureau uses hot deck imputation to assign
characteristics to a household instead of just
writing down a zero for that household?
    MR. SVERDLOV: Objection. Vague.
    A    Well, the Census Bureau does determine
through the use of staff whether they believe a
household to be non-existent, the address is, you
know, it's not a habitable address, and those, of course, are deleted.

But if we can tell that this is a habitable address, the Census Bureau will then want to take further steps to make sure that they are, that household is included in the decennial census.

Q Does using imputation then help to ensure that as many inhabitants as possible are counted?

MR. SVERDLOV: Objection. Vague.

A Imputation helps us to ensure that if there is a housing unit where we believe there are people living there but we do not have information for them, that we are including those units in the decennial census.

Q And the goal of the Census Bureau is to have as accurate a census as possible. Would you agree?

MR. SVERDLOV: Objection. Form.

A The Census Bureau strives to have a complete and accurate count.

Q Of course. And in this case the Census Bureau has determined that imputation results in a
more accurate census than not using imputation.
Would you agree with that?

MR. SVERDLOV: Objection. Argumentative.

A The Census Bureau is continually working
to develop statistical approaches and other types of
approaches to improve upon our methodology.

Q Of course.

A And while we are making improvements
through the use of administrative records, we still
need to rely on traditional methods when we need to
assign characteristics, if there is nothing else
that we can utilize to help.

Q Would you look, please, Mrs. Battle, at
the document that is behind Tab 11 of the notebook?

MR. DAVIS: And let's mark this as Exhibit
4, please.

(Battle Exhibit Number 4
was marked for identification.)

BY MR. DAVIS:

Q This is a list of frequently asked
questions, Mrs. Battle, from the Bureau's website.
And I'll represent to you that it may not be in this
exact form on the website today, but it serves our
purposes to help me understand the process a little
better.

Have you reviewed this document before
today?

A Yes.

Q A lot of these deal with apportionment,
and I want to understand the process of
apportionment and the role that the Census Bureau
plays in apportionment.

First, would you agree with the first
question and response there on the first page; that
apportionment is the process of dividing the 435
memberships or seats in the U.S. House of
Representatives among the 50 states?

A Yes.

Q And who is included in the apportionment
counts?

A So the apportionment population counts
contain two components. First, we include what's
called the resident population. This reflects the
population that was residing in a particular state
as of census day. That's their usual residence.

The second component of the apportionment population count includes the federally affiliated overseas. These are military and civilian employees of the federal government whose home state of record is that particular state.

So for a state you have the resident population and then the federally affiliated population, and together that equals the apportionment population counts.

Q Okay. After the 2020 census the Census Bureau will release a total population count for the United States of America; correct?

A Yes.

Q The count for apportionment purposes will differ from that, will it not?

MR. SVERDLOV: Objection. Vague.

A The results of the decennial census, the first results from a decennial census include the apportionment population counts, which includes the resident pop, people enumerated as usually residing in these states, plus the federally affiliated. So
that is the only data product that comes out of a
decennial census where you have the federally
affiliated population included.

Q Okay.

A All remaining data products from the
redistricting data file, the PL-94171, all the
remaining data products only include the resident
population, not the federally affiliated.

Q And the PL-94 --

A 171.

Q -- 171 file, tell me what that is.

A That is a data product that the Census
Bureau publishes that is for the use of states in
their redistricting process.

Q And that data product does not include
people, this population living overseas that you
described; correct?

A That is correct.

Q Okay. In the apportionment count, and
that's -- let me start over. Does the apportionment
count, for example, include residents of the
District of Columbia or Puerto Rico?
MR. SVERDLOV: Objection. Compound.

A The apportionment population counts do not include data for the District of Columbia or Puerto Rico.

Q It's only for the 50 states plus this overseas population?

A Correct.

Q Okay. And how -- this person who is living overseas, as part of the overseas population, how does the Census Bureau determine which state to count them in?

MR. SVERDLOV: Objection.

BY MR. DAVIS:

Q In the apportionment count?

A So the Census Bureau has an operation that's called the Federally Affiliated Americans Operation. And that operation entails the Census Bureau working with different federal agencies, and we first start by working with the U.S. Office of Personnel Management to get a list of those agencies that have employees stationed overseas.

And once we have that list, the Census
Bureau reaches out to those agencies and establishes a contact and informs them of the special federally affiliated overseas operation. The Census Bureau works with these agencies and explains what is needed, and these particular agencies will then go and through their records provide counts for everyone in their agency whose stationed overseas or deployed overseas and they will give us a count by state.

And we ask that they provide the information for employees' home state of record. So the agencies find that information and they deliver the state counts to us for the employees.

Q Okay. And one of those agencies may be, for example, the State Department?

A Yes.

Q So somebody whose home state of record is Alabama, is employed by the State Department and is stationed oversees, the State Department would report to the Census Bureau that that person has listed Alabama as the home state of record?

MR. SVERDLOV: Objection.
BY MR. DAVIS:

Q    Did I understand you correctly?

A    Yes. The State Department will then provide to us the home state of record, they will take a look at for all of their employees the home state of record and give us a count; for all of their employees who have a home state of record of Alabama, a count for all of their employees that had a home state of record of California, and so on.

Q    Okay. And so for the state of Alabama you have a count for the residents of the state of Alabama and you add in all of these other overseas people who are reported by the various agencies as having Alabama as their home state of record and you add that to Alabama's total for apportionment purposes; is that right?

A    That information results in the federally affiliated overseas count for a state, yes, and that is added to the state's resident population and that equals the apportionment population.

Q    And this apportionment population count is something the Census Bureau provides to the
President; correct?
A Yes.
Q And when does that happen?
A The Census Bureau is mandated to deliver
the apportionment population counts to the President
within nine months of the census day, which turns
out to be before December 31st of census year.
Q So that will be provided no later than
December 31st of 2020 to the President?
MR. SVERDLOV: Objection.

BY MR. DAVIS:
Q Is that right?
A That is correct.
Q Okay. Does the apportionment count
provided to the President include non-U.S. citizens?
A The apportionment population counts that
we develop includes the resident population as
enumerated in the decennial census as well as the
federally affiliated overseas, and both of those
will include citizens and non-citizens.
Q Obviously then if it includes both
citizens and non-citizens, it includes non-citizens
who are lawfully present and non-citizens who are
not lawfully present?

MR. SVERDLOV: Objection. Assumes facts
not in evidence.

A It includes all types of people who are
non-citizens.

Q Yes. It includes everyone regardless of
citizenship and regardless of lawful presence; is
that correct?

MR. SVERDLOV: Objection. Vague.

A Yes.

MR. DAVIS: We haven't been going that
long, but this actually might be a good time for a
breather.

MR. SVERDLOV: Okay.

MR. DAVIS: Do you want to take 15
minutes? Is that okay with you, Mrs. Battle?

THE WITNESS: Yes.

(Recessed at 10:03 a.m.)

(Reconvened at 10:26 a.m.)

BY MR. DAVIS:

Q Mrs. Battle, going back to the hot deck
imputation, do you know what the Census Bureau would do if my household is eligible for hot deck imputation, but I happen to live in the neighborhood where all of the residents of the neighborhood are very different from me, different race and all the other neighbors have kids and I don't; do you know what the Census Bureau would do in that instance?

MR. SVERDLOV: Objection. Vague and calls for speculation.

A Well, again the premise of the hot deck methodology would be to go to that nearest neighbor and we can use that.

Q Okay.

A Now, when we do have some information about the household, we do try to match up those characteristics when we do the hot deck imputation. So, for example, if we know that the householder who does not have information, if they have a Spanish surname, then we look for nearest neighbor with a Spanish surname to try to perhaps impute race or ethnicity. So if we do have some information, we try to match up those
characteristics and then take what we need to have

donated.

Q    And do you have a division that tries to
determine which household is the best source of the
donated information?

MR. SVERDLOV: Objection. Vague.

A    Again when it comes to the characteristic
imputation using a hot deck, there is this standard
approach, and I would have to look at the details of
the methodology to --

Q    Okay.

A    -- address that further.

Q    Okay. Is the Census Bureau trying to
enumerate the total number of people who are
physically present within the State of Alabama on
April 1, 2020 or residents of the State of Alabama?

MR. SVERDLOV: Objection. Compound.

A    The core concept that the Census Bureau
utilizes in doing its enumeration is the concept of
usual residence, so we are looking to enumerate
individuals where they usually reside, where they
live and sleep most of the time.
Q Okay. So someone simply driving through the state on that date would not be counted if their usual residence is in some other state; correct?

A Yes.

Q Okay. And a tourist who happens to be within the state on April 1 wouldn't necessarily be included in the population count if their usual residence is some other state; is that correct?

A The idea is, yes, we want to count people at their usual residence where they live and sleep most of the time.

Now, I need to say that the residence criteria is based on three core principles. So the first one is that of usual residence, where we want to count people where they reside and live and sleep most of the time.

Secondly, there are people who are in certain types of facilities on census day that will be counted at that facility, such as prisons, et cetera.

And then, thirdly, if we cannot determine the usual residence for an individual or they don't
know, they don't have one, then we count them where they are on census day. So those are the three principles.

Q Okay. Will the Bureau report a count of U.S. citizens as a result of the 2020 census?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau is working to develop what's called the citizen voting age population by race and ethnicity special tabulation, which would be based on data from the decennial census. And as you can tell by the name, it will include citizen information; citizenship voting age population.

Q Okay. So will there be within any of the products that the census releases after the 2020 census, will there be a total count of United States citizens?

MR. SVERDLOV: Objection. Vague.

A The specific data product that I mentioned for citizen voting age population by race and ethnicity will be limited to citizens that are 18 years and older. So that would be the extent of the publication of citizens.
Q    Does the Census Bureau have any intention of attempting to count the citizens who are under the age of 18?

    MR. SVERDLOV: Same objection.

    A    Well, all usual residents are to be counted in a decennial census.

    Q    I see the problem with the question I just asked. Okay. You are certainly going to try to count everyone, all residents who, regardless of age; correct?

    A    Yes.

    Q    Okay. Of those who are under 18, does the Census Bureau intend to attempt to determine how many of those people are U.S. citizens?

    MR. SVERDLOV: Objection. Vague.

    A    In terms of the publication of statistics, the Census Bureau is finalizing the exact format of the citizen voting age by race and ethnicity special product, but in the efforts to develop that information and using administrative records, I am -- the information on citizenship for those who are under the age of 18 would be involved in the
process. While we have not finalized the specific methodology to produce those data, we will be utilizing information on citizenship status for the population.

Q  Okay. How does the Census Bureau currently plan to develop the citizen voting age population data?

MR. SVERDLOV: Objection. Vague.

A  Well, the Census Bureau has not finalized the specific methodology and approach or the final table share, but of course the Census Bureau does produce a citizen voting age population special tabulation annually currently, but it's not based on the decennial census, it's based on the American Community Survey. So they are still determining that final methodology for the citizen voting age population product based on the decennial census.

Q  So in the past the Census Bureau has released citizen voting age population data that was based on the American Community Survey; correct?

A  Yes.

Q  Okay. After the 2020 census do I
understand you right that the Census Bureau intends to release citizen voting age population based on the 2020 census itself?

A For the product that we are planning to release in year 2021, the citizen voting age population data product would be based on the decennial census.

Q And when it comes to how exactly the Bureau plans to do that, is that what you say is still under consideration?

A Yes.

Q Okay. Has the Census Bureau determined that whatever the final method is, that it will use any particular subsets of data?

MR. SVERDLOV: Objection. Vague. And I will also say that as you can tell from the witness' answer, the methods haven't been determined, so we are sort of veering into areas where we might assert deliberative process privilege. So instruct the witness to answer in general terms.

BY MR. DAVIS:

Q The way I phrased the question is although
final methodology hasn't been determined, have you
at least determined that, for example, yes, we will
use this particular set of administrative data?

MR. SVERDLOV: I'm not convinced that that
cures my objection, but if you can answer in a
general way, please do.

A So the Census Bureau is looking to utilize
administrative records in combination with decennial
census data, so that is the general idea, but in
terms of specifically which administrative records,
that has not been determined yet.

Q Will you attempt for each person that you
count, and let's start first with people who are
voting age and older. Will the Census Bureau
attempt to determine whether or not that individual
is a citizen or a non-citizen?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau is developing
methodologies that would help us determine the
citizenship status for everyone counted in the
decennial census.

Q For everyone regardless of age?
For the purposes of developing the data product in and of itself, the methodology is not finalized, but the Census Bureau will be collecting information on, through administrative records and that information will be utilized to help us produce the final product which is focused on the population 18 years and older. It's because the methodology is not determined, I cannot say for sure at this time exactly to what extent we would be collecting the data on citizenship.

Q Would you look at the document that is behind Tab Number 8 in the notebook, please, Mrs. Battle?

MR. SMITH: Can you repeat the tab number?

MR. DAVIS: Tab Number 8.

MR. SMITH: Thank you.

MR. DAVIS: Can we mark this?

(Battle Exhibit Number 5 was marked for identification.)

MR. SVERDLOV: Can you state for the record what you've marked?

MR. DAVIS: Yes. We've marked as Exhibit
5 this January 19, 2018 memorandum from John M. Abowd to Wilbur Ross. And it's Bates marked as P-001.

BY MR. DAVIS:

Q Have you seen this memorandum before today, Mrs. Battle?

A Yes.

Q Can you summarize the recommendations in the memorandum? Let me see if I can make that quicker.

Do you understand the author to be discussing three different methods for attempting to determine citizenship or imputing citizenship for the people that they count and making a recommendation as to which of those three methods would be better?

MR. SVERDLOV: Objection. Vague and compound.

A Yes.

Q Okay. And am I reading it correctly that they recommended that, as it says in the second paragraph, we consider three alternatives in
response to the request from the Department of Justice, and one of those is Option C, obtaining citizenship status from administrative records for the whole 2020 census population?

A Yes.

Q Okay. Is that, in fact, the goal of the Census Bureau, to obtain citizenship status from administrative records for the whole 2020 census population?

MR. SVERDOLOV: Objection. Vague.

A Well, the Census Bureau would need to obtain that information. While the CVAP data product is focusing on the 18 and plus older population, we do need the foundational information. So, yes, the Census Bureau is trying to ascertain from administrative records citizenship status for the 2020 enumerated population.

Q This is a slightly different topic. There are questions and answers towards the back of the memorandum, Mrs. Battle. On the page that's Bates numbered P-11, there is a Q and A about the response rates for the 2000 census long form and short form,
and it says the mail response rate in 2000 was 66.4 percent for the short form and 53.9 percent for the long forms.

Do you know what the response rate was for surveys for the 2010 census?

A I do not know that off the top of my head.

Q Okay. In the 2010 census there was no long and short form, there was just one form; correct?

A Correct.

Q And is that going to be true for the 2020 census as well?

A Yes.

Q Do you know where I could go to look up the response rate for the 2010 census?

MR. SVERDLOV: Objection. Vague.

A That information must be in an assessment report on our website.

Q Okay. Do you think that's likely to be something that was publicly reported?

A Yes.

Q A few pages over on the page that's Bates
Numbered P-15, question 12 asked about other data that may be available, other administrative data that may be available to impute citizenship.

The response says the Census Bureau is in discussion with the U.S. Citizen and Immigration Services, USCIS, staff to acquire additional citizenship data. Do you know the status of the discussions with the U.S. Citizen and Immigration Services to acquire administrative data?

A This might be a good time to use our additional reference sheet. We have reference sheets.

Q Yes. You are looking at some of the documents that your counsel brought today?

A Uh-huh.

Q If at any point a document would help you respond to the question, please just refer to it.

A Background sheet number 2. Background sheet number 2.

MR. DAVIS: And before we continue, let's go ahead and mark it as an exhibit so that after the fact we will all know which document we are talking
about. And let's mark that as Exhibit 6, please.

(Battle Exhibit Number 6 was marked for identification.)

BY MR. DAVIS:

Q And what is this document that's been marked as Exhibit 6, Mrs. Battle?

A Well, the first page of the document lays out the members of the Interagency Working Group that the Census Bureau created per Executive Order 13880 and lists the departments who are participants as well as the representatives.

The second page begins the listing of the administrative records that the Census Bureau has received from a number of agencies, and it actually provides some information on the status.

Your question was about data from the Citizen and Immigration Services?

Q Correct.

A And so if you look on page 2, what you will see is a listing of the types of data that we have requested from the, received from the Department of Homeland Security, and you will see it
mentions that the lawful permanent resident file and
naturalization data have been obtained from the
Citizen and Immigration Services.

Q Okay. Okay. So I see in that row of the
document, page 2 of Exhibit 6?

A Yes.

Q The source agency is the Department of
Homeland Security, and you finalized an agreement
with the Department of Homeland Security on December
23, 2019. Am I reading that correctly?

A Yes.

Q You began negotiations with the Department
of Homeland Security on January 2018?

A Yes.

Q And data type I see, there the rows begins
to be broken down into two different rows. So you
have the lawful permanent resident file and
naturalization data, paren, Citizen and Immigration
Services; correct?

A Yes.

Q Okay. And under Variables it says: "46
variables consisting of person identifiers and
citizenship status. All variables will potentially be used for the citizenship project."

So do I understand this to mean that what you received is a database, and so for each person there are 46 fields in that database?


A We requested a data file from the Department of Homeland Security, and so the expectation is that each of the records for individuals will contain data in each of those 46 variables.

Q Okay.

A Yeah.

Q And under Status it says: "Fitness for use determination." What does that mean?

A So the Census Bureau is acquiring new sources of administrative records, and once those new sources arrive, the first thing we have to do is evaluate those data to help us determine if we can use the data, and if we can use the data, then we begin to think through how best can we use the data
to comply with the executive order.

So the first thing that has to happen is when we acquire these data sets, we need to make sure we can read the files that have been given to us and we need to make sure that all 46 of those variables are present in the data, just to make sure nothing went awry in the agency developing the data for us.

But once we have that covered, we then need to dig deeper and start taking a look at the variables that we have requested. We want to take stock of how complete are those data. If we have one of those variables that says address, well, is address missing for 60 percent of the records in the file? And for addresses that are reported, are they complete addresses, are they partial? So we need to evaluate the kind of data that we have in each of those variables.

And that's really important because we need to be able to assess if we can make record linkages, and so we need identifiers like name, age, date of birth, sex, address. And, of course, the
citizenship variable itself, we need to assess how complete are those data, et cetera.

Q  Okay. And you are trying to -- if you -- if you get this database from Homeland Security, just stick with that example, you are trying to link it to some other database, is that right? To connect it so that you can compare the two databases?

MR. SVERDLOV: Objection. Vague and misleading.

A  Yes.

Q  Okay. And what is the other database? Is it -- what is the other database?

A  So the Census Bureau, number one, has reference files, and the primary source of these reference files include the Numident file, the numerical identification file that we get from the Social Security Administration.

That's a huge database that has all of these data, data on all Social Security numbers ever issued. In addition to that we have a file that contains what's called ITI, income tax
identification numbers. These are unique
identifiers that are assigned by the Internal
Revenue Service to individuals who are not eligible
for a Social Security Number.

So we have this database that has all of
this unique identifiable information. So our goal
is to see if these newly acquired administrative
records, if we can match individuals up, whereas we
have in the Social Security Administration
information on citizenship. So that's one way that
we are doing linkages.

In addition to that, we also want to see
if we can link people across these different
administrative record data sets that we are
acquiring to compare and see what information do we
have, are they differing for individuals, have
people updated their addresses. So there is an
element of that to it.

So we are really looking to see how we can
make linkages, not only with our internal reference
files, but across the newly acquired data sets as
well.
Q. If I look at this chart on Exhibit 6 and I see the words under, "Status; Fitness for use determination," does that mean that the Census Bureau has already determined that the data is usable?

MR. SVERDLOV: Objection.

BY MR. DAVIS:

Q. Or that it has not made a determination yet?

A. It has not made a determination yet. It's in that process.

Q. Okay. What group or division in the Census Bureau has the responsibility of determining whether a database or performing the fitness for use determination?

A. Well, most of this work is going to be done through the Research and Methodology Directorate, as well as utilizing staff from the Center for Economic Studies.

Q. I'm sorry, Mrs. Battle. You said the Center of Economic Studies, but you also said the research?
A The Research and Methodology Directorate.
Q And is the Research and Methodology Directorate a division of the Census Bureau?
A It is an organizational unit that contains multiple divisions.
Q Okay. Does it -- is it part of the Census Bureau?
A Yes.
Q Okay. And who heads the Research and Methodology?
A John Abowd. Dr. John Abowd.
Q Now, back at Exhibit 6, and I see under Department of Homeland Security that there is a second data set, which is under Data Type it says Arrival Departure Information System and Visa Data. And there under Status it says, "Awaiting Data Transfer from DHS." I take it that just means you haven't received the data yet from Homeland Security?
A That particular data, that's correct, we are waiting to receive that.
Q Yeah. Is there any data where the fitness
for use determination process has been completed?

MR. SVERDLOV: Objection. Vague.

A   For the administrative records that we've acquired we are still in the process, either we are waiting for the data or we are beginning to do that evaluation.

Q   Okay. Is there any administrative data that you are aware of that the Census Bureau has requested for these purposes that is not listed on this chart that's been marked as Exhibit 6?

MR. SVERDLOV: Objection. Vague.

A   One thing I call your attention to is on page 5. At the bottom you'll see the source agency is Nebraska.

Q   Yes.

A   So what I would say is that we have put out requests to all 50 states to obtain driver's license data, but the only one listed here is Nebraska as we have received those data. So I will mention that.

MR. SVERDLOV: Counsel, can I pause for one second?
MR. DAVIS: Yes.

MR. SVERDLOV: I want to go back to my prior objection. The reason I objected is because it was unclear whether the question asked for the witness to testify on behalf of the Census Bureau or in her personal capacity when you said whether she is aware.

MR. DAVIS: Fair. But let me clear that up. I could and almost certainly will get sloppy with some of the language I use. That's not intentional. I recognize Mrs. Battle is produced as a representative of the department. Unless I very clearly state otherwise, I'm intending to seek the department's knowledge and information.

MR. SVERDLOV: Thank you.

BY MR. DAVIS:

Q So there is data, Mrs. Battle, that the Census Bureau has requested that is not on the chart. At least we know that it's requested driver's license data from all other states; correct?

A Correct.
Q    Are you aware of any other data that the
Census Bureau has requested that is not listed on
this chart?

A    The Census Bureau has also reached out to
states to request data on WIC, and TANF, and SNAP.
So that would be SNAP would be the Supplemental
Nutrition Assistance Program data. WIC is the
Women, Infants and Children's Program. And TANF is
the Temporary Assistance for Needy Families Program.
So we are working to obtain those data from states
as well.

Q    Do you know if any states have declined to
provide driver's license information, if they have
responded to the Census Bureau's request and said we
are not going to provide that?

A    My understanding is that there have been a
number of states who have said no.

Q    Do you know how many?

A    Rough approximation, about a third.

Q    Okay. Are you aware of any administrative
data that the Census Bureau has requested from
federal agencies and those federal agencies have
refused to provide the administrative data?

MR. SVERDLOV: Counsel, I'm going to object here once again because we are verging very close to ongoing negotiations, and we would view materials that this question potentially calls for as subject to the deliberative process privilege.

So I think if the witness can answer in a general way, that would be fine. But specific details about agencies which have and have not responded we would view as falling within the privilege.

MR. DAVIS: Okay. Tell me this. And I will direct this to counsel. Just -- if -- would the witness be allowed to tell me whether, that if a hypothetical federal agency had said no, whether the Census Bureau would consider the matter closed or whether that issue would still be under negotiation?

MR. SVERDLOV: I think we would view that issue as still under negotiations potentially.

BY MR. DAVIS:

Q Okay. Let me try to ask it this way, and be sure to allow your counsel time to lodge an
objection. Mrs. Battle, if the Census Bureau has requested administrative data from another federal agency and that federal agency initially said no, is it the intention of the Department of Census to continue to seek that information through negotiations?

MR. SVERDLOV: I'm going to raise the same objection and instruct the witness not to answer.

BY MR. DAVIS:

Q    Let me ask it this way. Has the Census Bureau requested information from any federal agency, and by information I mean administrative data that it intends to use to impute citizenship status, and that other federal agency has responded with a refusal to provide the information?

MR. SVERDLOV: Counsel, I'm not sure how that question is materially different.

MR. DAVIS: How is -- this is a fact of something that happened in the past, whether an agency has responded with a yes or a no. That's not a deliberation.

MR. SVERDLOV: I think if we can answer it
in a general way, the witness can try to do so. But I think we are very close, as I've indicated, we are very close to the line of those, the negotiations that the Department of Commerce and the Census Bureau is having with other agencies, and we would view that as subject to privilege. So if you can answer in a general way, perhaps it would be helpful to, for you to restate your question.

BY MR. DAVIS:

Q I'm not waiving this issue, but tell me what you can.

MR. SVERDLOV: Objection. Vague.

A I would say that the Census Bureau has established an interagency working group and we do have members from the, across the federal government. And the purpose of that working group is to facilitate the Census Bureau acquiring administrative records to help us comply with the executive order.

Q Thank you. That doesn't really help with what I'm looking for, but I appreciate that.

Now, this working group, that is what is
listed on the first page of Exhibit 6; correct?

   Q   Okay. And they have had one meeting to date?

   A   Yes.

   Q   Are any further meetings planned?

   MR. SVERDLOV: Objection. Vague.

   A   At this point the work that's happening is really involving the points of contact. So the Census Bureau has a point of contact who is working with points of contacts at all of the member agencies to work through any issues with interagency agreements, to talk through the data and the variables that we are requesting to acquire.

   So there is a lot of back and forth, and not in formal meetings with full membership, but there is a lot of back and forth between the Census and individual agencies to continue working through issues to make sure we can acquire the data that we have requested.

   Q   Is there any administrative data that the Census Bureau has determined that it will request
but it simply has not made that request yet?

MR. SVERDLOV: Objection. Vague.

A At this time I am not aware that the Census Bureau has any other remaining requests outstanding.

Q Let's look back at Exhibit 5, and that's the document that's behind Tab 8 in your notebook, Mrs. Battle. We are still in the back with the Q and As.

A All right.

Q Q&A 20, which is on page P-17, as I read it, you tell me if I'm wrong, please, the question posed is whether the Alternative C approach, the use of administrative data, has been used before on other data collection projects. And the response says the approach in Alternative C has been routinely used in processing the economic censuses for several decades.

First off, I read at that correctly; right?

A I'm sorry. Which number are you on?

Q It's Q&A 20 on page P-17.
A  Okay. Okay.

Q  Okay. First tell me what it means by economic censuses.

A  So the Census Bureau not only conducts a census of the population, but it also conducts a census of organizations, businesses, et cetera. And so they are referring to those economic censuses.

Q  Okay. Administrative data has been used, was used in the 2010 census, was it not, to impute characteristics and for other purposes?

A  There were administrative records used to impute characteristics used in the 2010 census.

Q  Okay. So the use of administrative records is not limited in the past to economic censuses. Am I right about that?

A  Correct.

Q  Okay. And if you turn to the page of that same exhibit where the Bates Number at the bottom is P-30, please? Do you see the chart there that's labeled Figure 1, Mrs. Battle?

A  Yes.

Q  Can you explain this to me, what the terms
are; Linked, Adrec, A-D-R-E-C, and then on the other side Not Linked and Model?

   MR. SVERDLOV: Counsel, really quick, I'm also going to raise an objection because I think this line of questioning is starting to veer somewhat outside of the topics that we have negotiated.

   MR. DAVIS: I believe this Figure 1 refers to the use of administrative data in general and the memo is about citizenship. That seems to fall under the umbrella.

   MR. SVERDLOV: Yes. And as you will recall -- my yes was not me acceding to your premise.

   As you recall, we narrowed those topics in our December 27th, 2019 letter, which stated that we will produce a witness who can testify about these topics to the extent they concern the feasibility and utility of collecting and using administrative records in the manner directed by Executive Order 13880, and I believe the document you are referring to is part of Topic 5.
MR. DAVIS: Okay. Well, is the witness allowed to explain to me, for example, what modeling is?

MR. SVERDLOV: I think we can pursue some general questions along those lines, but I do want to flag that, you know, questions about like the general background of this document and it's preparation was one of the things that we specifically limited.

MR. DAVIS: I'm not asking about that. I want to explain the terms. I asked her to explain the terms.

BY MR. DAVIS:

Q First, Mrs. Battle, what is A-D-R-E-C? Do you know?

A Yes. That refers to administrative records.

Q Okay. And what is model?

A Model refers to developing a statistical model.

Q Okay. So after the 2020 census if you are able to link records, you will use the
administrative records to impute citizenship for a person; is that correct?


A The basic idea is that the Census Bureau will combine multiple sources of citizenship from different sources of administrative records and use that information to determine citizenship status.

Q Okay.

A Linked records can then, we can then utilize those administrative records to determine citizenship.

Q Okay. And in the 2020 census if you are not able to link administrative records, does the Census Bureau intend to use statistical modeling to impute citizenship?

MR. SVERDLOV: Objection. Vague.

A This diagram shows that initial thinking is that if we are not able to link administrative records to respondents or individuals counted in the census and we need to determine their citizenship status, that a statistical model would be utilized
to determine that.

    Q  Okay. And how will that be performed?

    MR. SVERDLOV: Objection. As you might
have surmised from the nature of that question, the
work in this area is still ongoing, so we view the
specifics of that work to be covered by the
deliberative process privilege. I will instruct the
witness to answer in general terms if she can, but
not the specifics.

    MR. DAVIS: But it's a fair question and
if the answer is that they don't know yet, then
that's the answer.

    MR. SVERDLOV: Sure.

BY MR. DAVIS:

    Q  So if the Census Bureau is not able to
link administrative data and you will use
statistical modeling, the question is how will that
happen?

    A  So at this point in time the Census Bureau
has not finalized its methodology about exactly how
that will take place.

    Q  Okay. Who is working on making the final
determination of how that will work?


BY MR. DAVIS:

Q   Well, did I understand you correctly? You said no final determination had been made. Is anyone in the Census Bureau thinking about that and working on making a final solution?

MR. SVERDLOV: Objection. Vague and compound.

A   The Census Bureau staff who are evaluating the administrative records that the Census Bureau acquires are going to be involved in the process of working with Dr. John Abowd to determine the statistical modeling. So -- so the first step is really to evaluate the incoming data, and then we can turn to specifically how to develop the modeling.

Q   Okay. And to the best of your knowledge, is that going -- will these decisions be made by Dr. Abowd and his group?

MR. SVERDLOV: Objection. Vague.
A I believe recommendations will come from those involved in this research and those recommendations will be presented to executive leadership at the Census Bureau and the department.

Q Okay. We touched on this, but I'm not sure it's clear in one spot, Mrs. Battle. Can you describe for me the difference between statistical modeling and imputation?

MR. SVERDLOV: Objection. Vague.

A Well, I would say that statistical modeling is a form of imputation, whereas imputation might involve imputing data from someone else in the same household or using a hot deck or using a statistical model. So to me statistical modeling for this purpose is a form of imputation.

Q Okay. Let's say for the 2020 census through linking databases you learn from the administrative records you receive from the Social Security records that a particular person is a United States citizen. That's imputation because you are taking, is it not, when you are taking information you received directly from other
administrative records that says that this person
with this Social Security Number is a citizen?

               MR. SVERDLOV: Objection. Vague, compound
               and calls for speculation.
               
               A       So information on citizenship status from
               these administrative records will be used in
               combination to help us determine the citizenship
               status, so we are going to take multiple sources
               into account to help us determine the citizenship
               status. It may not necessarily be taking one
               specific source and then imputing it. We are going
               to take all of that into account and then determine.
               
               Q       Okay. You wouldn't look then at a single
               agency's administrative records, but at the universe
               of the administrative records you receive in this
               process in order to impute citizenship? Did I hear
               you correctly?

               MR. SVERDLOV: Objection. Vague.
               
               A       The general idea at this point is to pool
               as many different sources on citizenship for an
               individual as possible and to utilize those multiple
               sources to help us determine what the citizenship
status is.

Q      Does the Census Bureau have a goal for a
deadline for determining, number one, what of this
data is usable? And by this data I mean the
administrative records that are listed on Exhibit 6?

MR. SVERDLOV: Objection. Vague and
compound.

A      The Census Bureau has set a goal of the
spring of 2020 to complete or at least complete
initial evaluations of the data to try to determine
specifically which sources could be utilized in
continuing to develop a CVAP file.

Q      Is there any plan that you are aware of,
Mrs. Battle, to report publicly that the Census
Bureau has determined that, for example, the records
from Department of Homeland Security are usable and
will be part of this imputation process?

MR. SVERDLOV: Objection. Vague and once
again verges into deliberative process. So to the
extent -- to the extent the witness can answer in
general terms about whether there are plans, that
would be acceptable.
BY MR. DAVIS:

Q    That's what I asked. Are there plans to publicly report the decisions as to the determinations as to whether the data is usable?

A    I know the Census Bureau does plan to share publicly the approach, the statistical modeling approach and the data sources to be utilized.

Q    Okay. And you said that there is a goal of making the decision by, making the determination by spring of 2020 as to whether the data is usable or to release the statistical modeling process?

MR. SVERDLOV: Objection. Compound.

A    The goal for spring of 2020 is to be able to determine specifically which sources of administrative records could be used and the methodology.

Q    Both?

A    Yes.

Q    Okay. While I understand there is no final determination of the specific processes to be used, has a decision been made on what to do if
there is conflicting information about citizenship among different administrative records?

MR. SVERDLOV: I think that this very much verges into the ongoing deliberations of the agency. To the extent that the witness can answer in general terms about whether there is or is not a plan, that would be fine. But otherwise I will instruct the witness not to answer.

MR. DAVIS: That's what I asked, Aleks. I asked has a determination been made on what to do. I didn't ask what that determination is. I don't want to know. I asked if a decision has been made.

BY MR. DAVIS:

Q So has a decision been made about what to do if there is conflicting information about citizenship among the different administrative records?

A The methodology to be used to address that issue has not been determined as of yet.

Q Thank you.

MR. SVERDLOV: Are you okay? Do you need a break.
THE WITNESS: I'm good.

BY MR. DAVIS:

Q You tell me at any time if you need a break.

A Okay.

Q Would you please turn, Mrs. Battle, to the document behind Tab 6 of the notebook? Are you familiar with this document, Mrs. Battle?

A I do not believe I have specifically seen this document, but I understand the general information.

Q Okay. I have some very general questions, so I don't think a lack of familiarity with the specifics of this individual document will matter.

MR. DAVIS: Let's go ahead and mark this for the record.

(Battle Exhibit Number 7 was marked for identification.)

MR. SVERDLOV: Just to be clear on the record, this is a document that was not one of the ones identified in your list of topics. So to the extent that it falls within some other category, or
you believe it falls within some other category that
you have identified, obviously we will let you
pursue those questions, but otherwise specific
questions about this document I think would be
outside the scope.

MR. DAVIS: I know that if I ask a
question outside the topics, you will object. You
don't have to warn me about that. And I know this
wasn't listed.

BY MR. DAVIS:

Q     On the Executive Summary, which is the
12    page that's Bates numbered 6315 --
    A     Yes.

Q     -- the first sentence says:

"Characteristic imputation in the 2010 Census
Coverage Measurement program imputed values when
missing values occurred for relationship, race,
Hispanic origin, age, sex, and tenure."

    I want to know do you know what the 2010
    Census Coverage Measurement Program is?

    A     Yes. This is the program that is
    conducted after the decennial census to assess the
coverage of the population. It's one of two methods
the Census Bureau uses to assess the coverage in the
decennial census, whether there is an over-count or
under-count.

Q Okay. And do I understand this memo
correctly that characteristic imputation is a part
of that process?

A Yes.

Q Okay. So you are using imputation when
you are assessing the coverage of a past census?

A Uh-huh. So with the Census Coverage
Measurement Program they actually go out and conduct
a survey. And so what they are doing is collecting
the same information that was collected in the
decennial census. And not everyone answers all of
those questions even in this survey.

So this is, the same method, the same
approach is used to fill in the missing data.

Q Okay. And -- no. Never mind.

On page 3, the first full paragraph begins
as follows. It says: "Editing was a fundamental
part of the census characteristic imputation
system."

I'm not sure I understood what, what the difference is between editing and imputation.


A So the difference here is that editing is when you are trying to resolve inconsistencies that may exist between the data or utilize data that's been provided to help you determine a value.

So, for example, if someone only provides their date of birth, but they don't provide their age, what we will do then is calculate age based on the date of birth. So that's the editing.

Q Okay.

A As opposed to using administrative records to bring in and fill in missing information. So that's, you know, another example of editing would be if we have a situation where a household responds that there is a same sex couple household, but then when we look at the sex data for the variables, they are opposite sex. So we have to figure out how do we handle this inconsistency. So we are using
reported data, but we have to resolve
inconsistencies.

Another example would be if someone
reported their date of birth and gave an age, but
when you calculate age and date of birth, it doesn't
match. Some people like to report their age around
zeros and fives, you know, 40 instead of 41.

So there are things like that that involve
editing of the data to try to resolve
inconsistencies, and that's different from
imputation where you have let's say missing data and
you need to find a way to bring in other sources to
fill in the gaps.

Q  Okay. And let's say that different, a
person reports an age and a date of birth that don't
match up. Are there rules that the Census Bureau
has that when that happens, these are the steps we
will go through?

A  Yes. There are business rules for that,
yes.

Q  Where are those reported?

MR. SVERDLOV: Objection. Assumes facts
not in evidence.

A  So --

Q  Are they reported?

A  The business rules for how to conduct the editing and imputation procedures, they are contained in a specification.

Q  Okay. Where are the specifications? Are those something that's publicly reported?

A  Those specifications typically are not put out to the public.

Q  Okay. Is there a particular group or department or division in the Census Bureau that's responsible for developing and maintaining those business rules?

MR. SVERDLOV: Objection. Vague and compound.

A  Yes. For the characteristics related to age, sex, race and Hispanic origin, my division, the Population Division, is responsible for those specifications.

For editing and imputation rules, business rules related to relationship and tenure, our sister
division, the Social, Economic and Household
Statistics Division produces those specifications.

Q  Okay. And related to the methods that the
Bureau is developing for citizenship, does the
Census Bureau intend to develop business rules that
will address those issues?

MR. SVERDLOV: Objection to vague and
compound.

A  I think that the methodology that will be
determined and developed to allow the Bureau to
determine citizenship will have to include the
information on statistical modeling and any other
procedures that are done with the data.

Q  I've seen references, Mrs. Battle, to
developing or imputing the best citizenship status?

A  Yes.

Q  What is best citizenship as opposed to
just citizenship?

MR. SVERDLOV: Objection. Vague, and
misleading, assumes facts not in evidence.

A  So this is part of what the Census Bureau
needs to do in terms of evaluating the
administrative records that have been acquired.

Q  Okay.

A  There will potentially be different citizenship values reported across different administrative records, so the Census Bureau needs to develop a methodology that will help them take those multiple sources of information into account and then determine what the best citizenship status is for an individual.

Q  Okay. So let's say hypothetically for this one person one set of administrative records suggests that this person is a citizen and another set of administrative records suggests that this person is a non-citizen. When you say best citizenship, do you mean that the Census Bureau will try to determine which of the various pieces of information is more likely to be reliable?

MR. SVERDLOV: Objection. Misleading and calls for information that we view as protected by the deliberative process privilege.

MR. DAVIS: I'm asking about what she just told me, trying to understand her previous response.
BY MR. DAVIS:

Q. So this was directly related to her past response. Did I understand you correctly, Mrs. Battle, that when the Bureau is referring to best citizenship variable, that you are trying to reconcile which conflicting pieces of information is correct?

MR. SVERDLOV: Objection. Vague. And I think we are still in that category of information where the Census Bureau has not reached the final decision and so it's trying to deliberate. But if you can answer in a general way, go ahead.

A. One example that might help that is mentioned in a number of the memos is that, for instance, our primary source of citizenship data comes from the Social Security Administration, and we know that if the sources of data from the Social Security Administration, for example, may list that an individual is not a citizen, but we don't know if that individual's citizenship status has changed over time and they just didn't update the Social Security Administration, and so, again as listed in
some of the memos, that's one of the reasons for
trying to acquire administrative records on
naturalizations, for example, that may have more
current information or updated information that may
not be reflected in our reference file. So we are
trying to gather multiple sources and look at them
together to help us determine the best
citizenship --
    Q  Okay.
    A  -- value.
    Q  Mrs. Battle, have we discussed all of the
records that have been requested for state
governments? As I recall, we have discussed
driver's license data, SNAP, WIC and TANF, four
categories. Are there any other pieces of data or
administrative records that have been requested from
state governments by the Census Bureau?
    MR. SVERDLOV: Objection. Vague and
compound.
    A  I'm not aware of any additional
state-level records that have been requested at this
time.
Q    Let's say for a request for driver's license data, how would that request be made?

MR. SVERDLOV: Objection. Vague.

A    The Census Bureau staff reached out to the heads of the states Department of Motor Vehicles to request, have a discussion about obtaining those data.

Q    Okay. So somebody from the Census Bureau would call, like in Alabama there is the Alabama Law Enforcement Agency which is part of, is the agency which issues driver's licenses. They would likely reach out to the head of that department in the State of Alabama?

MR. SVERDLOV: Objection. Vague and compound.

BY MR. DAVIS:

Q    Is that right?

MR. SVERDLOV: Object.

A    Yes.

Q    Is there any particular person in the Census Bureau who is responsible for making the request for administrative records to the state
governments?

A There is, but I do not recall the name off the top of my head.

Q Okay. Do you know what that person's title or what division that person likely works in?

A That person likely works in the section of the Census Bureau that is responsible for acquiring administrative records and ingesting those administrative records.

Q And what would that be?

MR. SVERDLOV: Objection. Vague.

A That -- it's the -- within the Economic Directorate there is a division called I believe Economic Reimbursable Surveys Division, and that houses the staff that are responsible for acquiring and ingesting the administrative records.

Q I'm sorry, Mrs. Battle. Did you say Economic Reimbursable Survey?

A That is my -- I would need to double check on the specific name, but I believe that's correct.

Q I understand you are not sure. But I did understand you correctly? The word was
"reimbursable," if you are remembering correctly?

A  Yes.

Q  Would you look, please, Mrs. Battle, at the document behind Tab 3 of the notebook?

MR. DAVIS: And for the record, I have no doubt we have the original of this in what you produced. There simply wasn't time to get that in every case. So the format of this particular memo was as it was reformatted for purposes of the United States Supreme Court record. So let's mark that.

(Battle Exhibit Number 8 was marked for identification.)

BY MR. DAVIS:

Q  Are you familiar with this memorandum, Mrs. Battle?

A  Yes.

Q  Okay. And this is a reproduction of a memorandum dated December 22, 2017 prepared for John M. Abowd prepared by Michael Berning and others?

A  Uh-huh.

Q  So look at page, it will say 304 at the top. This has been marked as Exhibit 8.
Q This was a couple years ago, but it talks about, under Table 2, data that is currently in census inventory and lists Social Security Administration Numident, Temporary Assistance to Needy Families, and Bureau of Prisons; correct?
A Yes.
Q Then is says Potential New Acquisitions.
A Uh-huh.
Q Now the USCIS Citizen Data, we talked about that because it was listed on one of the other documents we reviewed; right?
A Yes.
Q Okay. And Real ID Act Data, is that data, Mrs. Battle, that states would have?
BY MR. DAVIS:
Q Driver's license data, for example?
A I think we would need to turn to a memorandum of understanding regarding exactly what the Census Bureau is requesting from the states
regarding the driver's license data.

Q Okay. And another document listed under Potential New Acquisitions is FHA Loan Applications. Do you know if those have been requested?


BY MR. DAVIS:

Q Do you know if those have been requested?

A I am not aware of this being requested.

Q Okay. Do you know if there is any intention that the Census Bureau has to request FHA loan application data?

A I cannot say at this time --

Q Okay.

A -- if there is an intention to collect that.

Q Who would know?

A I think we would turn to the organization within the Economic Directorate who is responsible for acquiring administrative records to make that final determination.

Q And that's a person who you can't remember
their name at this moment; right?

A  Well, actually the supervisor, I know his
name, but I'm sure his staff -- the supervisor's
name is Michael Berning.

Q  Okay.

A  So...

Q  But there might be someone on his staff
who is better able to answer that question; is that
right?

MR. SVERDLOV: Objection. Vague.

A  Well, Michael would know the answer,
because his staff would be involved in this.

Q  Okay. And back to this Exhibit 8, under
FHA Loan Applications, still under the part of the
table that lists Potential New Acquisitions, the
next item is State Department Expatriates. Do you
know of any requests for that information?

A  I am not aware of the request, but we
would need to talk to Michael Berning's staff to
confirm that.

Q  All right. And what about the next item
listed, Medicare/Medicaid Loan Applications?
A Well, we do have on our first reference sheet that the Census Bureau has both Medicare enrollment data and Medicaid enrollment data. I know this says specifically "loan applications," so we would need to talk with Michael Berning to ensure that there is a distinction there or not.

Q Okay. I'm sorry, Mrs. Battle. Let's go back. You said the reference sheet -- would you refer to that by Exhibit Number, please?

A Exhibit Number 2.

Q Would you point to me where there is information about Medicare and Medicaid?

A The third row down says CMS MEDB. That's the Medicare enrollment database. And then where, towards the bottom where it says Best Race and Ethnicity, the first sub-bullet, CMS MSIS is the Medicaid enrollment.

Q Okay. Does this suggest to you that this is data on people who are in fact enrolled in Medicare or Medicaid?

A The information in Exhibit 2 reflects data on those who are enrolled. Whereas, I know on 304
it mentions loan application, so if these are the
same things or different things, I need to --

Q    I understand. When you said 304, you are
referring to page 304 of Exhibit 8?

A    Yes.

Q    Okay. And it's Mr. Berning or his group
who could tell us to the best of your knowledge?

A    Yes.

Q    Okay. Would you look now at Tab 4, the
document behind Tab 4, the Executive Order 13880?
And let's mark that as the next exhibit, please.

    (Battle Exhibit Number 9
    was marked for identification.)

BY MR. DAVIES:

Q    Okay. Do you see this is Exhibit 9;
right? And it's a copy of the Executive Order
13880. Have you reviewed this Executive Order
before, Mrs. Battle?

A    Yes.

MR. SVERDLOV: Objection. Vague.

MR. DAVIES: Have you reviewed this
Executive Order before?
MR. SVERDLOV: Vague as to time. Go ahead.

BY MR. DAVIS:

Q Would you look at the page -- it's Bates Number P-169 at the bottom. Do you see that?

A Yes.

Q Page? Under Section 3, the Executive Order says that -- that section is titled Assistance to the Department of Commerce and Maximizing Citizenship Data. Do you understand this to be a list of data that agencies, quote, "shall examine relevant legal authorities and, to the maximum extent consistent with law, provide access to the following records"? These are documents the President wants the agencies to review and study and see if they can provide to the Department of Commerce; correct?

MR. SVERDLOV: Objection. Compound.

A Yes.

Q Okay. Walk me through this, Mrs. Battle. Has the department requested all of this information listed? And we can refer to the different documents
we've been reviewing. I just want to be able to
match them up.

A    So if we go back to Exhibit Number 6 --

Q    Yes.

A    So back in Exhibit Number 9 on page 169,
the first item under Section 3 calls for Department
of Homeland Security, United States Citizenship and
Immigration Services — National-level file of Lawful
Permanent Residents, and Naturalizations. And so if
we refer back to Exhibit 6 on page 2, you will see
that that request was made for Lawful Permanent
Resident file and Naturalization data.

Q    Yes. That's data that in fact we
discussed earlier?

A    Yes.

Q    Okay.

A    And back in Exhibit 9, the second bullet
under Section 3 calls for Department of Homeland
Security, Immigration and Customs Enforcement,
Non-immigrant Visas, and that is reflected on page 2
back in Exhibit 6, the last row where it talks about
Arrival Departure Information System and Visa data,
Customs and Border Protection. That is the data on
temporary lawful residents.

Q And for that data, according to Exhibit 6,
it's been requested, you are awaiting transfer from
DHS; right?

A Yes. Yes.

Q Got it.

A Okay.

Q And going back to the Executive Order,
bullet 3 says Department of Homeland Security,
National-level file of Customs and Border
Arrival/Departure transaction data?

A And that will be fulfilled through the
same role we just talked about.

Q Okay. Arrival/departure information?

A Yes.

Q And on the Executive Order bullet 4,
Department of Homeland Security and Department of
State, Worldwide Refugee and Asylum Processing
System, Refugee and Asylum visas?

A In Exhibit 6 on page 3, at the very top
you'll see the Department of State and the request
was for Worldwide Refugee Admission Processing System data.

Q Okay. And according to Exhibit 6, that's been requested and you are awaiting data transfer?

A Yes.

Q All right. So item 5 on the Executive Record lists Department of State, National-level passport application data.

A Uh-huh. I need to -- I would need to check on the passport application data from the State Department. I do not see it in the Exhibit Number 6.

Q Okay. Back to the Executive Order, Mrs. Battle, item 6 is Social Security Administration - Master Beneficiary Records. Is that what I see on page 3 of Exhibit 6?

A On page 3 of Exhibit 6, yes. The Master Beneficiary Record, yes. That has been requested and received.

Q Great. And the last item on that particular list on the Executive Order is the, the Department of Health and Human Services - CMS
Medicaid and CHIP Information System. Is that on Exhibit 6?

A Yes. Exhibit 6, page 4. They reference the Medicaid Children's Health Insurance Program there, and that we are awaiting transfer.

Q Okay. Then with your and your counsel's permission, I would like to take just a couple minutes for you to tell me in very general terms what some of these other documents are that you brought today, and then we will break for lunch, and that will give us a chance to look at them and decide what we need to ask about them. Does that work?

A Yes.

MR. DAVIS: Let's mark these as exhibits. We have got three more it seems.

(Battle Exhibit Number 10 was marked for identification.)

BY MR. DAVIS:

Q So, Mrs. Battle, first I'm marking one of these as Exhibit 10. Would you tell me what this document is?
A  This document is a Memorandum of
Understanding between the Census Bureau and the
Department of State.
Q  Okay.
A  And it is requesting passport data.
Q  And is this a memorandum that has been
executed? Is it in place?
A  This memorandum was signed earlier this
week, January 13th --
Q  Great.
A  -- when it was executed. This is new.
Q  Okay.
(Battle Exhibit Number 11
was marked for identification.)

BY MR. DAVIS:
Q  And what about the one I'm marking as
Exhibit 11?
A  Exhibit 11 is another Memorandum of
Agreement between the Census Bureau and the
Department of Homeland Security regarding data on
immigration and citizenship.
(Battle Exhibit Number 12
was marked for identification.)

BY MR. DAVIS:

Q    And the last one I'll mark as Exhibit 12.

This appears to be a chart. Would you tell me what
this indicates, please?

A    Exhibit --

MR. SVERDLOV: Objection. Vague.

A    Exhibit 12 is a chart that shows you the
existing administrative records that the Census
Bureau has and has obtained over the years, long
history of obtaining these data from the Social
Security Administration, the Internal Revenue
Service, and the Department of Housing and Urban
Development.

Q    Okay. So some of this stuff like from DHS
that we've been talking about just a couple minutes
ago, those are kind of new requests. This is data
that you've had for a while? Is that right?

A    Yes.

Q    Okay.

MR. DAVIS: Very good. I think this is a
good stopping point. What time would you like to
come back?

MR. SVERDLOV: We are at noon now. Let's take about an hour.

MR. DAVIS: Sounds good. See you then.

(Recessed at 11:54 a.m.)

(Reconvened at 1:23 p.m.)

MR. SVERDLOV: Can folks on the phone hear us okay?

PHONE PARTICIPANT: Yes.

BY MR. DAVIS:

Q Mrs. Battle, early in the deposition we talked about some populations that tended to be subject to under-counts in the census. Would you remind me what some of those are?

A Yes. So we know that in the decennial census there tends to be an under-count for young children. Those are children under the age of five. And we also know from research that there are certain racial and ethnic population groups that may be under-counted, such as young black males or American Indians and Alaskan Natives, for example.

Q Okay. Taking the Alaskan Natives as an
example, if I understand you correctly, research
after the census suggests to the Census Bureau that
there is likely an under-count of Alaskan Natives in
the census; correct?

A For the 2010 census in recent history
there was an under-count, yes.

Q Yes. Okay. Do you know whether that's
true for other censuses as well?

A The Census Bureau does publish after the
decennial census their assessment of coverage of the
decennial census and those reports would have that
information.

Q Okay. And the Census Bureau wants to
count everyone it can, that are supposed to be
counted; correct?

MR. SVERDLOV: Objection. Vague. Calls
for a legal conclusion.

A Yes.

Q Okay. Does the Census Bureau have any
efforts planned to reach harder to count
populations?

MR. SVERDLOV: Objection. Vague.
A    Yes.

Q    Would you give me an example of efforts
that the Census Bureau has planned to reach a
population that it believes to be more difficult to
count than other populations?

A    So the Census Bureau has an advertising
campaign and the Census Bureau develops advertising
directed towards particular hard to count
populations in order to help make awareness more
broad of the decennial census and to encourage
participation.

The Census Bureau also has a network of
partner -- it's called the National Partnership
Program, and the idea there is to partner with
particular organizations, local areas, to try to
develop ways and approaches to reach the hard to
count to get participation improved in the decennial
census.

Q    Okay. Are there any efforts by the Census
Bureau or any planned efforts to reach as many
undocumented immigrants as possible for the count?

MR. SVERDLOV: Objection. Vague. Calls
for a legal conclusion.

A I am not aware of any activities or programs or advertising that would be focused on that population.

Q Would you turn, please, Mrs. Battle, to the document behind Tab 5 of the notebook?

A Uh-huh.

MR. SVERDLOV: Counsel, for the record, I'm just going to note here this is also not a document that was identified in the topics, and given its date as noted on the first page of September 18, 1985, we have concerns that questions about this document would venture far outside the scope of the topics negotiated.

MR. DAVIS: Well, it could, but you might listen to my question first and then you could decide whether or not it's within the topics. It would save us a little bit of time.

MR. SVERDLOV: I'm flagging a concern. I'm happy to give you an opportunity to prove me wrong.

MR. DAVIS: Let's mark this as Exhibit 13,
please.

(Battle Exhibit Number 13

was marked for identification.)

BY MR. DAVIS:

Q Mrs. Battle, this is a statement of the

Director of the Bureau of the Census before the

Subcommittee on Energy, Nuclear Proliferation, et

cetera, dated September 18, 1985. I'm going to turn

to the page -- the first page is Bates Numbered

1820, produced by the Department of Commerce, and

I'm looking at the page that's Bates Numbered 1827.

And here I'm going to represent to you

that if you see a paragraph towards the bottom that

begins, "because undocumented aliens," et cetera?

On that page and the following page, as I read this,

and you can tell me if you disagree, the former

director is talking about efforts addressed to count

as many undocumented aliens as possible.

And I just want to see if this refreshes

your recollection if you review the steps that he

says were taken in the past, I ask you to look at

those and see if this refreshes your recollection,
if you are aware of any such effort that the Census
Bureau intends to make as part of the 2020 census?

MR. SVERDLOV: I'm going to object to that
question on the basis of foundation and on the basis
of scope.

A On page 1828 --

Q Yes, ma'am.

A -- it mentions enumerating migrant farm
camps.

Q Yes.

A And I will say that in the course of the
decennial census the Census Bureau does have a group
quarters enumeration operation that would include
workers dormitories which may be similar to this
type of facility.

Q Okay.

A I would need to check on any conversations
that the Census Bureau has had with law enforcement
agencies.

Q Okay. Yes. Because this statement, the
former director said that they discussed with law
enforcement agencies about curtailing law
enforcement on census days to ensure maximum participation. Do you read it the same way?

    MR. SVERDLOV: Objection. Lack of personal knowledge and foundation and scope. The document says what the document says and the witness was neither prepared on this document, nor was this document something that you indicated you were interested in pursuing testimony on.

    BY MR. DAVIS:

    Q    Are you aware of any conversations the Census Bureau has had with law enforcement agencies seeking perhaps a curtailment of law enforcement with related to immigration on census day to ensure, to help ensure maximum participation by undocumented immigrants?

    MR. SVERDLOV: I'm going to object based on scope and also based on potentially deliberative process privilege. I will direct the witness not to answer because at the very least we are far outside the scope of the topics noticed in this deposition.

    BY MR. DAVIS:

    Q    Has the Census Bureau made any decision of
whether or not to work with law enforcement agencies
to curtail enforcement of immigration laws around
census days in order to ensure greater participation
by undocumented immigrants in the census?

MR. SVEDLOV: To protect the deliberative
process I will direct the witness to answer in a
general way.

A I do not have knowledge regarding that. I
would need to check.

Q Okay. Who would you check with if you
wanted to find out the answer to that question?

A I would talk with the Deputy Director of
the Census Bureau.

Q And who would that be?

A Ron Jarmin.

Q Okay. Has the Census Bureau made any
decision of whether or not to reach out to clergy,
for example, the Conference of Catholic Bishops, to
solicit their support in spreading the word about
the census and the importance of participating in
the census?

MR. SVEDLOV: I will raise the same
objection as before and give a similar instruction
to the witness.

A  Well, in the National Partnership Program
that I mentioned earlier there is a faith-based
component there, so I do know that the Census Bureau
has partnered with members of the different
religious communities to help get the word out about
the decennial census.

Q  The date of the census is April 1, did you
say, 2020? That's the date that you are targeting
trying to measure the population on that date?

MR. SVERDLOV: Objection. Compound and
not I'm not clear the witness has testified on that,
so misstates prior testimony.

A  Yes.

Q  Okay. That doesn't mean though that
everyone who fills out a form fills it out on April
1 though, does it?

A  No.

Q  Okay. What if I fill out my form on March
the 1st and move on the 15th; on March the 1st I
report that I live in Prattville, Alabama, but I
move to Nebraska on the 15th. Where does the Census
Bureau count me for the purposes of the 2020 census
if those things were to happen?

A Well --

MR. SVERDLOV: Objection. Vague.

A We do ask people to report as of census
day.

Q Okay.

A It could be we collect their data early,
earlier than that or even after that, but we always
reference it back to we need your information as of
census day, the reference date.

Q Okay. Well, let's say that maybe I didn't
see that part or I misunderstood, but I nonetheless
report my address in Prattville, but I move to
Nebraska on the 15th. Does the Census Bureau count
me at the state that's on my form?

MR. SVERDLOV: Objection. Vague and
misleading.

A The -- could you repeat that question,
please?

Q Sure. Let's say in spite of the
instructions that you put on my form to reflect my
status as of April 1, I fill out my form early, I
fill it out on March 1 and say I live in Prattville,
which was true on March 1, but on the 15th I moved
to Nebraska. Is the Census Bureau going to count me
as a resident of Alabama or Nebraska?

MR. SVERDLOV: Same objection.

A I think what would happen is that the data
would be collected from that original form and if
that individual did not fill out another form in
Nebraska, that that information would be held -- in
the sense -- I don't know that the Census Bureau
would know that this person has moved if they never
engaged with the Census Bureau an additional time.

Q Unless it's self-reported, is it possible
or even likely that the Census Bureau would not be
aware of my move to another state?

MR. SVERDLOV: Objection. Compound and
misleading.

A If the only information we have for that
household has come in on a census form and we have
no need to follow up with that individual, then that
would be the information that we have.

Q    Okay.

A    If we never needed to interact with that person again.

Q    Okay. What if just any random person fills out their census form on March 15th, mails it in and the next day passes away; does the Census Bureau have any way that you are aware of to know that someone who filled out a census form in fact was deceased before census day?

MR. SVERDLOV: Objection. Compound.

A    Once that census form has been submitted and the individual passes away, the Census Bureau would not have knowledge of that.

Q    Okay. I suppose it could also work the other way, a couple could fill out a census form and report two people live in a household and before census day they have a child. In that case that house would likely be under-counted, would it not?

MR. SVERDLOV: Objection. Calls for a legal conclusion.

A    The Census Bureau would have access to the
information that that family provided on their
questionnaire, yes.

Q In that case there may be an additional
resident of that household that the Census Bureau
just has no way of counting; is that correct?

MR. SVERDLOV: Objection. Misleading.

A If that household provided their
information, they responded to the decennial census,
completed the questionnaire and submitted it, then
that would be their record for the census.

Q Would you turn back, please, Mrs. Battle
to the document behind Tab 8? It's been previously
marked as an exhibit, but I didn't write down for
this one which Exhibit Number that was.

A Five.

Q Exhibit 5. And going back to the Q and As
at the back on the page that's Bates Numbered P-15,
I'm going to refer you to Question Number 13 at the
bottom. The question in this question and answer
section reads as follows:

"Is Census confident that administrative
data will be able to be used to determine
citizenship for all persons, e.g., not all citizens have Social Security Numbers."

And the response given is: "We are confident that Alternative C," use of administrative data, "is viable and that we have already ingested enough high-quality citizenship administrative data from SSA and IRS."

Does the -- is the Census Bureau still confident that the use of administrative data to impute citizenship is viable and that you have enough high-quality citizenship data to perform those functions?

MR. SVERDLOV: Objection. One second. Objection. I think this is verging into the deliberative process privilege. The question by its terms calls upon the witness to testify about efforts that are ongoing, so I will direct the witness not to answer that question.

MR. DAVIS: Okay.

BY MR. DAVIS:

Q This memo is dated January 19, 2018. Was it true on January 19, 2018 that the Census Bureau
was confident that Alternative C in this memo, quote, is viable and that we, meaning the Census Bureau, have already ingested enough high-quality citizenship administrative data from SSA and IRS?

A The Census Bureau knows that, yes, the Social Security Administration data and the Internal Revenue Service data are of high quality but there are still some gaps.

Q Okay. The next sentence of the response says: "The USCIS data are not required. They would, however, make the citizenship voting age tabulations better." Was that true in 2018?

MR. SVERDLOV: Objection. Vague.

A What I can tell you is that there are gaps in the Social Security Administration data, and acquiring information from the Citizenship and Immigration Services Agency may be helpful in filling in those gaps.

Q Okay. Then I apologize for this, but I want to make sure I've asked what I need to ask, Mrs. Battle. I want to try this another way. The statement that Alternative C is
viable, was that statement true when it was made?

MR. SVERDLOV: Objection. Vague.

A Alternative C was put forward as an option that the Census Bureau thought should be pursued, additional research would need to be done, additional data would need to be collected to see how that alternative could be then developed to produce information on citizenship status.

Q Well, on this day does the Census Bureau know whether the use of administrative data will allow it to produce citizen voting age population after the 2020 census?

MR. SVERDLOV: Objection. Vague as to time. To the extent that this question concerns a date other than the date on the memorandum or dates subsequent to it, I will direct the witness not to answer based on deliberative process privilege.

BY MR. DAVIS:

Q The question is as of today's date does the Census Bureau know whether it will be able to use the 2020 census to produce citizen voting age population data using administrative data? I'm not
asking about deliberations, I'm asking if it knows?

MR. SVERDLOV: As of today's date?

MR. DAVIS: As we sit here right now.

MR. SVERDLOV: So to the extent the question can be answered without going into deliberations and can be answered in a general way, the witness can answer. Otherwise, I will direct the witness not to answer.

The Census Bureau is pursuing and has obtained additional administrative records that will be evaluated to see how those data can be used in conjunction with the Social Security Administration data and the Internal Revenue Service data to help us develop the citizenship status information for the purposes of CVAP.

So we are ingesting data, we are evaluating data, and we need to continue that evaluation in order to make a final determination on what data we need to help us develop citizenship status.

Q So do I understand that the Census Bureau does not know yet whether it can use administrative
data to produce citizen voting age population data?

A    The Census Bureau is pursuing that, but we
need to continue to evaluate all of the data that we
have requested and then make sure we have developed
the appropriate methodology that will allow us to do
that. So we are still evaluating the data.

Q    Okay. Are you aware of any memorandum or
reports from the Census Bureau or perhaps testimony
from prior litigation where the Census Bureau or a
representative said in effect we don't know whether
we can use administrative to do this, but we are
going to look at it and see?

MR. SVERDLOV: Objection. Vague and
misleading. To the extent that -- strike that last
part.

A    I am aware of memos that instruct the
Census Bureau to acquire additional administrative
records and with the purpose of developing
methodology to determine citizenship status with the
CVAP data product.

Q    Does the Census Bureau expect to know the
answer to that question by spring of 2020?
MR. SVERDLOV: Objection. Vague.

A    The Census Bureau has stated that in the spring of 2020 its goal is to have identified specific administrative record data sources and methodology that will permit it to develop the CVAP data product.

Q    When this report or memo dated January 19, 2018 contains the statement that we are confident that Alternative C is viable, has anything happened since that date to make the Census Bureau less confident that Alternative C is viable?

MR. SVERDLOV: Objection on the basis of deliberative process privilege. To the extent the witness can answer in general terms, she may try to do so. But I will direct the witness not to answer the question to the extent it calls for the internal deliberations and the substance of those deliberations of the Census Bureau.

A    I am not aware of any conversations that concluded that administrative records are not viable to help us with those efforts.

Q    Has the Census Bureau made a decision as
to whether any sampling will be involved to measure
or impute citizenship as part of the 2020 census?

MR. SVERDLOV: Objection. Vague and
compound.

A The Census Bureau has not determined its
final methodology for producing the CVAP yet.

Q Has the Census Bureau determined whether
CVAP data will be released as part of the P-4 --
what was the data file? Dash 171?

MR. SVERDLOV: Objection. Vague and
compound.

A You are asking me if CVAP is intended to
be a part of the redistricting data file, the PL.

Q Right. PL dash --

A PL-94171.

Q That's it. Thank you.

A The Census Bureau intends for the CVAP
data product to be a separate special tabulation.

Q Okay. What form will it be released in?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau is working to finalize
the format of the CVAP. I expect that information
to be ready in the spring of 2020.

Q      Okay. So you don't know yet what form it
will be released in; is that correct?
A      The specific format, no.
Q      Okay. Would you turn now, please, Mrs. 
Battle, to the document behind Tab 9?
A      Uh-huh.
Q      That, for the record, is a March 1, 2018
memorandum for Wilbur Ross from John Abowd through
others. Let's mark the first page of that, please,
Mrs. Battle, as Exhibit 14.

(Battle Exhibit Number 14
was marked for identification.)

BY MR. DAVIS:

Q      Are you familiar with that document, Mrs. 
Battle?
A      Yes.
Q      And one of the sections is, it begins on 
the page that's Bates Numbered P-38. There is a 
heading, "What are the weaknesses in Alternative C?"
What was the author's response to that question, if 
you could just summarize it for me?
A So one of the key issues with the Numident is whether or not there, the information regarding individuals who are not citizen is up-to-date. Whereas, it could be the case that at the time that someone applied for a Social Security Number they were not a citizen, but subsequently they have achieved naturalization, but then never updated the Social Security Administration. So there is a weakness there, there is a gap there.

The -- another issue, a weakness with the Social Security Administration that's listed is that some people are not required to have a Social Security Number, and so then they would not appear in the Numident data from the Social Security Administration.

Q So, I want you to continue, but what you have described so far are groups of people for whom you may not have citizenship information in the administrative data; is that correct?

MR. SVERDLOV: I'm sorry. Hold on one second. I want to read the question. Objection. Vague.
A So with the key issue regarding individuals who are not citizens at the time that they obtained the Social Security Number, that information may not be updated in that particular source of data, but the idea is to search other administrative records to use in conjunction to then have more updated information.

Q Okay. So it's a population who may not be included in the citizenship information in a particular set of administrative records? Did I understand you correctly?

A Yes.

Q Okay. But there could be other administrative records that do contain citizenship information about that individual?

A Yes.

MR. SVERDLOV: Objection. Calls for speculation.

Q And it lists one, two, three, four, five, six, seven people starting on -- not people -- groups starting on page P-39. One is U.S. citizens from birth with no Social Security Number or U.S.
passport. The second is U.S. citizens from birth born outside the U.S. who do not have a U.S. passport, et cetera, and I'm not reading the whole description, but you see where I'm talking about?

A    Yes.

Q    Is the Census Bureau making any efforts to seek particular data to fill the so-called citizenship data gaps?

MR. SVERDLOV: Objection. This question calls for information that is protected by the deliberative process privilege. So to the extent the witness can answer it in a general way, she may do so. But I will direct her not to go into the details regarding any efforts that may or may not be taking place.

A    So the Census Bureau has recently acquired and will acquire additional administrative records, and in the course of evaluating this data the Census Bureau can assess how many of these gaps we might be able to fill.

Q    And was it in seeking this information, was it one of the goals of the Census Department to
fill as many of these gaps as possible?

MR. SVERDLOV: Objection. That question calls for information protected by the deliberative process privilege.

MR. DAVIS: Was it a goal of the Census Department to fill as many gaps as possible? That doesn't call for deliberations.

MR. SVERDLOV: It precisely does. It calls for revealing the rationale by which the Census Bureau has been acting on a matter in which the Census Bureau has not yet completed deliberations. So our view is that it is protected by the deliberative process privilege.

MR. DAVIS: Are you instructing the witness not to answer?

MR. SVERDLOV: Let me review the question. I will direct the witness not to answer that particular question. However, there may be general questions that she can answer.

BY MR. DAVIS:

Q Is it the goal of the Census Department to refrain from asking for data that it believes would
be helpful?

MR. SVERDLOV: Objection. Argumentative.

A      Can you please restate that?

Q      Sure. Is it a goal of the Census Department to purposefully refuse to ask for administrative data from another agency that it believes would be helpful in producing a more accurate citizen voting age population count in the 2020 census?

MR. SVERDLOV: In addition to being argumentative, that question seeks to discover the deliberations of the Census Bureau. I will direct the witness not to answer that question.

BY MR. DAVIS:

Q      You can refer to this document if you wish. It's the executive order, Mrs. Battle. What do you understand the executive order behind Tab 4, what do you understand this executive order to direct the census department to do?

A      My understanding is that the Census Bureau is directed to establish an interagency working group with the purpose of meeting with federal
departments to discuss acquiring their administrative records that may be helpful in helping the Census Bureau meet and comply with the executive order.

Q: And does the Census Bureau intend to do that?

A: Yes.

Q: Is there in any respect that the Census Bureau does not intend to comply with Executive Order 13880?

A: The Census Bureau is working to comply with Executive Order 13880.

Q: And you are not aware of any area or any requirement of the Executive Order that the Census Bureau intends to refuse?

MR. SVERDLOV: Objection. Vague, calls for a legal conclusion, calls for speculation.

A: I am not aware of any part of the Executive Order that the Census Bureau intends to refuse.

Q: Referring, Mrs. Battle, to the efforts of the Census Bureau to obtain administrative data from
the various states, let's say there is a case where a particular state has declined to provide requested data. Has the Census Bureau made any decision yet as to what the next steps might or might not be?

MR. SVERDLOV: Objection. Calls for speculation.

A I'm not aware of any next steps that the Census Bureau plans to take regarding states that have refused to share their administrative records.

Q Okay. Well, I have to be clear because of the objections. Has there been a decision made that the Census Bureau is going to take no further steps if a state has declined to provide requested data?

MR. SVERDLOV: Objection to the extent it calls for deliberative information. To the extent that the witness can answer whether or not there has been a decision made, she may answer.

MR. DAVIS: Which is the question that I asked.

A I am not aware of the Census Bureau making any decisions about whether or not next steps need to be taken.
Q Okay. Look back, please, Mrs. Battle, at the document behind Tab 9. And remind me for the record what Exhibit Number is.

A 14.

Q 14. Thank you. And look back at the list of one through seven.

MR. SVERDLOV: For the record, this is the page that's Bates Numbered P-39.

THE WITNESS: Yes.

BY MR. DAVIS:

Q Does the Census Bureau know how many individuals are in any of these categories one through seven?

MR. SVERDLOV: Objection. Vague.

A I am not aware of the Census Bureau having quantified how many people are in each of these categories.

Q To make sure I'm clear, are you aware of any estimates of the number of people in any of these categories?

MR. SVERDLOV: Objection. Vague.

A I'm not aware of any specific estimates
for any of these categories that may have been
utilized in the development of this memo.

Q   Would you turn now, please, Mrs. Battle,
to the document that is behind Tab 14 of the
notebook? And let's mark the first page as Exhibit
15, please.

And I'll represent to you that these are
excerpts of a deposition in other litigation. These
are excerpts of a deposition taken in other
litigation, the deposition of Dr. John Abowd, on
Wednesday, August 29th in the lawsuit New York
Immigration Collision, et al., versus U.S.
Department of Commerce.

(Battle Exhibit Number 15
was marked for identification.)

MR. SVERDLOV: Just for the record, I will
note that this is another document that has not been
identified for purposes of the topics that the
parties negotiated. So to the extent that the
witness can answer in general terms, she may do so.

MR. DAVIS: That's not helpful, because I
don't have to tell you what the exhibits are going
to be when we negotiate topics. And it --

MR. SVERDLOV: I'm laying groundwork for
an objection. I don't know where you are going to
go.

MR. DAVIS: Exactly. You don't know. So
in my view it's a waste of time. You can still
raise the objection after a question if in fact the
question is objectionable, instead of taking up our
time flagging potential objections.

BY MR. DAVIS:

Q I will tell you, Mrs. Battle, I find some
of the coloring hard to read. This is the form we
were able to receive it in. I think it is because
different parties designated different portions of
the deposition in other litigation.

I'm going to refer you to page 67 of the
deposition. Do you see the page I mean? The top
line one begins, "in 2000 and 2010 that was
accomplished."

A Yes.

Q Okay. There is testimony here I'll
represent to you, Mrs. Battle, concerning
introducing randomness to see that data to ensure
protection of privacy, at least that's the way I
interpret the testimony.

I would like you to review that and help
me understand, if you know and if any decision has
been made about this, whether randomness is going to
be injected into CVAP data to protect the privacy of
individuals?

A    Yes. The Census Bureau has determined
that it will use a procedure or methodology called
differential privacy that will be used to infuse
noise into all estimates that come out from the CVAP
as well as all census counts that come out from the
decennial census. So all data products from the
decennial census will have this noise infusion to
protect the privacy of those who are included.

Q    Okay. How does that work? What does it
mean to inject -- what I mean by that question is
what does it mean to inject noise into the data?

A    The Census Bureau will be using a
mathematical approach to determine how to -- a
mathematical approach in terms of how to take census
responses and then be able to inject noise is the
best way I can describe it, to protect an
individual's information. So it's a way of
preventing an individual from being identified based
on their characteristics that they provided in
response to the decennial census.

Q  Okay. I'm sure I'm just slow, but I don't
understand that. Let me try to give you an example.

Let's say the Census Bureau reports for a
particular census block that there are 100 people
living here, there are 90 citizens and ten
non-citizens. Is that going to be true or will this
noise mean that you are reporting some different
number?

MR. SVERDLOV: Objection. Vague. Calls
for speculation.

A  The Census Bureau is going to take the
as-enumerated information and will use a
mathematical approach to take those data and the
data will then reflect the population in that area,
but some of the specific details may be altered,
changed, so that you cannot identify an individual.
Q    What is an example of details that my
might be altered or changed?

A    In particular, we have information on age,
information on race, information on Hispanic origin,
for example.

Q    So I understand you can't look at the CVAP
data for a census block and tell from that who
individually is a citizen and who is not. But will
the totals for that census block be reported
accurately?

MR. SVERDLOV: Objection. Vague.

Compound.

A    The Census Bureau has determined that the
only population data coming out of the decennial
census that will not have differential privacy or
noise injection will be the state-level population
totals. All other totals will have this
differential privacy applied to it, at least that's
as of today the Census Bureau's position.

Q    And when states are using this CVAP data
to draw districts and it looks at a census block and
it says we add this census block to this district,
we are adding 100 additional white voters, white
voting age citizens and 42 additional
African-American voting age citizens, are those
numbers going to be true?

MR. SVERDLOV: I'm going to object based
on scope and I'm also going to object -- first, I'm
going to object to the question as vague and I will
also object to it on the basis of scope, because
redistricting is explicitly not one of the things
that we have agreed to proffer a witness to testify
about, nor is it something that the Census Bureau
performs.

MR. DAVIS: Well, this is not really about
redistricting, it's about the accuracy of the CVAP
data that will be important, and I'm just having
trouble understanding what injecting noise does to
accuracy.

MR. SVERDLOV: Is that a question?

MR. DAVIS: Yes.

BY MR. DAVIS:

Q What does injecting noise have to do with
accuracy? How does it effect it?
MR. SVERDLOV: Objection. Compound.

A So the Census Bureau has talked publicly about the differential privacy methodology and the fact that the data will become more accurate as you aggregate levels of geography. So data at the block level may have noise in it that's more pronounced, but as you group those blocks into block groups and take those block groups and create census tracks and take those census tracts and build up to counties, the accuracy improves as you aggregate data and build larger geographic areas.

Q And is there any difference in the process that you described as injecting noise in what otherwise may have been referred to as injecting randomness? Or are those the same thing?

MR. SVERDLOV: Objection. Calls for speculation.

A You are referring to a statement on page 67 about randomness?

Q Right.

A Let's see.

Q And that's in Exhibit 15. I'm trying to
understand if you and this witness are describing the same procedure.

A Because on the top of page 67 the testimony talks about differential privacy, then we are talking about the same thing.

Q Okay.

MR. SVERDLOV: Counsel, I think we would benefit from a little bit of clarification. The document in Tab 14, you've designated the excerpt of testimony from Dr. John Abowd, do you know whether that was a 30(b)(6) deposition? It does not appear to be one on its face.

MR. DAVIS: I do not know the answer to that question. And if I intended -- if I represented this as being the testimony of the department itself, that was not intentional.

MR. SVERDLOV: Okay.

MR. DAVIS: With your permission, counsel, and, Mrs. Battle, this would be a good time for a 10 or 15-minute break to get organized. I think the rest of the time would proceed more efficiently if you allow me to do that.
MR. SVERDLOV: That makes sense.

MR. DAVIS: Thank you, Mrs. Battle.

(Recessed at 2:15 p.m.)

(Reconvened at 2:40 p.m.)

BY MR. DAVIS:

Q Mrs. Battle, the Executive Order -- you are free to turn to it if you want -- but it is behind Tab 4. In Executive Order 13880 it says on the page that's been marked, that's Bates Numbered P-169, it says, before it lists the different categories of administrative records it says: "The following agencies shall examine relevant legal authorities and, to the maximum extent consistent with law, provide access to the following records."

MR. SVERDLOV: I'm sorry, counsel. Can you direct me?

MR. DAVIS: It's under Section 3 just before the list of documents, small little Roman one.

MR. SVERDLOV: Okay.

BY MR. DAVIS:

Q My question to you, Mrs. Battle, is this:
Are you aware of any federal agencies that have said we cannot provided requested information because the law doesn't permit us to share it with you?

A    I am not aware of any agencies stating that they cannot share or send to us their data because of a law.

Q    Okay. And for the data that you received or that they've agreed to share, are you aware of any circumstance where the law would not permit you to use the data in order to impute citizenship?

MR. SVERDLOV: Objection. Calls for a legal conclusion, and to the extent it pertains to the ongoing deliberations about the use of data, that this information we would view as protected under the deliberative process privilege, so I will instruct the witness not to answer that portion.

BY MR. DAVIS:

Q    Let's start over. Are you aware of any circumstance where the Census Bureau has determined that it is unable to use a set of administrative data because of some impediment of the law?

MR. SVERDLOV: Objection. Vague.
BY MR. DAVIS:

Q    Or some legal requirement?

MR. SVERDLOV: Objection. Compound.

A    I am not aware of that.

Q    Would you look at the document, one of the ones that you brought with you today, that's marked as Exhibit 11? And this, for the record, is a Memorandum of Agreement between the United States Department of Commerce and the United States Department of Homeland Security. And I will refer you to page 17 of that document, Mrs. Battle.

Do you see that page with the heading Attachment 1: Description of Approved Research Project?

A    Yes. Yes.

Q    In the first paragraph, Mrs. Battle, it says: "The Census Bureau plans to use several administrative data sources of citizenship status in a statistical model that will produce a probability of being a U.S. citizen on April 1, 2020 for each person in the 2020 census."

First, is that in fact the Census Bureau's
plans?

A The Census Bureau is acquiring administrative records that it will evaluate and the Census Bureau will then finalize their plans about how they specifically will determine citizenship for those enumerated in the census.

Q Okay. What does it mean you'll produce a probability of being a U.S. citizen?

A In this general approach the probability would be a value between zero and one.

Q Okay. Well, what if the probability is .5; is that person counted as a citizen or a non-citizen?

MR. SVERDLOV: Objection. Vague and misleading, assumes facts not in evidence.

A The final methodology for how the Census Bureau will use administrative records and to actually develop the citizenship status for individuals in the census has not been finalized yet to be able to tell you that information.

Q Okay. Let me make sure I understand you by asking you a different way. Has the Census
Bureau yet decided how high the probability must be of citizenship before a person is counted as a U.S. citizen?

A  I am not aware of the Census Bureau making that decision yet.

Q  Okay. And who would be making that decision?


A  The final methodology that the Census Bureau will use to create the CVAP file will need to be vetted and approved by executive leadership at the Census Bureau as well as at the Department of Commerce.

Q  Okay. So executive leadership has to approve it. I assume that there are employees of the Census Bureau who will be working on answers to these questions to recommend to executive leadership. Is that true?

MR. SVERDLOV: Objection. Vague.

A  Yes.

Q  Okay. And do you know who within the
Census Bureau will be working on recommendations to make to executive leadership?


A The Census Bureau will look to an internal expert team that includes leadership from John Abowd and the development of the recommendation about how to develop the statistical models, how to use probability data if that indeed will be part of the final methodology.

Q Mrs. Battle, when you talk about in terms of probability of citizenship and the value between zero and one, what does zero mean?

MR. SVERDLOV: Objection. Vague.

A The methodology that needs to be finalized will determine what the values of the range of the probabilities actually means.

Q Okay. I guess you would give me the same answer if I asked what one means in that scenario?

A Yes. All of that has to be finalized in the methodology.

Q Okay. Let's say, Mrs. Battle, that after
the 2020 census the Census Bureau counts in a
particular census block 100 voting age white
citizens, 40 voting age African-American citizens,
and ten non-citizens. Are those numbers going to be
reported for that census block?

MR. SVERDLOV: Objection. Vague and
compound. To the extent it concerns ongoing
deliberations, that question would -- the answer to
that question would be protected by the deliberative
process privilege.

I think more pertinent right now is that
this question is verging outside the scope of the
negotiated topics and I think we would benefit from
you explaining how you view the, that type of count
you described as falling within one of the topics we
negotiated.

BY MR. DAVIS:

Q I'm making the numbers up. I don't care
what the numbers are. I just want to know if you
count particular numbers in the census block. This
is going back, Mrs. Battle, to the injecting noise
and I just want to understand that as well as I can
while I have the opportunity to speak with you.

    So the first step is if you measure X
number of, let's just stick with X number of
Caucasian voting age citizens in a census block, is
that X in fact going to be released for that census
block, or because of noise, will it be changed to
some other number?

    MR. SVERDLOV: Objection. Vague.

    A The Census Bureau will take enumerated
counts for a block and those data, along with all
the other census data collected in the decennial
census, will go through the disclosure avoidance
process and noise will be injected.

    Q Okay. And after -- how will the numbers
for a block look different after noise is injected?

    MR. SVERDLOV: Objection. Calls for
speculation.

    BY MR. DAVIS:

    Q I'm going to break that down with
different questions to see if maybe I can make it
make sense a little more for me.

    After you inject noise, would the total
population of the block change?

MR. SVERDLOV: Objection. Vague.

A The current plans for using disclosure avoidance in the decennial census holds that only the state's population totals will be as enumerated in the census and other population totals may change because of noise that's been injected.

Q Okay. So the numbers reported for a particular census block may not be accurate then if I understand you correctly?

MR. SVERDLOV: I'm going to object based on scope once again and this time I'm going to direct the witness not to answer. I do not see how this bears on the question of state apportionments, which is the nature of your claims in this lawsuit and therefore the predicate for --

MR. DAVIS: We will come back to that. We will just skip that for now.

BY MR. DAVIS:

Q But from what you described, Mrs. Battle, voting age population at the state level will be correct?
MR. SVERDLOV: Objection. Vague.

A The state population totals will be as enumerated in the decennial census.

Q Okay. Will you be releasing citizen voting age population at the state level?

A That level of geography traditionally has been published with the CVAP data file. The final specifications for the 2020 CVAP are not finalized yet.

Q Is there any doubt that the Census Bureau will in fact release CVAP data after the 2020 census?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau plans to release the CVAP data after the census. The goal is to produce that by March 31st of 2021.

Q Does the Census Bureau have any intention that you are aware of to seek information concerning deferred action for childhood arrivals program?

MR. SVERDLOV: Objection. I will direct the witness not to answer both on the basis of scope and deliberative process privilege.
BY MR. DAVIS:

Q Have you made a decision as to whether or not to seek that data?

MR. SVERDLOV: Objection. Assumes facts not in evidence. And outside the scope. But if --

BY MR. DAVIS:

Q I feel like the administrative data that may be available to address citizenship is well within the scope of the topics. So I will ask again. Has the Census Bureau made any decision as to whether it will seek information related to the deferred action for childhood arrivals program?


A I am not aware of any decision that's been made regarding that topic.

Q Okay. I am almost positive that at times today I have referred to the census department when it's really the Census Bureau. If I have done that, we understood each other? You knew who I was talking about, that I meant the Census Bureau, did you not?
MR. SVERDLOV: Objection. Misleading.

A Yes.

MR. DAVIS: Do you all need a break?

MR. ROSENBERG: Are you done?

MR. DAVIS: Not quite. But close.

BY MR. DAVIS:

Q Would you look at Tab 17 of your notebook, please, Mrs. Battle?

MR. SVERDLOV: I'm sorry? What tab?

MR. DAVIS: Tab 17.

BY MR. DAVIS:

Q And, Mrs. Battle, take all the time you want. I really just want to know if you can identify that document for me just so I can get on the record if you know what that document is.

Let's mark it as Exhibit 18. For the record, I made a mistake. This document will be marked as Exhibit 16 to Mrs. Battle's deposition. (Battle Exhibit Number 16 was marked for identification.)

BY MR. DAVIS:

Q Can you identify the document that's been
marked as Exhibit 16, Mrs. Battle?

A    This is the Department of Homeland Security Immigration-Related Information Sharing with U.S. Census Bureau, December 20th, 2019.

Q    And how is that different from the document we marked as Exhibit 11, the Memorandum of Agreement between the Department of Commerce and the U.S. Department of Homeland Security?

MR. SVERDLOV: Objection. Vague and misleading and assumes facts not in evidence. And to the extent you are asking the witness to testify about a Department of Homeland Security document that you have marked as Exhibit 16, it is outside the scope of this deposition because the witness is testifying on behalf of the U.S. Census Bureau, not the Department of Homeland Security.

BY MR. DAVIS:

Q    Have you reviewed the document that's been marked Exhibit 16 before?

A    I am not familiar with this particular document.

Q    That's all. That's fine. Then I will
have no other questions about it.

Mrs. Battle, does the Census Bureau know yet whether it is feasible to produce high-quality citizen voting age population data using administrative records?

MR. SVERDLOV: Objection. Vague and misleading, assumes facts not in evidence.

A The Census Bureau will need to continue evaluating the administrative records that we have recently acquired before being able to make that statement.

Q So the answer is the Bureau just doesn't know yet? Is that true?

A Yes.

Q Okay. If it didn't know now, then it didn't know the answer to that question in 2019 or 2018 or 2017, did it?

MR. SVERDLOV: Objection. Argumentative.

A The Census Bureau needs to get access to the data and be able to evaluate that to make that final decision.

Q So if someone said in 2019 that, yes, the
Census Bureau can use administrative data and use that to produce high-quality citizen voting age population data, that would have been incorrect?

MR. SVERDLOV: Objection. Vague and misleading.

A The goal of the Census Bureau is to use administrative records to produce high-quality data on citizenship for the population. But we need to access the data that we believe may be helpful to us and just make sure that it will be of the quality that we need for the purposes that we need.

Q After the 2020 census, Mrs. Battle, does the Census Bureau intend to release a total population count for each state?

A After the decennial census the Census Bureau intends to publish a, an apportionment population count for the state, which would include a resident population count for the state as well as the federal affiliated overseas population for the state.

Q Okay. Will it produce as a part of any product a count of the number of U.S. citizens
residing in each state?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau in the development of the citizen voting age population file would include data on the number of citizens of voting age. The final format of other information that would be in that CVAP file has to be finalized.

Q The numbers released for citizenship, if I understood you correctly, will be the number of citizens of voting age; is that correct?

A Yes. That would be in the citizen voting age population data product.

Q But does the Census Bureau also intend to count each person, even those not of voting age, as a citizen or a non-citizen?

MR. SVERDLOV: Objection. Vague and misleading.

A The Census Bureau through the use of administrative records will be determining a citizenship value for all those counted in the decennial census.

Q Does the Census Bureau plan to count the
number of non-citizens who are lawfully present in each state?

MR. SVERDLOV: Objection. Vague and misleading.

A The Census Bureau plans to count in the decennial enumeration all of those who are usual residents of the state regardless of citizenship status.

Q Do you know and does the Census Bureau know whether any of the administrative data that it has sought or obtained would contain administrative data on lawful residents?

Let me say by that I mean do you know whether any of the data from any of these other agencies will contain information to let you impute whether or not a person counted is, a non-citizen counted is a lawful resident of the United States?

MR. SVERDLOV: Objection. Vague and misleading.

A I can't speak to whether the Census Bureau will impute a particular legal status to someone in a decennial census. The Census Bureau is acquiring
administrative records that will have some of that information.

Q Okay. What are some of those? And I will refer you, Mrs. Battle, to the document that's been marked as Exhibit 6. I'm not limiting you to that exhibit, but it may be a place to start. And again what I'm asking you is to tell me which of these records either have or may have information related to the lawful status of a non-citizen.

A So in Exhibit 6 on page 2, in the bottom part of the table we see data that either has been acquired or we are waiting to acquire from the Department of Homeland Security, which would include information on lawful permanent residents and naturalized citizens, as well as temporary lawful migrants, people with student visas or temporary work visas, et cetera.

And page 3, at the top the Department of State, we are waiting to acquire those records on data regarding the refugee population.

Q Any other sources of data listed on Exhibit 6 that may have information about lawful
residency?

A    I would need to defer back to the Memorandum of Understanding with all of these agencies which lists the variables specifically that are being requested to determine that.

Q    If a state agrees to release information to the Census Bureau, and by information I mean administrative data requested as part of the effort to comply with the Executive Order, is the Census Bureau entering into agreements with those states or memorandums of understanding?

MR. SVERDLOV: Objection. Vague.

A    The Census Bureau will need to have a memorandum of understanding or enter transfer agreements to document exactly what the Census Bureau is requesting, yes.

Q    Look. Nebraska is listed on here and providing you some information; correct?

A    Yes.

Q    Does that mean that Nebraska has entered into a memorandum of understanding with the Census Bureau?
A  In order for the Census Bureau to acquire
those data there needs to be a memorandum of
understanding.

Q     Gotcha.

MR. DAVIS:  This is off the record.

-- --

(Discussion off the Record.)

-- --

BY MR. DAVIS:

Q     Back on. Mrs. Battle, if the Census
Bureau determined that it was going to make a count
of non-citizens who were lawfully present in each
state, is there additional administrative data that
the Census Bureau would need in order to accomplish
that?

MR. SVERDLOV:  Objection. I will skip the
form objection and just object on the basis of
deliberative process privilege and instruct the
witness not to answer.

BY MR. DAVIS:

Q     Mrs. Battle, has the Census Bureau made
any decision that should it determine to make a
count of persons who were unlawfully present non-citizens in each state, that it would need additional administrative data to do that?


A The Census Bureau has not made any determination at this point as to additional information that could be produced or published regarding lawful immigrants.

Q We discussed earlier, Mrs. Battle, the different steps that the Census Bureau goes through when it's attempting to make an enumeration. You send out the form, sometimes enumerator, sometimes in certain cases you might ask a neighbor, sometimes these hot deck imputations.

My question is this: Are each of these steps, each of these efforts, are they part of the Census Bureau's efforts to make the census as accurate as possible?

MR. SVERDLOV: Objection. Vague, calls for a legal conclusion.

A The Census Bureau strives to conduct as
accurate and as complete a count as possible and
utilizes many different operations and techniques to
help us meet that goal.

Q  Certainly. And imputation, for example,
is it true that at least one of the reasons why the
Census Bureau uses characteristic imputation for the
use of administrative records is that because it
results in a more accurate census?

MR. SVERDLOV: Objection. Vague.

A  Yes.

MR. DAVIS: Can we go off the record so I
can talk to my colleagues? We can take a break, let
us chat and we will be right back.

MR. SVERDLOV: Why don't you chat and then
we will figure out next.

(Recessed at 3:13 p.m.)

(Reconvened at 3:31 p.m.)

MR. DAVIS: I think I'm up and I can say
we have no further questions. We really appreciate
counsel hosting Mrs. Battle. We thank you for
taking time to speak to us and helping with these
issues. Before I close I would say that there is
still documents to be produced or documents that
through unavoidable technical difficulties we just
received a new copy of today.

If in the course of reviewing those
documents there is something that we need additional
testimony about, I reserve the right to speak with
counsel and seek additional testimony. Although, we
would in those circumstances most certainly try to
exhaust other ways of getting the information that
we need.

MR. SVERDLOV: We understand your position
and we certainly do not consent to anything at this
time, but we are happy to work with you to resolve
any issues that may arise.

MR. DAVIES: Thank you.

MR. SVERDLOV: We don't have -- I don't
have any questions for Mrs. Battle. We will reserve
the right to read and sign the transcript.

MR. DAVIES: Certainly.

MR. SVERDLOV: And otherwise we have
nothing further.

MR. DAVIES: Thank you all.
(Whereupon, at 3:33 p.m., the deposition of KAREN R. BATTLE was concluded.)

* * * * *
UNITED STATES OF AMERICA

SS:

DISTRICT OF COLUMBIA

I, ROBERT M. JAKUPCIAK, an RPR and Notary Public within and for the District of Columbia do hereby certify:

That the witness whose deposition is hereinbefore set forth, was duly sworn and that the within transcript is a true record of the testimony given by such witness.

I further certify that I am not related to any of these parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of January, 2020.

My Commission Expires:

February 29, 2024
To: ALEXANDER V. SVERDLOV, ESQ.
Re: Signature of Deponent 30(b)(6) Karen R. Battle
Date Errata due back at our offices: 2/20/2020

Greetings:
This deposition has been requested for read and sign by the deponent. It is the deponent's responsibility to review the transcript, noting any changes or corrections on the attached PDF Errata. The deponent may fill out the Errata electronically or print and fill out manually.

Once the Errata is signed by the deponent and notarized, please mail it to the offices of Veritext (below).

When the signed Errata is returned to us, we will seal and forward to the taking attorney to file with the original transcript. We will also send copies of the Errata to all ordering parties.

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I, the undersigned, do hereby certify that I have read the
transcript of my testimony, and that

___ There are no changes noted.
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Alabama Rules of Civil Procedure

Part V. Depositions and Discovery

Rule 30

(e) Submission to witness; changes; signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty (30) days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the
court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(F) Certification and filing by officer; exhibits; copies; notice of filing.
(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the court, the officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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On Jan 17, 2020, at 8:52 AM, Rosenberg, Brad (CIV) wrote:

Mike, Sapna, and Stephanie:

b(5) - AC/WP

Thanks,
- Brad

From: Robert Jakupciak
Sent: Thursday, January 16, 2020 7:40 PM
To: Rosenberg, Brad (CIV)
Subject: Rough draft of Battle deposition

Attached please find the rough draft of the Battle deposition.
Sent from Mail for Windows 10
<AL-3846101-R.txt>
Mike, Sapna, and Stephanie:

**b(5) - AC/WP**

Thanks,
-Brad

Attached please find the rough draft of the Battle deposition.

Sent from Mail for Windows 10
ROUGH DRAFT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA (Southern)

----------------------------------:
STATE OF ALABAMA, et al., :

Plaintiffs, :

vs. :

Civil Docket No.:

UNITED STATES DEPARTMENT :

2:18-cv-00772-RDP

OF COMMERCE, et al., :

Defendants. :

----------------------------------:

ROUGH DRAFT

Rule 30(b)(6) Deposition of
U.S. DEPARTMENT OF COMMERCE
Washington, D.C.
Thursday, January 16, 2020
9:00 a.m.

Job No. AL-3846101

Pages 1 - NUMBER

Reported by: Robert M. Jakupciak, RPR
Deposition of KAREN R. BATTLE, held at the offices of:

U.S. Department of Commerce

1401 Constitution Avenue, N.W.

Washington, D.C. 20230

Pursuant to Notice, before Robert Michael Jakupciak, RPR, a Notary Public in and for the District of Columbia, when were present on behalf of the respective parties:
ROUGH DRAFT

APPEARANCES

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Congressman Mel Brooks

On behalf of Defendants U.S. Department of Commerce,
Wilbur L. Ross, Bureau of the Census, and Ron S.
Jarmin:

ALEXANDER V. SVERDLOV, ESQUIRE
BRAD P. ROSENBERG, ESQUIRE
U.S. Department of Justice

b(6)
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FIRM
FIRM ADDRESS
CITY/STATE/ZIP
PHONE NUMBER
EMAIL

On behalf of the Defendant:

ATTORNEY, ESQUIRE
Also Present:

Sapna Sharma, Esquire
Michael A. Cannon, Esquire
Marc Perry, Esquire
Michael A. Cannon, Esquire
Miles Ryan, Esquire
Stephanie Olson, Esquire

Also Present by phone:

Edmund Gerard LaCour
Winfield Sinclair
Jonathan Weissglass
Bryan Kusmin
Ming Ming Yang
1 Don Lewis
2 Julia Gomez
3 Congressman
4 Sean Brebbia
(Exhibits attached to transcript.)
ROUGH DRAFT

PROCEEDINGS

Whereupon,

KAREN R. BATTLE,
called as a witness, and having been first duly
sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. DAVIS:

Q Good morning.

A Good morning.

Q Would you state your name, please?

A My name is Karen Battle.

Q Ms. Battle, my name is Jim Davis. First

off is, it Ms., Mrs., doctor?

A Mrs.

Q I represent the State of Alabama in a

lawsuit against the Department of Commerce. You are

familiar with that litigation; correct?

A Yes.

Q And you have been identified as a

representative of the Department of Commerce for

purposes of that deposition; correct?

A Yes.
Q Have you ever given a deposition before?
A Yes.
Q How many times? More than five?
A Once.
Q Once. Okay. How long ago was that?
A Three months ago.
Q What kind of case was that?
A A human resources case.
Q I have some questions about the lawsuit today. If at any point you don't understand my question, let me know. If you need a break, let me know. Where do you work?
A I work in the Population Division at the U.S. Census Bureau.
Q What is your title?
A Division Chief, Chief of the Population Division.
Q How long have you held that position?
A I have been the Division Chief for five years.
Q Did you have any positions in the Division before you were Chief?
A  Yes.

Q  What were those, and approximately for what term?

A  Prior to becoming the Division Chief I served as the Assistant Division Chief for Special Populations Statistics, and I served in that position from 2007 to 2014.

Prior to that I served as the Branch Chief over the sex and age statistics branch, and I served in that position from 2004 to 2007.

Prior to that at this served as the special assistant to the division chief from approximately 2004 -- 2000 to 2004. And prior to that I served as a data analyst in the racial statistics branch and the ethnicity and ancestry branch. And prior to that I was a summer intern in 1998.

Q  So have you been employed by the census bureau since 1998?

A  Yes.

Q  Tell me about your education background, please.
A I have a master's degree in sociology from the western Michigan university.

Q Did you work -- did you have any employment before you were employed by the bureau of census?

A I held research positions at universities.

Q Which universities?

A The western Michigan university and after leaving western Michigan university, I spent several years working at the university of miss con sin in mad son in a research position.

Q I have a notebook here, Mrs. Battle, with some documents that we are going to be discussing during the deposition. They are behind tabs so everyone can find it easily, but the ones we will be marking as an exhibit probably won't correspondence to the tab numbers.

Would you look at tab 18 in the notebook, please?

MR. DAVIS: And we will mark that as Exhibit 1, if you please.

(WITNESS Exhibit Number #)
BY MR. DAVIS:

Q Have you reviewed this notice of deposition that has been marked as Exhibit 1, Mrs. Battle?

MR. SVERDLOV: Objection. Vague.

BY MR. DAVIS:

Q Have you seen it before this morning?

A Yes.

Q Are you familiar with the topics that are listed?

A Yes.

Q And there have been discussions following issuing of the dopings between counsel, some of these topics have been narrowed. But are you prepared today to speak on behalf of the Department of Commerce for the topics listed on this deposition notice as narrowed per the discussions by counsel?

MR. SVERDLOV: Objection. Misleading.

The deposition notice is for a representative of the Census Bureau to testify, not the Department of Commerce.
MR. DAVIS: You are correct. I misspoke.

BY MR. DAVIS:

Q  Same question, except substitute census bureau for commerce?

A  Could you repeat that?

Q  Yes, ma'am. Are you prepared today to speak on behalf of the Census Bureau for the topics listed on this deposition notice as those topics have been narrowed between discussions with counsel?

MR. SVERDLOV: Objection. Compound.

A  Yes. SA*EP.

Q  Mrs. Battle, just some preliminaries. There is a census every ten years; correct?

A  Yes.

Q  And after each census the bureau of census releases population statistics?

MR. SVERDLOV: Objection. Vague.

A  Yes.

Q  Okay. And part of the data the Census Bureau releases population totals for the United States and for each state; is that correct?

MR. SVERDLOV: Objection. Vague.
A Yes.

Q Are there known under counts in the census?

MR. SVERDLOV: Objection. Vague.

A Yes.

Q Are any particular populations more likely to it be subject to under-counts than other populations in the country?

A The Census Bureau does assess the coverage on the population after the decennial census and there are two methods that the census bureau uses to do that and those methods have identified certain sub populations that are under counted.

Q What subpopulations tend to be under counted?

MR. SVERDLOV: Objection. Vague.

A We know from our analyses that young children, children under the age of five, tend to be under counted in the decennial census. In addition there are other racial and ethnic population that is may be under counted in the decennial census, for example, young black males with Hispanic population
or the American nature or the last scan native
population. Xxxxxxxxx

Q  Are there over-counts in the census?
A  Yes.

Q  How does that work? Who is overcounted?
MR. SVERDLOV: Objection. Vague and
compound.

A  Well, our analyses have showed that there
may be populations, such as the white population,
that may be over-counted.

(Now joining the conference is Congressman
Brooks.)

A  So there are some populations that might
be over-counted. For example, it could be the white
population or some different components along those
lines.

Q  The Census Bureau again knows that when it
releases a count say of the total population for to
the State of Alabama, would that total population
count, could that be characterized as an estimate?

MR. SVERDLOV: Objection. Vague,

misleading.
A The Census Bureau publishing numerous population counts not estimates.

Q Okay. SP*EL SA*EP say after the 2010 census the population for the State of Alabama was reported to be 4,779,736, is that as of a particular date?


A Yes. The decennial census reference date is April 1st of the census year.

Q But your assessments following the census have shown that some populations are under counted; correct?

A Yes.

Q And there may be overcounties as well; is that correct?

A Yes.

Q So the total population of the State of Alabama assuming its 4,779,000 and change, that may not mean that there were exactly that number of residents in Alabama as of April 1, 2010?

MR. SVERDLOV: Objection.
BY MR. DAVIS:

Q Would you agree with that?

MR. SVERDLOV: Objection. Compound and argumentative.

A The state population counts that come out from the decennial census represent the population that was enumerated as of that census reference date.

Q Okay. Let’s talk, Mrs. Battle, about how the Bureau gets to that number. The decennial census starts with questionnaires; correct?

A Yes.

Q Okay. And how do you know who to send the questionnaires too?

A The census Bureau maintains what’s called a master address file which contains it the addresses for all of the housing units and reporters facilities in the United States.

Q And you send a questionnaire to all of those addresses?

A There are different types of enumeration approaches for different areas within the United
States, but about 95 percent of the housing units do receive a mailing to either instruct them to go online to respond to the decennial census or they can fill out a paper response. There are other sections of the country where the Census Bureau may go out and just enumerate those areas that may be more rural or hard to enumerate, for example.

Q Objection. And when you say that they go out and enumerate those areas, what do you mean?

A I mean that an enumerator will have their device to it be able to collect the information on the decennial census form and will go out to the housing unit or location and attempt to collect the data at that point.

Q For people to whom the Bureau sends a questionnaire, I assume you don't get a hundred percent response rate from those questionnaires; is that correct?

MR. SVERDLOV: Objection. Compound.

A That is correct.

Q What happens then? What does the Census Bureau do if you do not receive a response from a
particular household?

A The Census Bureau has a contact strategy where there are a series of attempts to contact a household through mailings. If those contacts do not result in a returned questionnaire, then the Census Bureau will have that particular housing unit that has not responded go into what's called the non-response follow-up universe and then the Census Bureau will actually have enumerators go out and start knocking on the doors to try to collect the data.

Q And if you reach the point where you are sending enumerators to go to the household to try to collect the data, let's say they go once and no one is there, they got get no response, are there follow-up visits?

A Well, for the 2020 census the Census Bureau is employing a new strategy or for the non-response follow-up operation. And what we are doing is using statistical models to determine if the housing units within the non-response follow-up universe are indeed occupied. And if we have
information that indicates that that housing unit is indeed occupied, and we also have administrative records available that are associated or linked to that particular housing unit, then we would only make one attempt to have an individual out there knocking on the door to try to collect that information. And if they are not successful, then we would utilize the administrative records to enumerate that household.

Q  Okay. What administrative records would you use to enumerate that household?

A  We actually have a reference sheet.

Q  Sure. Your counsel gave us some documents before the deposition. Would one of those documents help you respond to this question?

A  Yes.

Q  I'm going to just give you the stack and you tell me which one would be helpful to you.

A  This one.

Q  Okay.

MR. DAVIS: Then let's mark this as our next exhibit, please.
(WITNESS Exhibit Number #
was marked for identification.)

BY MR. DAVIS:

Q  Census all right. Mrs. Battle, as I understand your testimony you say if there is a household you send a questionnaire and you get no response, if you have administrative records related to that household that suggests that household is occupied, you would send a enumerator only a single time; is that correct?

A  The Census Bureau will be using statistical models that incorporate data from administrative records to identify households in the none response follow-up universe that are occupied, and if we have administrative records that have information on the characteristics of those individuals, then we can use that to enumerate the household after one attempt.

Q  Okay. I want to come back to the statistical models. But first deal with the question I asked previously. If you get to the point where you use administrative records to
enumerate that household, what administrative
records does the Census Bureau use? And at this
point you are referring to Exhibit 2.

A Yes. So what you'll see in this chart, in
the left column are data sources that are used. We
have administrative records from the Internal
Revenue Service, the 1040, 1099 returns, we have
data on the Medicare enrollment, we have data from
the census numident, which is actually the numerical
identification file that we receive from the Social
Security Administration that contains data on every
Social Security Number that's ever been issued.

We also have information from the census
household composition key, we have information from
HUD which reflects data on public and Indian
housing, as well as tenant rental assistance
information. We have data from the Indian Health
Service Patient Registration, we have data from the
United States Postal Service. They have information
on addresses that where they attempt to deliver but
they are undeliverable as addressed. That's the
UAA.
So for the NRFU or the none response follow-up portion of things we focus on that information. We also have data down below where it says best rates and ethnicity, we have data on Medicaid enrollment, as well as data from the TANF program, the temporary assistance for needy families.

And we also use CoreLogic Black Knight, which provides information on property taxes and deeds of, along those lines.

So we are able to utilize some of this information to help us determine if this household is occupied and how many people are living there and we can also use some data from these administrative records to determine age, sex, race, ethnicity and tenure, whether they own or rent that property, and that's what we utilize to help do the enumeration.

Q What is the last item listed, Group Quarters Records?
A Well, the group quarters records, it's not part of the none response follow-up universe, but we have an operation to enumerate individuals who are
residing in group quarters, like prisons and college dormitories and nursing homes.

And in those instances much of the data that we collect for those residing in group quarters come from the offices administrative records. As opposed to the census going out to interview each.

Q Resident in a prison cell or someone who might be in a nursing home bed that's not cognitively functioning.

Q Okay.

A So we use administrative records in that sense.

Q All right. So if this -- say you are trying to enumerate a nursing home, would you get records from the group or organization that operates that nursing home, a list of residents, for example?

MR. SVERDLOV: Objection. Compound.

A The Census Bureau works with a, an administrator for that particular nursing home.

Q Okay.

A And that administrator will pull upon their records from their office to provide us with a
listing of the residents and their demographic
characteristics, age, date of birth, sex and racing
and ethnicity if possible.

Q  Okay. And still looking at Exhibit 2,
could you tell me what these columns indicate?

A  Yes. So the first two columns describe
the none response follow-up administrative records
enumeration. So this is the instance where we have
used statistical models to determine that a housing
unit is occupied and if we are not able to get a
response via enumerator, then we are able to utilize
data from these administrative records to determine
how many people are in that household and then to
fill in their characteristics. So that's really
what the NRFU AR emulation columns reflect.

Next to that we've count imputation and
this may take into SP*ELG occur when we do not have
information that would allow us to do a NRFU actual
enumeration. So we don't have administrative
records that could provide necessarily at first
glance characteristics, so we have a special
operation for count imputation where we utilize
ROUGH DRAFT

administrative records to help us determine the

count of people in that household, similar to the

NRFU. And then later in the processing we will work
to assign the characteristics. So it's a similar

process, but the count imputation takes place when

at first we don't know that we have the information,
the sticker cakes characteristics for that household
but we do have information on the count.

Q    Okay. So in that case there may be a

household where you have administrative records
suggesting that four people reside in that
household, but you don't have administrative records
that tell you their age, gender, those sorts of
things? Am I understanding you correctly?

A    We would have to do further processing to
try to determine that.

Q    Okay. And what further processing would

you do?

A    That is when we have an operation called
the edit and -- edit and imputation characteristics
operation, and at that point we will make another
attempt to see if we have administrative records
that can be used to fill in the missing characteristics. And if we are not able to, then we utilize what's called a hot deck methodology where you are basically looking for the nearest neighbor and they will be donating their characteristics to the household.

Q  Let's go back, Mrs. Battle, to the statistical modeling. What do you mean by statistical modeling?

MR. SVERDLOV: Objection. Vague.

A  So when I say statistical models, what I'm basically saying is that there is a mathematical broach where you are developing an equation that is trying to assess the relationship amongst a group of variables to help you predict an outcome. So in this case the Census Bureau would be utilizing administrative records for the NRFU, none response follow-up, to assess different data sources to help us predict whether that household is occupied. So using data from the Postal Service, using data from the IRS, using data from the Social Security Administration to help us predict whether that
household is occupied.

Q  We are talking about a household where, that did not response to the questionnaire; correct?
A   Yes.

MR. SVERDLOV: Objection. Vague.

BY MR. DAVIS:

Q   So you got no response. You use the statistical model to determine the likelihood that that household is occupied. So when you say that, are you looking at records from the Postal Service as an example that suggests that mail isn't being returned as undeliverable that's addressed to that household?
A   Yes. SA*EP that's exactly right. That's one of the components into the hold model. When we have data from the Postal Service, do they have this address marked as undeliverable as addressed. So that's a piece of information that goes into helping us determine whether or not we think that household is occupied, for example.

Q   And you mentioned IRS records if I understood you correctly. What type of information
might be you receive from the Internal Revenue
Service to be a clue as to whether or not that
household is occupied?

MR. SVERDLOV: Objection. Compound.

A Well, definitely the address and just
understanding that there has been someone who filed
taxes recently from that address again provides more
information to help us determine whether or not that
household is occupied.

Q Okay. Tell me -- look, if you would, Mrs.
Battle, at the document that's behind tab 7 of the
notebook.

MR. DAVIS: Let's mark that as Exhibit 3,
please.

(WITNESS Exhibit Number #
was marked for identification.)

BY MR. DAVIS:

Q Are you familiar with the document that's
been marked as Exhibit 3, Mrs. Battle?

A I believe I have seen this document.

Q Does it describe the process that we were
just discussing of the steps that the bureau goes
through?

MR. SVERDLOV: Objection. Vague.

A It does talk about the steps that we follow for the 2018ened test in terms of non-response follow-up, it talks about SA*EP different administrative records that could be utilized, it talks about the imputation of the count of the household as well as the characteristics of the household. So, yes, it is similar to what we were just discussing.

Q Okay. What do you mean, Mrs. Battle, when you discussed the editing process?

A So after the census data has been collected, we know that not everyone answers every question, and so we have a process that we create where we specify how we are to fill in missing data. And so that's our edit and imputation process.

And so we begin by taking a look at an individual record for a particular housing unit and we assess are there missing responses? And, for example, if there is a missing race response, the first thing we would do is then look to the other
questions for that particular individual and see if
responses to those other questions might help us
fill in the race information.

So, for example, if race is blank, but
they reported they are Hispanic origin and wrote in
something like white or along with their Hispanic
ethnicity, we can use that to help us fill in their
race and make their race white, for example.

Q  Okay.

A  So we look to see if there is other
information provided in that form to help us fill in
missing information.

If there is no other information provided
in that form to help us, then our next effort to try
to fill in mission data is to see are we able to
link up that household with our administrative
records, which would include the 2010 census
responses. Did this household respond to the 2010
Census? If so, was information provided for this
person and can bring forward and assign for 2020?

We also are going to it be checking
administrative records such as the numident file,
the Social Security Administration file. That file might be able to provide data on age or date of birth or sex for that individual. So but if we are not able to match up with administrative records, then the next attempt to try to fill in missing information involves taking a look at others in that same household.

So if there is a child of the householder who is missing data, let's say race, and we know that their parent is in that household and they do have arrays, then we can use that and assign that to their biological child. So the we are looking within the household to see if there is anywhere else with we can grab information to fill in. And if that fails, then one of our last resorts is to use this hot deck methodology where we then look for the nearest neighbor and try to match up the household on certain characteristics and then the nearest neighbor can donate that missing information. So there is a series of distoolses and steps we go through.

Q I see. Let's say you got to the point
where you use the hot deck methodology. What does hot deck mean?

A Really it's a statistical procedure where as we are collecting data through it the decennial censuses and people are reporting fully their information, we store that fully reported information up in this, it's called a hot deck. And then as we come across households that are missing information and we aren't able to be fill it in anywhere else, we take from that deck and assign data from the nearest neighbor. So that's the idea behind this.

Q Why is it called hot deck?

A Well, just that you are using live data on the spot and you are trying to use as fresh of information as possible to fill in the missing information.

Q Okay. And give me an example of what type of characteristic might be imputed using the hot deck methodology.

A Race, ethnicity, and age and sex.

Q Would you use hot deck imputation to
assign a count to a household?

A  Earlier on when we were talking about count imputation, if there is a household where we really don't have any information available to us from administrative records to help us determine how many people are in that household to start, because we have zero information, and we are not able to utilize any administrative records, so the last resort, similar to the characteristics, is to use a hot deck methodology where again you are pulling information from the nearest neighbors to assign a count, a population count.

Q  Okay. When if if the Census Bureau believes that that would make the census more accurate if you have no information about a household to impute characteristics from a neighboring household?

MR. SVERDLOV: Objection. Vague and compound and beyond the notice.

A  This has been a standard methodology that the census bureau has relied on for a number of decades and has relied on this methodology. This is
the chosen methodology. But again as we are
experimenting with administrative records and again
that's a huge focus for the 2020 census, we are
working to use administrative records as our kind of
one of our first attempts. But if we are not able
to do that, then we do need to rely on other
statistical methods to fill in characteristics, et
cetera.

Q    I assume that the census bureau use this
is methodology because it believes that to result in
a more accurate census?

MR. SVERDLOV: Same objection.

BY MR. DAVIS:

Q    Do you agree?

A    Yes. We need to provide information and
we need to make sure that we have complete
information for every housing unit counted in the
decennial census.

Q    Okay. And if you get to a household
where even using administrative records and
questionnaires and enumerators the bureau just has
no information about that household, you will use
hot deck imputation and a neighbor will donate
characteristics to the household; correct?

A There is one other step I need to talk
about.

Q Please.

A For the non-response follow-up operation
for those housing units where I mentioned earlier
where we determine that those housing units are
occupied and that we have administrative records
that we can use to assign their characteristics,
that's one type of housing unit outcome. However
there are going to be other housing units where
again we don't have that information and so the
census bureau will tip to visit that housing unit up
to six times trying to get the information.

For the 2020 census, after the third visit
if we still are not able to get information, then
the census bureau will tell the enumerator to
attempt to get a proxy interview, which means the
enumerator will then try to reach out to a neighbor
to see if they have information about how many
people are living there and if they have any
information on the characteristics. If a proxy interviews are not possible, then we move to the imputation aspect of it.

Q  Okay. And how does the census bureau determine what type of household to donate characteristics to this other hypothetical household about which you have no information?

MR. SVERDLOV: Objection. Vague.

A  I would need to examine the detailed methodology to answer that, but the general approach is that the census bureau will rely on the nearest neighbor, information that we have been collecting from the nearest neighbor to try to fill in information for that housing unit.

Q  I'm thinking of my neighborhood and you have an none household, wife and I are empty nesters, I have an across the street neighbor who is a single retired man, a next door neighbor who is a very young single man another young African-American woman who is living with an extended family including both grandparents and young children, it's a very diverse neighborhood. So if you went through
all these steps, the census bureau went through all
these steps ask could not get any information about
my household, who would donate characteristics to my
house how old?

MR. SVERDLOV: Objection. Calls for
speculation. Vague.

BY MR. DAVIS:

Q It may be -- I'm just trying to
understand, Mrs. Battled. It may be that it would
be easier for you to simply describe the steps that
the bureau would go through under those
circumstances.

A Well, again I would need to examine the
detailed methodology to explain exactly how that
would transpire.

Q Okay. Where would you go to examine the
detailed methodology? Is there a particular manual
or document in the census bureau that you would uses
to educate yourself on that point?

A I would need to first consult with the
area that's responsible for developing that
operation.
Q  What would that area be?
A  That would be the decennial statistical
    studies division.
Q  Is there a particular person in that
    division that you would speak to to better
    understand the process?
A  I would start with the division chief,
    Patrick Cantwell.
Q  And do you know, Mrs. Battle, why the
census bureau uses hot deck imputation to assign
characteristics to a household instead ever just
writing down a zero for that household?
MR. SVERDLOV: Objection. Vague.
A  Well, the census bureau does determine
    through the use of staff whether they believe a
    household to be non-existent it, the address, you
    know, it's not a habitable address and those, of
    course, are deleted. But if we can tell that this
    is a habitable address, the census bureau will then
    want to take further steps to make sure that they
    are, that household is included in the decennial
census.
Q Does using imputation then help to ensure that as many inhabitants as possible are counted?

MR. SVERDLOV: Objection. Vague.

A Imputation helps us to ensure that if there is a housing unit where we believe there are people living there but we do not have information for them, that we are including those units in the decennial census.

Q And the goal of the census bureau is to have as accurate a census as possible. Would you agree?

MR. SVERDLOV: Objection. Form.

A The census bureau strives to have a complete and accurate count.

Q Of course. And in this case the Census Bureau has determined that imputation results in a more accurate census than not using imputation. Would you agree with that?

MR. SVERDLOV: Objection. Argumentative.

A The Census Bureau is continually working to develop statistical approaches and other types of approaches to improve upon our methodology.
Q Of course.

A And while we are making improvements through the reviews use of administrative records, we still need to rely on traditional methods when we need to assign characteristics, if there is nothing else that we can utilize to help.

Q Would you look, please, Mrs. Battle, at the document that is behind tab 11 of the notebook?

MR. DAVIS: And let's mark this as Exhibit 4, please.

(WITNESS Exhibit Number #

was marked for identification.)

BY MR. DAVIS:

Q This is a list of frequently asked questions, Mrs. Battle, from the bureau's website. And I'll represent to you that it may not be in this exact form on the website today. But it serves our purposes to help me understand the process a little better.

Have you reviewed this document before today?

A Yes.
ROUGH DRAFT

Q  A loot of these deal with apportionment. And I want to understand the process of apportionment and the role that the Census Bureau plays apportionment. First, would you agree with the first question and response there on the first page that apportionment is the process of dividing the 435 memberships or seats in the U.S. house of representatives among the 50 states?

A  Yes.

Q  And who is included in the apportionment counts?

A  So the apportionment population counts contain two components. First we include what's called a resident population. This reflects the population that was residing in a particular state as of census date day. That's their usual residence.

The second component of the apportionment population count includes the federally affiliated overseas. These are military and civilian employees of the federal government whose home state of record is that particular state. So for a state you have
the resident population and then the federally
affiliated population and together that equals the
apportionment population counts.

Q    Okay. After the 2020 census the Census
      Bureau will release a total population count for the
      United States of America; correct?

A    Yes.

Q    The count for apportionment purposes will
differ from that, will it not?

      MR. SVERDLOV: Objection. Vague.

A    The result of the decennial census, the
      first results from a decennial census include the
      apportionment population counts, which includes the
      resident pop, people enumerated as usually residing
      in these states plus the federally affiliated. So
      that is the only data product that comes out of a
      decennial census where you have the federally
      affiliated population included.

Q    Okay?

A    All remaining data products from the
      redistricting data file it, the PL94171, all the
      replanning data products only include the resident
population not the federally affiliated.

Q And the Appeal 94 --
A 170.

Q -- 171 file, tell me what that is.
A That is a data product that the Census Bureau publishes that is for the use of states in their redistricting process.

Q And that data product does not include people, this population living overseas that you described; correct?
A That is correct.

Q Okay. In the apportionment count, and that's -- let me start over. Does the apportionment count, for example, include residents of the District of Columbia or Puerto Rico?

MR. SVERDLOV: Objection. Compound.

A The apportionment population counts do not include data for the District of Columbia or Puerto Rico.

Q It's only for the 50 states plus this overseas population?
A Correct.
Q  Okay. And how -- this person who is living overseas, as part of the overseas population, how does the Census Bureau determine which state to count them in?

MR. SVERDLOV: Objection.

BY MR. DAVIS:

Q  In the apportionment count?

A  So the Census Bureau has an operation that's called the federally affiliated Americans operation. And that operation entails the Census Bureau working with different federal agencies and we first start by working with the U.S. office of personnel management to get a list of those agencies that have employees stationed overseas. And once we have that list, the census bureau reaches out to those agencies and establishes a contact and informs them of the special federally affiliated overseas operation. The Census Bureau works with these agencies and explains what is needed and these particular agencies will then go and through their records provide counsel for everyone in their agency whose stationed overseas or deployed overseas and
they will give us a count by state. And we ask that
they provide the information for employees home
state of record. So is the agencies find that
information and they deliver the state counts to us
for the employees.

Q  Okay. And one of those agencies may be,
for example, the State Department?
A  Yes.

Q  So somebody whose home state of record is
Alabama, is employed by the State Department and is
stationed oversees, the State Department would
report to the Census Bureau that that person has
listed Alabama as the home state of record?

MR. SVERDLOV: Objection.

BY MR. DAVIS:

Q  Did I understand you correctly?
A  Yes. The State Department will then
provide to us the home state of record, they will
take a look at for all of their employees the home
state of record and give us a count for all of their
employees who have a home state of record of
Alabama, a count for all who had a home state of
record of California and so on.

Q   Okay. And the so for the state of Alabama you have a count for residents of the state of Alabama and you add in all of these other overseas people who are reported by the various agencies as having Alabama as their home state of record and you add that had to Alabama's total for apportionment purposes? Is that right?

A   That information results in the federally affiliated overseas count for a state, yes, and that is added to it the state's resident population and that equals the apportionment population.

Q   And this apportionment population count is something the Census Bureau provides to the President; correct?

A   Yes.

Q   And when does that happen?

A   The Census Bureau is mandated to deliver the apportionment population counts to the President within nine months of the census day which turns out to be before December 31st of census year.

Q   So that will be provided no later than
December 31st of 2020 to the President?

MR. SVERDLOV: Objection.

BY MR. DAVIS:

Q    Is that right?

A    That is correct.

Q    Okay. Does the apportionment count provided to the President include none U.S. citizens?

A    The apportionment population counts that we develop includes the resident population as enumerated in the decennial census as well as the federally affiliated overseas, and both of those will include citizens and non-citizens.

Q    Obviously then if it includes both citizens and non-citizens, it includes non-citizens who were lawfully present and non-citizens who were not lawfully present?


A    It includes all types of people who are non-citizens.

Q    Yes. It includes everyone regardless of
citizenship and regardless of lawful presence; is that correct?

MR. SVERDLOV: Objection. Vague.

A Yes.

MR. DAVIS: We haven't been going that long, but this actually might be a good time for a breather.

MR. SVERDLOV: Okay.

MR. DAVIS: Do you want to take 15 minutes? Is that okay with you, Mrs. Battle.

THE WITNESS: Yes.

(Recessed at TIME AMPM )

(Reconvened at TIME AMPM )

BY MR. DAVIS:

Q Mrs. Battle, going back to the hot deck imputation, do you know what the Census Bureau would do if my household is eligible for hot deck imputation but I happen to live in the neighborhood where all of the residents of the neighborhood are very different from me, different race and all the other neighbors have kids and I don't, do you know what the Census Bureau would do in that instance?
MR. SVERDLOV: Objection. Vague and calls for speculation.

A Well, again the premise of the hot deck methodology would be to go to that nearest neighbor and use that.

Q Okay.

A Now, when we do have some information about the household, we do try to match up those characteristics when we do the hot deck imputation. So, for example, if we know that the householder who does not have information, if they have a Spanish surname, then we look for nearest neighbor with a Spanish surname to try to perhaps impute race or ethnicity. So if we do have some information, we try to match up those characteristics and then take what we need to have donated.

Q And do you have a division that tries to determine which household is the best source of the donated information?

MR. SVERDLOV: Objection. Vague.

A Again when it comes to the characteristic imputation using a hot deck, there is this standard
approach, and I would have to look at the details of
the methodology to --

Q  Okay --

A  -- address that further.

Q  Okay. Is the Census Bureau trying to
enumerate the total number of people who are
physically present within the State of Alabama on
April 1, 2020 or residents of the State of Alabama?

MR. SVERDLOV: Objection. Compound.

A  The core concept that the Census Bureau
utilizes in doing its enumeration is the concept of
the usual residence, so we are looking to enumerate
individuals where they usually reside, where they
live and sleep most of the time.

Q  Okay. So someone simply driving through
the state on that date would not be counted if their
usual residence is in some other state; correct?

A  Yes.

Q  Okay. And a tourist who happens to be
within the state on April 1 wouldn't necessarily be
included in the population count if their usual
residence is some other state; is that correct?
A. The idea is, yes, we want to count people at their usual residence where they live and sleep most of the time. Now, I need to say that the residence criteria is based on three core principles. So the first one is that of usual residence where we want to count people where they reside and live and sleep most of the time. Secondly, there are people who are in certain types of facilities on census day that will be counted at that facility, such as prisons, et cetera.

And then thirdly, if we cannot determine the usual residence for an individual or they don't know, they don't have one, then we count them where they are on census day. So those are the three principles.

Q. Okay. Will the bureau report a count of U.S. citizens as a result of the 2020 census?

MR. SVERDLOV: Objection. Vague.

A. The Census Bureau is working to develop what's called the citizen voting age population by race and ethnicity special tabulation, which would be based on data from the decennial census. And as
you can tell by the name, it will include citizen
information; citizenship, voting age, population.

Q  Okay. So will there be within any of the
products that the census releases after the 2020
census, will there be a total count of United States
citizens?

MR. SVERDLOV: Objection. Vague.

A  The specific data product that I mentioned
for citizens voting age population by race and
ethnicity will be limited to citizens that are 18
years and older. So that would be the extent of the
publication of citizens.

Q  Does the Census Bureau have any intention
of attempting to count citizens who are under the
age of 18?

MR. SVERDLOV: Same objection.

A  Well, all usual residents are to be
counted in a decennial census.

Q  I see the problem with the question I just
asked. Okay. You are certainly going to try to
count everyone, all residents who, regardless of
age; correct?
A  Yes.
Q  Okay. Of those who are under 18, is the
census bureau’s to attempt to determine how many
of those people are U.S. citizens?
MR. SVERDLOV: Objection. Vague.
A  In terms of the publication of statistics,
the census bureau is finalizing the exact format of
the citizen voting age by race and ethnicity special
product, but in the efforts to develop that
information and using administrative records, I
am -- the information on citizenship for those who
are under the age of 18 would be involved in the
process. While we have not finalized the specific
methodology to produce those data, we will be
utilizing information on citizenship status for the
population.
Q  Okay. How does the census bureau
currently plan to develop the citizen voting age
population data?
MR. SVERDLOV: Objection. Vague.
A  Well, the census bureau has not finalized
the specific methodology and approach or the final
table SHO*EPB, but of course the Census Bureau does produce a citizen voting age population special tabulation annually currently, but it's not based on the decennial census, it's based on the American community survey, so they are still determining that final methodology for the citizen voting age population product based on the decennial census.

Q  So in the past the Census Bureau has released citizen voting age population data that was based on the American community survey; correct?

A  Yes.

Q  Okay. After the 2020 census do did I understand you right that the Census Bureau inattends to release citizen voting age population based on the 2020 census itself?

A  For the product that we are planning to release in year 2021, the citizen voting age population data product would be based on the decennial census.

Q  And when it comes to how exactly the bureau plans to do that, is that what you say is still under consideration?
A  Yes.

Q  Okay. Has the Census Bureau determined that whatever the final method is, that it will use any particular subsets of data?

MR. SVERDLOV: Objection. Vague. And I will also say that as you can tell from the witness' answer, the methods haven't been determined, so we are sort of veering into areas where we might assert deliberative process privilege. So instruct the witness to answer in general terms.

Q  The way I phrased the question is although final methodology hasn't been determined, have you determined that yes we will use this particular set of administrative data?

MR. SVERDLOV: I'm not sure if that cures my objection but if you can answer in a general way, please do.

A  So the Census Bureau is looking to utilize administrative records in combination with the decennial census data, so that is the general idea, but in terms of specifically which administrative records, that has not been determined yet.
Q  Will you attempt for each person that you
count, and let's start first with people who are
voting age and older. Will the Census Bureau
attempt to determine whether or not that individual
is a citizen or a non-citizen?

MR. SVERDLOV: Objection. Vague.

A  The Census Bureau is developing methods
that would help us determine the citizenship status
for everyone counted in in the decennial census.

Q  For everyone regardless of age?

A  For the purposes of developing the data
product in and of itself the methodology is not
finalized, but the Census Bureau will be collecting
information on, through administrative records and
that information will be utilized to help us produce
the final product which is focused on the population
18 years and older. It's because the methodology is
not determined, I cannot say for sure at this time
exactly to what extent we would be collecting the
data on citizenship.

Q  Would you look at the document that is
behind tab number 8 in the notebook, please, Mrs.
Battle?

MR. SMITH: The tab number?

MR. DAVIS: Tab number 8.

MR. SMITH: Thank you.

MR. DAVIS: Can we mark this?

(WITNESS Exhibit Number 5 was marked for identification.)

MR. SVERDLOV: Can you state for the record what you've marked?

MR. DAVIS: Yes. We've marked as Exhibit 5 this January 19, 2018 memorandum from John M. Abowd to Wilbur Ross. And it's Bates marked as P001.

BY MR. DAVIS:

Q Have you seen this memorandum before today, Mrs. Battle?

A Yes.

Q Can you summarize the recommendations in the memorandum? Let me see if I can make that quicker. Do you understand the author to be discussing three different methods for attempting to determine citizenship or imputing citizenship for
the count and making a recommendation as to which of
those three methods would be better?

MR. SVERDLOV: Objection. Vague and

compound.

A Yes.

Q Okay. And am I reading it correctly that
they recommended that as it says in the second
paragraph, we consider three alternatives in
response to the request from the Department of
Justice and one of those is option C obtaining
citizenship status from administrative records for
the whole 2020 census population?

A Yes.

Q Okay. Is that in fact the goal of the
Census Bureau to obtain citizenship status from
administrative records for the whole 2020 census
population?

MR. SVERDLOV: Objection. Vague. SA*EP.

A Well, the Census Bureau would need to
obtain that information. While the CVAP data
product is focusing on the 18 and plus older
population, we do need the foundational information.
So, yes, the Census Bureau is trying to ascertain from administrative records citizenship status for the 2020 enumerated population.

Q This is a slightly different topic. There are questions and answers towards the back of the memorandum, Mrs. Battle. On the page that's Bates numbered P-11.

There is a Q and A about the response rates for the 2000 census long form and short form and says the mail response rate was -- and 53.9 percent for the long forms. SA*EP do you know what the response rate was for surveys for it the 2010 census?

A I do not know that off the top of my head.

Q Okay. And the 2010 census there was no long and short form, there was just one form; correct?

A Correct.

Q And is that going to be true for the 2020 census as well?

A Yes.

Q Do you know where I could go to look up
the response rate for the 2010 census?

MR. SVERDLOV: Objection. Vague.

A That information must be in an assessment report on our website.

Q Okay. Do you think there is likely to be something that was publicly reported?

A Yes.

Q A few pages over on P-15, question 12 asked about other data that may be available, other administrative data that may be available to impute citizenship. The response says the Census Bureau is in discussion with the U.S. citizen and immigration services USCIS staff to acquire additional citizenship data. Do you know the status test discussions with the U.S. citizen and immigration services to acquired administrative data?

A This might be a good time to use our additional reference sheet. We have reference sheets.

Q Yes. You are looking at some of the documents that your counsel brought today?

A Uh-huh.
Q    If at any point a document would help you
respond to the question, please just refer to it.

A    Background sheet number 2. Background
sheet number 2.

Q    And before we continue, let's go ahead and
mark it as an exhibit so after the fact we will all
know which document we are talking about. And let's
mark that as Exhibit 6, please.

(WITNESS    Exhibit Number #

was marked for identification.)

MR. DAVIS: And.

Q    And what is this document that's been
marked as Exhibit 6, Mrs. Battle?

A    Well, the first page of the document lays
out the members of the enter agency working group
that the Census Bureau created per executive order
13880 and lists the departments who are participants
as well as the representatives.

The second page begins the listing of the
administrative records that the Census Bureau has
received from a number of agencies, and it actually
provides some information on the status.
Your question was about data from the citizen and immigration services?

Q    Correct?

A    And so if you look on page 2, what you will see is a listing of the types of data that we have requested from the, received from the Department of Homeland Security, and you will see it mentions that the lawful permanent resident file and naturalization data have been obtained from the citizen and immigration services.

Q    Okay. Okay. So I see in that row of the document, page 2 of Exhibit 6?

A    Yes.

Q    The source agency is the Department of Homeland Security and you finalized an agreement with the Department of Homeland Security on December 23, 2019. Am I reading that correctly?

A    Yes.

Q    You began negotiations with the Department of Homeland Security on January 2018?

A    Yes.

Q    And data type I see, they are the rows,
appears to be broken down into two rows. You have
the lawful permanent resident file and
naturalization data, citizen and immigration
services; correct?

A Yes.

Q Okay. And under variables it says 46
variables consisting of person identifiers and
citizenship status, all variables will potentially
be used for the citizenship project.

So do I understand this to mean that what
you receive is a database and for each person there
are 46 fields in that database?

MR. SVERDLOV: Objection. Vague.

Assumption facts not in evidence.

A We requested a data file from the
Department of Homeland Security and so the
expectation is that each of the records for
individuals will contain data and each of those 46
variables.

Q Okay?

A Yeah.

Q And understand status it says fitness for
use determination. What does that mean?

A So the Census Bureau is acquiring new sources of administrative records and once those new sources arrive, the first thing we have to do is evaluate those data to help us determine if we can use the data and if we can use the data, then we begin to think through how best can we use the data to comply with the executive order.

So the first thing that has to happen is when we acquire these data sets we need make sure we can read the files that have been given to us and we need to make sure that all 46 of those variables are present in the data, just to make sure nothing went awry in the agency developing the data for us.

But once we have that covered, we then need to dig deeper and start taking a look at the variables that we have requested. We want to take stock of how complete are those data. If we have one of those variables that says address, well is address missing for 60 percent of the records in it the file? And for addresses that are reported, are they complete addresses, are they partial? So we
need to evaluate the kind of data that we have in each of those variables.

And that's really important because we need to be able to assess if we can make record linkages and so we need identifiers like name, age, date of birth, sex, address. And of course the citizenship variable itself, we need to assess how complete are those data, et cetera.

Q Okay. And you are trying to -- if you -- if you get this database from Homeland Security, just stick with that example, you are trying to link it to some other database; is that correct, to connect it so that you can compare the two databases?

MR. SVERDLOV: Objection. Vague and misleading.

A Yes.

Q Okay. And what is the other database? Is it -- what is the other database?

A So the Census Bureau, number one, has reference files, and the primary sores of these reference files include the numident file, the
numerical identification file that we get from the
Social Security Administration. That's a huge
database that has all of these data, data an on all
Social Security numbers ever issued. In addition to
that we've a file that contains what's called ITI,
income tax identification numbers. These are unique
identifiers that are assigned by the Internal
Revenue Service to individuals who are not eligible
for a Social Security Number. So we have this
database that has all of this unique identifiable
information. So our goal is to see if these newly
acquired administrative records, if we can match
individuals up, where as we have in the Social
Security Administration information on citizenship.
So that's one way that we are doing linkages.

In addition to that we also want to see if
we can link people across these different
administrative data record sets that we are
acquiring to compare and see what information do we
have, are they differing for individuals, have
people updated their addresses, so there is an
element of that to it. So we are really looking to
see how we can make linkages not only with our
internal reference files but across the newly
acquired data sets as well will.

    Q    If I look at this chart on Exhibit 6 and I
see the words fitness for use determination, does
that mean that the Census Bureau has already
determined that the data is usable?

    MR. SVERDLOV: Objection.

    BY MR. DAVIS:

    Q    Or that it has not made a determination
yet?

    A    It has not made a determination yet. It's
in that process.

    Q    Okay. What group or division in the
Census Bureau has the responsibility of determining
whether a database or performing the fitness for use
determination?

    A    Well, most of this work is going to be
done through the research and methodology
directorate, as well as utilizing staff from the
center for economic studies.

    Q    I'm sorry, Mrs. Battle. You said the
center of economic studies but you also said the research?

A The research and methodology directorates.

Q And is the research and directorate a division of the Census Bureau? SA*EP?

A It is an organizational unit that contains multiple divisions.

Q Okay. Does it -- is it part of the Census Bureau?

A Yes.

Q Okay. And who heads the research and methodology?

A John Abowd. Dr. John Abowd.

Q Now, back at Exhibit 6, and I see under Department of Homeland Security that there is a second data set, which is under data type it says arrival departure information system and visa data. And there under status it says awaiting data transfer from DHS. I take that means you haven't received the data yet from Homeland Security?

A That particular data, that's correct, we are waiting to receive that.
Q    Yeah. Is there any data where the fitness
for use determination process has been completed?

MR. SVERDLOV: Objection. Vague.

A    For the administrative records that we've
acquired we are still in the process either we are
waiting for the data or we are beginning to do that
evaluation.

Q    Okay. Is there any administrative data
that you are aware of that the Census Bureau has
requested for these purpose that is is not listed on
this chart that's been marked as Exhibit 6?

MR. SVERDLOV: Objection. Vague.

A    One thing I call your attention to is on
page 5. At the bottom you'll see the source agency
is Nebraska.

Q    Yes.

A    So what I would say is that we have put
out requests to all 50 states to obtain driver's
license data, but the only one listed here is
Nebraska as we have received those data. So I will
mention that.

MR. SVERDLOV: Counsel, can I pass for one
second? I want to go back to my prior objection. The reason I objected is because it was unclear whether the ask question asked for the witness to testify on behalf of the Census Bureau or her personal capacity when you said she is --

MR. DAVIS: Fair. But let me clear that up. I could and almost certainly will get sloppy with some of the language I use. That's not intentionally national. I recognize she is produced as a representative of the department. Unless I state otherwise I'm intending to seek the department's knowledge and information.

MR. SVERDLOV: Thank you.

BY MR. DAVIS:

Q So there is data, Mrs. Battle, that the Census Bureau has requested that is not on the chart. At least we know that it's requested driver's license data from all other states; correct?

A Correct.

Q Are you aware of any other data that the Census Bureau has requested that is not listed on
this chart?

A The Census Bureau hassles reached out to states to request data on WIC, and TANF and SNAP. So that would be SNAP would be the supplemental nutrition assistance program data, WIC is the women, infants and children's program, and TANF is the temporary assistance for needy families program. So we are working to obtain those data from states as well.

Q Do you know if any states have declined to provide driver's license information, if they have responded to the Census Bureau's request and said we are not going to provide that?

A My understanding is that there have been a number of states who have said no.

Q Do you know how many?

A Rough approximation, about a third.

Q Okay. Are you aware of any administrative data that the Census Bureau has requested from federal agencies and those federal agencies have refused to provide the administrative data?

MR. SVERDLOV: Counsel, I'm going to
 object here once again because we are verging very
close to on going negotiations and we would view
materials that this question potentially calls for
as subject to the deliberative process privilege.
So I think if the witness can answer in a general
way, that would be fine. But specific details about
agencies which have and are have have not responded
we would view as following within the privilege.

MR. DAVIS: Okay.

BY MR. DAVIS:

Q   Tell me this. And I will direct this to
counsel just --

MR. DAVIS: If -- would the witness be
allowed to tell me whether, that if a hypothetical
federal agency had said no, would the Census Bureau
would consider the matter closed or whether that
issue would still be under negotiation?

MR. SVERDLOV: I think we would view that
issue as still under negotiations potentially.

MR. DAVIS: Okay. Let me try to ask it
this way and be sure to allow your counsel time to
lodge an objection. Mrs. Battle, if the Census
Bureau has requested administrative data from another federal agency and that federal agency initially said no, is it the intention of the department of census to continue to seek that information through negotiations.

MR. SVERDLOV: I'm going to raise the same objection and instruct the witness not to answer.

BY MR. DAVIS:

Q Let me ask it this way. Has the Census Bureau requested information from any federal agency, and by information I mean administrative data that it continue tends to use to impute citizenship status and that other federal agency has responded with a refusal to provide the information?

MR. SVERDLOV: Counsel, I'm not sure how that question is materially different.

BY MR. DAVIS:

Q How is -- this is a fact of something that happened in the past, whether an agency has responded with a yes or a no. That's not a deliberation.

MR. SVERDLOV: I think if we can answer it
in a general wearings the witness can try to do so.

But I think we are very close, as I've indicate
canned, we are very close to the line of those, the
negotiations that the Department of Commerce and the
Census Bureau is having with other agencies, and we
would view that as subject to privilege. So if you
can answer in a general way, perhaps it would be
helpful to, for you to restate your question.

BY MR. DAVIS:

Q    I'm not waving this issue but tell me what
you can.

MR. SVERDLOV: Objection. Vague.

A    I would say that the Census Bureau has
established an enter agency working group and we do
have members from the, across the federal
government. And the purpose of that working group
is to facilitate the Census Bureau acquiring
administrative records to help us comply with the
executive order.

Q    Thank you. That doesn't really help with
what I'm looking for but I appreciate that.

Now, this working group, that is what is
listed on the first page ever Exhibit 6; correct?
A    Yes.
Q    Okay. And they have had one meeting to
date?
A    Yes.
Q    Are any further meetings planned?
MR. SVERDLOV: Objection. Vague.
A    At this point the work that's happening is
really involving the points of contact. So the
Census Bureau has a point of contact who is working
with points of contacts at all of the member
agencies to work through any issues with enter
agency agreements, to talk through the data and the
variables that we are requesting to acquire. So
there is a lot of back and forth. They are not in
formal meetings with full membership but there is a
lot of back and forth between the census and
individual agencies to continue working through
issues to make sure we can acquire the data that we
have requested.
Q    Is there any administrative data that the
Census Bureau has determined that it will request
but it simply has not made that had request yet?

MR. SVERDLOV: Objection. Vague.

A    At this time I am not aware that the
Census Bureau has any other remaining requests
outstanding.

Q    Let's look back at Exhibit 5, and that's
the document that's behind tab 8 in your notebook,
Mrs. Battle. We are still in the back with the Q
and As.

A    All right.

Q    Q & A 20, which is on page 17, as I read
it, you tell me if I'm wrong, please, the question
posed is whether the alternative C approach, the use
of administrative data has been used before on other
data collection process and the response says the
approach that is been routinely used and processed
into economic census for several decades. First off
I read at that correctly; right?

A    I'm sorry. Which number are you on?

Q    Q & A 20 on page P-17.

A    Okay. Okay.

Q    Okay. First tell me what it means by
economic sense censuses.

A So the Census Bureau not only conducts a census of the population, but it also conducts a census of organizations, businesses, et cetera. And so they are referring to those economic censuses.

Q Okay. Administrative data has been used, was used in the 2010 census was it not to impute characteristics and for other purposes?

A There were administrative records used to impute characteristics used in the 2010 census.

Q Okay. So the use of administrative records is not limited in the past to economic censuses. Am I right about that?

A Correct.

Q Okay. And if you turn to the page of that same exhibit with the Bates Number at the bottom is P-30, please? Do you see the chart there that's labeled Figure 1, Mrs. Battle?

A Yes.

Q Can you explain this to me what the terms are, linked, ADREC, and then on the other side not linked and model?
MR. SVERDLOV: Counsel, really quick, I'm also going to raise an objection because I think this line of questioning is starting to veer somewhat outside of the topics that we have negotiated.

MR. DAVIS: I believe this Figure 1 reference to the use of administrative data in general and the memo is about citizenship. That seems to follow under the umbrella.

MR. SVERDLOV: Yes. And as you will recall, my yes was not me acceding to your member price. As you recall, we narrowed those topics in our December 27th, 2019 letter, which stated that we will produce a witness who can testify about these topics to the extent they concern the feasibility and out of collecting and using administrative records in the manner directed by executive order 13880 and I believe the document you are referring to is part ever topic 5.

MR. DAVIS: Okay. Well, is the witness allowed to explain to me, for example, what modeling is.
MR. SVERDLOV: I think we can pursue some
general questions along those lines but I do want to
flag that, you know, questions about like the
general background of this document and it's
preparation was one of the things that we
specifically limited.

MR. DAVIS: I'm not asking about that. I
want to explain the terms. I asked her to explain
the terms.

BY MR. DAVIS:

Q First, Mrs. Battle, what is ADREC? Do you
know?
A Yes. That refers to administrative
records.

Q Okay. And what is model?
A Model refers to developing a statistical
model.

Q Okay. So after the 2020 census if you are
able to link records, you will use the
administrative records to impute citizenship for a
person? Is that correct?

MR. SVERDLOV: Objection. Vague. Calls
for speculation.

A The basic idea is that the Census Bureau will combine multiple sources of citizenship from different sources of administrative records and use that information to determine citizenship status.

Q Okay.

A Linked records can then, we can then utilize those administrative records to determine citizenship.

Q Okay. And in the 2020 census if you are not able to link administrative records, does the Census Bureau intend to use statistical modeling to impute citizenship?

MR. SVERDLOV: Objection. Vague.

A This diagram shows that initial thinking is that if we are not able to link administrative records to respondent's are individuals counted in the census and we need to determine their citizenship status, that a statistical model would be utilized to determine that.

Q Okay. And how will that be performed?

MR. SVERDLOV: Objection. As you might
have surmised from the nature of that question, the work in this area is still on going so we view the specifics of that work to be covered by the deliberative process privilege. I will instruct the witness to answer in general terms if she can but not the specifics.

MR. DAVIS: That's a fair question and if the answer is that they don't know yet, then that's the answer.

MR. SVERDLOV: Sure.

BY MR. DAVIS:

Q  So if the Census Bureau is not able to link administrative data and you will use statistical modeling, the question is how will that happen?

A  So at this point in time the Census Bureau has not finalized its methodology about exactly how that will take place.

Q  Okay. Who is working on making the final determination of how that will work?

BY MR. DAVIS:

Q   Well, did I understand you correctly? You said no final determination had been made. Is anyone in the Census Bureau thinking about that and working on making ago final solution?

MR. SVERDLOV: Objection. Vague and compound.

A   The Census Bureau staff who are evaluating the administrative records that the Census Bureau acquires are going to be involved in the process of working with Dr. John Abowd to determine the statistical modeling. So --

         Congress PHA*PB PH*EL PWRAO*BGS.

A   So the first step is really to evaluate the incoming data and then we can turn to specifically how to develop the modeling.

Q   Okay. And to the best of your knowledge is that going -- will these decisions be made by Dr. Abowd and his group?

MR. SVERDLOV: Objection. Vague.

A   I believe recommendations will come from those involved in this research and those
recommendations will be presented to executive leadership at the Census Bureau and the department.

Q Okay. We touched on this but I'm not sure it's clear in one spot, Mrs. Battle. Can you describe for me the difference between statistical modeling and imputation?

MR. SVERDLOV: Objection. Vague.

A Well, I would say that statistical modeling is a form of imputation, whereas imputation might involve imputing data from someone else in the same household or using a hot deck or using a statistical model. So to me statistical modeling for this purpose is a form of imputation.

Q Okay. Let's say for the 2020 census through linking databases you learn from the administrative records you receive from the social security records that a particular person is a United States citizen. That's imputation because you are taking, is it not because you are taking information you received directly from administrative records that says that this person with this Social Security Number somebody a citizen?
MR. SVERDLOV: Objection. Vague, compound and calls for speculation.

A So information on citizenship status from these administrative records will be used in combination to help us determine the citizenship status, so we are going to take multiple sources into account to help us determine the Z citizenship status. It may not necessarily be taking one specific source and then imputing it. We are going to take all of that into account and then determine.

Q Okay. You wouldn't look then at a single agency's administrative records but at the universe of the administrative records you receive in this process in order to impute citizenship? Did I hear you correctly?

MR. SVERDLOV: Objection. Vague.

A The general idea at this point is to pool as many different sources on citizenship for an individual as possible and to utilize those multiple sources to help us determine what the citizenship status is.

Q Does the Census Bureau have a goal or a
deadline for determining, number one, what of this
data is usable? Ask by this data I mean the
administrative records that are listed on exhibit C?

MR. SVERDLOV: Objection. Vague and
compound.

A The Census Bureau has set a goal of the
spring of 2020 to complete or at least complete
initial evaluations of the data to try to determine
specifically which sources could be utilized in
continuing to develop a CVAP file.

Q Is there any plan that you are aware of,
Mrs. Battle, to report publicly that the Census
Bureau has determined that, for example, the records
from Department of Homeland Security are usable and
will be part of this imputation process?

MR. SVERDLOV: Objection. Vague and once
again verges into deliberative process. So to the
extent -- to the extent the witness can answer in
general terms about whether there are plans that,
would be acceptable.

MR. DAVIS: That's what I asked. Are
there plans to publicly report the decisions as to,
the determinations as to whether the data is usable.

A I know the Census Bureau does plan to
share publicly the approach, the statistical
modeling approach and the data sources to be
utilized.

Q Okay. And you said that there is a goal
of making the decision by, making the determination
by spring of 2020 as to whether the data is usable
or to release the statistical modeling process?

MR. SVERDLOV: Objection. Compound.

A The goal for spring of 2020 is to be able
to determine as specifically which sources of
administrative records could be used and the
methodology.

Q Both?

A Yes.

Q Okay. While I understand there is no
final determination of the specific processes to it
be used, has a decision been made on what to do if
there is conflicting information being citizenship
among different administrative records?

MR. SVERDLOV: I think that this very much
verges into the ongoing deliberation of the agency.
To the extent that the witness can answer in general
terms about whether there is or is not a plan, that
would be fine. But otherwise I will instruct the
witness not to answer.

MR. DAVIS: That's what I asked, Aleks. I
asked has a determination been made on what to do.
I didn't ask what that determination is. I don't
want to know. I asked if a decision has been made.

BY MR. DAVIS:

Q So has a decision been made about what to
do if there is conflicting information about
citizenship among the different administrative
records?

A The methodology to be used to address that
issue has note been determined as of yet.

Q Thank you.

MR. SVERDLOV: Are you okay? Do you need
a break.

THE WITNESS: I'm good.

BY MR. DAVIS:

Q You tell me at any time if it you need a
break.

A    Okay.

Q    Would you please turn, Mrs. Battle, to the
document behind tab 6 of the notebook? Are you
familiar with this document, Mrs. Battle?

A    I do not believe I have specifically seen
this document, but I understand the general
information.

Q    Okay. I have some very general questions,
so I don't think a lack of familiarity with the
specifics of of this individual document will
matter.

MR. DAVIS: Let's go ahead and mark this
for the record.

(WITNESS    Exhibit Number #

was marked for identification.)

MR. SVERDLOV: Just to be clear on the
record, this is a document that was not one of the
ones identified in your list of topics. So to the
extent that it falls within some other category, we
believe it falls within some other categories that
you haven't identified, obviously we will let you
pursue those questions but otherwise specific
questions about this document I think would be
outside the scope.

MR. DAVIS: I know you will object if I
ask a question outside the topics and I know this
wasn't listed.

BY MR. DAVIS:

Q On the executive summary, which is the
page that's Bates numbered 6315 --

A Yes.

Q -- it says characteristics imputation in
the 2010 census coverage measurement program imputed
values when missing values occurred per rages shall
race, spin, age, sex and tenure. I want to know do
you know what the 2010 census coverage measurement
program is?

A Yes. SA*EP this is the program that is
conducted after the decennial census to assess the
coverage of the population. It's one of two methods
the Census Bureau uses to assess the coverage in the
decennial census, whether there is an overcount or
under count.
Q  Okay. And do I understand this memo
correctly that characteristic imputation is a part
of that process?

A  Yes.

Q  Okay. So you are using imputation when
you are assessing the coverage of a past census?

A  Uh-huh. So with the census coverage
measurement program they actually go out and conduct
a survey. And so what they are doing is collecting
the same information that was collected in the
decennial census. And not everyone answers all of
those questions even in this survey.

So this is, the same method, the same
approach is used to fill in the missing data.

Q  Okay. And -- no. Never mind.

On page 3, the first full paragraph begins
as follows: It says editing was a fundamental part
plaintiff census characteristics imputation system.

I'm not sure I understood what, what the
difference is between editing and imputation.

MR. SVERDLOV: Objection. Assumes

hypothetical evidence.
A So the difference here is that editing is when you are trying to resolve inconsistencies that may result between the data or utilize data to help you determine a value. SA*EP so, for example, if someone only provides their data date of birth but they don't provide their age, what we will do then is calculate age based on the date confidence birth. So that's the editing.

Q Okay?

A As opposed to using administrative records to bring in and fill in missing information. So that's, you know, another example of editing would be if we have a situation where a household response that there is a same sex couple household, but then when we look at the sex data for the variables, they are opposite sex. So we have to figure out how do we handle this inconsistency. So we are using reported data but we have to resolve inconsistencies.

Another example would be if someone reported their date of birth and gave an age but when you calculate age and date of birth it doesn't
match. Some people like to report their age around zeros and five cents, you know. 40 instead of 41. So there are things like that that involve editing of the data to try to resolve inconsistencies and that's different from imputation where you have let's say missing data and you need to find a way to bring in other sources to fill in the gaps.

Q Okay. And let's say that different, a person reports an age and a date of birth that don't match up. Are there rules that it the Census Bureau has that when that happens, these are the steps we will go through?

A Yes. There are business rules for that, yes.

Q Where are those reported?


A So --

Q Are they reported?

A The business rules are how to conduct the editing and imputation procedures, they are contained in a specifics.
Q  Okay. Where are the specifications? Are those something that's publicly reported?

A  Those specifications typically are not put out to the public.

Q  Okay. Is there a particular group or department or division in the Census Bureau that's responsible for developing and maintaining those business rules?

MR. SVERDLOV: Objection. Vague and compound.

A  Yes. For the characteristics related to age, sex, race and Hispanic origin, my division, the population division, is responsible for those specifications.

For editing and imputation rules, business rules related to relationship and tenure, our sister division, the social economic and household statistics division produces those specifications.

Yes.

Q  Okay. And related to the methods that the Bureau is developing for citizenship, does the Census Bureau intend to develop business rules that
will address those issues?

MR. SVERDLOV: Objection to vague and compound.

A I think that the methodology that will be determined and developed to allow the Bureau to determine citizenship will have to include the information on statistical modeling and any other procedures that are done with the data.

Q I've seen references, Mrs. Battle, to developing repeating the best citizenship status?

A Yes.

Q What is best citizenship as opposed to just citizenship?


A So this is part of what the Census Bureau needs to do in terms of it evaluating the administrative records that have been acquired.

Q Okay.

A There will potentially be different citizenship values reported across different administrative records so the Census Bureau needs to
develop a methodology that will help them take those
multiple sources of information into account and
then determine what the best citizenship status is
for an individual.

Q  Okay. So let's say hypothetical for this
one person one set of administrative records
suggests that this person is a citizen and another
set of administrative records suggests that this
person is a non citizen. When you say best
citizenship, do you mean that the Census Bureau will
try to determine which of the various pieces of
information is more likely to be reliable?

MR. SVERDLOV: Objection. Misleading and
calls for information that I believe is protected by
the deliberative process privilege.

MR. DAVIS: I'm asking about what she just
told me, trying to understand her previous response.

BY MR. DAVIS:

Q  So this was directly related to her past
response. Did I understand you correctly, Mrs.
Battle, that when the bureau is referring to best
citizenship variable, that you are trying to
reconcile which conflicting pieces of information is correct?

MR. SVERDLOV: Objection. Vague. And I think we are still in that category ever information where the Census Bureau has not reached the final decision and so it's is trying to deliberate. But if you can answer in a general way, go ahead.

A One example that might help is mentioned in a number of the memos is that for instance our primary source of citizenship data comes from the Social Security Administration and we know that if the sources ever data from the Social Security Administration, for example, may list that an individual is not a citizen, but we don't know if that individual's citizenship's status has changed over time and just didn't update the Social Security Administration, and so, again as listed in some of the memos, that's one of the reasons for trying to acquire administrative records on naturalizations, for example, that may have more current information or updated information that may not be reflected in our reference file. So we are trying to gather
multiple sources and look at them together to help us determine the best citizenship.

Q    Okay.

A    Value.

Q    Mrs. Battle, have we discuss canned all of the records that have been requested for state governments? As I recall, we have discussed driver license data, SNAP, WIC and TANF four categories. Are there any other pieces of data or administrative records that have been requested from state governments by the Census Bureau?

MR. SVERDLOV: Objection. Vague and compound.

A    I'm not aware of any additional state level records that have been requested at this time.

Q    Let's say for a request for delivers license data, how would that request be made?

MR. SVERDLOV: Objection. Vague.

A    The Census Bureau staff reached out to the heads of the states department of motor vehicles to request, have a discussion about obtaining those data.
Q    Okay. So somebody from the Census Bureau would call like in Alabama there is the Alabama law enforcement agency which is part of, is the agency which issues driver's licenses. They would likely reach out to the head of that department in the State of Alabama?

MR. SVERDLOV: Objection. Vague and compound.

BY MR. DAVIS:

Q    Is that right?

MR. SVERDLOV: Object.

A    Yes.

Q    Is there any particular person in the Census Bureau who is responsible for making the request for administrative records to the state governments?

A    There is, but I do not recall the name off the top of my head.

Q    Okay. Do you know what that person's title or what division that person likely works in?

A    That person likely works in the section of the Census Bureau that is responsible for acquiring
Q And what would that be?

MR. SVERDLOV: Objection. Vague.

A That -- it's the -- within the economic directorate there is a division called I believe economic reimbursable surveys division, and that houses the staff that are responsible for acquiring and injecting administrative records.

Q I'm sorry, Mrs. Battle. Did you say economic reimbursable survey?

A That is my -- I would need to double check on the specific name, but I believe that's correct.

Q I understand you are not sure. But I did understand you correctly? The word was reimbursable, if you are remembering correctly?

A Yes.

Q Would you look, please, Mrs. Battle, at the document behind tab 3 of the notebook?

MR. DAVIS: And for the record, I have no doubt we have the original of this in what you produced. There simply wasn't time to get that in
every case. So the format of this particular memo
was as it was refor mated for purposes of the United
States supreme court record. So let's mark that.
(WITNESS Exhibit Number #
was marked for identification.)

BY MR. DAVIS:

Q Are you familiar with this memorandum,
Mrs. Battle?

A Yes.

Q Okay. And this is a reproduction of a
memorandum dated December 22, 2017 prepared for John
M. Abowd prepared by Michael Berning and others?

A Uh-huh.

Q So look at page, it will say 304 at the
top. This has been marked as Exhibit 8.

A Uh-huh.

Q This was a couple years ago, but it talks
about under Table 2 data that is currently in census
inventory unless Social Security Administration
numident did it, and bureau of prisons; correct?

A Yes. SA*EP.

Q This is potentially in acquisitions.
A Uh-huh.

Q Now the U.S. CIS citizen data, we talked about that because it was listed on one of the other documents we reviewed; right?

A Yes.

Q Okay. And real ID at data, is that data, Mrs. Battle, that states would have?


BY MR. DAVIS:

Q Drivers license data for example?

A I think we would need to turn to a memorandum of understanding regarding exactly what the Census Bureau is requesting from the states regarding the delivers license data.

Q Okay. And in order document listed under potential acquisitions is FHA loan applications. Do you know if those have been requested?


BY MR. DAVIS:

Q Do you know if those have been requested?
A I am not aware of this being requested.

Q Okay. Do you know if there is any intention that the Census Bureau has to request FHA loan application data?

A I cannot say at this time --

Q Okay.

A -- if there is an intention to collect that.

Q Who would know?

A I think we would turn to the organization within the economic directorate who is responsible for acquiring administrative records to make that final determination.

Q And that's a person who you can't remember their name at this moment; right?

A Well, actually the supervisor, I know his name, but I'm sure his staff -- the supervisor's name is Michael Berning.

Q Okay.

A So.

Q But there might be someone on his staff who is better able to answer that question; is that
right?

MR. SVERDLOV: Objection. Vague.

A    Well, Michael would know the answer, because his staff would be involved in this.

Q    Okay. And back to this Exhibit 8, under FHA loan applications, still under the part of the table that lists potential new acquisitions, the next item is State Department SPA*BG KWRA*EUTS. Do you know of any requests for that information?

SP*ELG?

A    I am not aware of the request, but we would need to talk to Michael Berning's staff to confirm that.

Q    All right. And what about the next item list willed, Medicare, Medicaid loan applications?

A    Well, we do have on our first reference sheets that the Census Bureau has -- both Medicare enrollment data and Medicaid enrollment data. I know this says specifically loan applications, so we would needed to talk with Michael Berning to ensure that there is a distinction there or not.

Q    Okay. I'm sorry, Mrs. Battle. Let's go
back. You said the reference sheet -- would you refer to that by Exhibit Number, please?

A  Exhibit Number 2.

Q  Would you point to me where there is information about Medicare and Medicaid?

A  The third row down says CNSEDBE. That's the Medicare enrollment database. And then where towards the bottom where it says best race and ethnicity, the first sub bullet with, CMS, MSIC is the Medicaid enrollment.

Q  Okay. Does suggest to you this is data on people who are in fact enrolled in Medicare or Medicaid? (This)?

A  The information in Exhibit 2 reflects data on those who are enrolled. Where as I know on 304 it mentions loan application, so if these are the same things or different things I need to --

Q  I understand. When you said 304, you are referring to page 304 of Exhibit 8?

A  Yes.

Q  Okay. And it's Mr. Berning or his group who could tell us to the best of your knowledge?
1 A Yes.

2 Q Okay. Would you look now at tab 4, the document behind tab 4, the executive order 13880? And let's mark that as the next exhibit, please.

(WITNESS Exhibit Number #

was marked for identification.)

BY MR. DAVIS:

8 Q Okay. Do you see this is Exhibit 9; right? And it's a copy of the executive order 13880. Have you reviewed this executive order before, Mrs. Battle?

12 A Yes.


14 Q Have you reviewed this executive order before?

16 MR. SVERDLOV: Vague as to time. Go ahead.

BY MR. DAVIS:

19 Q Would you look at the page -- it's Bates Number P-169 at the bottom. Do you see that?

21 A Yes.

22 Q Page? Under Section 3, the executive
order says that, that section is titled assistance
to the Department of Commerce in maximizing
citizenship data. Do you understand this to be a
list of data that agencies quote shall Exhibit
relatively authorities and to the maximum extent
consistent with law pry access to the following
records? These are documents the President wants
the agencies to review and study and see if they can
provide to the Department of Commerce; correct?

MR. SVERDLOV: Objection. Compound.

A Yes.

Q Okay. Walk me through this, Mrs. Battle.

Has the department requested all of this information
listed? And we can refer to the different documents
we've been reviewing? I just want to be able to
match them up?

A So if we go back to Exhibit Number 6 --

Q Yes.

A So back be in Exhibit Number 9 on page

169, the first item under Section 3 calls for
Department of Homeland Security, United States
citizenship and immigration services national file
of lawful permanent residence and naturalization,
and so if we refer back to Exhibit 6 on page 2, you
will see that that request was made for lawful
permanent resident file and naturalization data.

Q Yes. That's data that in fact we discuss
canned earlier?

A Yes.

Q Okay.

A And back in Exhibit 9 the second bullet
under Section 3 calls for Department of Homeland
Security, immigration and customs enforcement,
non-immigrant visas, and that is reflected on page 2
back in Exhibit 6, the last row where it talks about
arrival, departure information system and visa data,
customs and border protection. That is the data on
temporary lawful residence.

Q And for that data according to Exhibit 6
it's been requested, you are awaiting transfer from
DHS; right?

A Yes. Yes.

Q Got it it.

A Okay.
Q And going back to the executive order, bullet 3 says Department of Homeland Security national level file of customs and border arrival/departed tour transaction data?

A And that will be fulfilled through the same role we just talked about.

Q Okay. Arrival/departure information?

A Yes.

Q And on the executive order bullet 4, Department of Homeland Security and Department of State, worldwide revenue and asylum processing system, revenues gee and asylum visas?

A In Exhibit 6 on page 3, at the very top you'll see the Department of State and the request was for a worldwide rev gee admission processing system data.

Q Okay. And according to Exhibit 6, that's been requested and you are awaiting data transfer?

A Yes.

Q All right. So item 5 on the executive record lists Department of State, national level passport application data.
A  Uh-huh. I need to -- I would need to
check on the passport application data from the
State Department. I do not see it in the Exhibit
Number 6.

Q  Okay. Back to the executive order, Mrs.
Battle, item 6, Social Security
Administration-master beneficiary record, is that
what I see on page 3 of Exhibit 6?

A  On page 3 of Exhibit 6, yes. The master
beneficiary record, yes. That has been requested
and received.

Q  Great. And the last item on that
particular list on the executive order is the, the
Department of Health and Human Services, CMS med
cared and CMICP system. Is that on Exhibit 6?

A  Yes. Exhibit 6, page 4. They reference
the Medicaid children’s health insurance program
there. And that we are awaiting transfer.

Q  Okay. SA*EP then with your and your
counsel’s permission, I would like to take just a
couple minutes for you to tell me in very general
terms what some of these other documents are that
you brought today and then we will break for lunch
and that will give us a chance to look at them and
decide what we need to ask about them. Does that
work?

A Yes.

MR. DAVIS: Let's mark these as exhibits.
We have got three more it seems.
(WITNESS Exhibit Number #
was marked for identification.)

BY MR. DAVIS:

Q So, Mrs. Battle, first I'm marking one of
these as Exhibit 10. Would you tell me what this
document is?

A This document is a memorandum of
understanding between the Census Bureau and the
Department of State.

Q Okay.

A And it is requesting passport data.

Q And is this a memorandum that has been
executed? Is it in place?

A This memorandum was signed earlier this
week, January 13th.
Q  Great?
A  When it was executed. This is new.
Q  Okay.
(WITNESS Exhibit Number #
was marked for identification.)

BY MR. DAVIS:
Q  And what about the one I'm marking as
Exhibit 11?
A  Exhibit 11 is another memorandum of
agreement between the Census Bureau and the
Department of Homeland Security regarding data on
immigration and citizenship.
(WITNESS Exhibit Number #
was marked for identification.)

BY MR. DAVIS:
Q  And the last one I'll mark as Exhibit 12.
This appears to be a chart. Would you tell me what
this indicates, please?
A  Exhibit.
MR. SVERDLOV: Objection. Vague.
A  Exhibit 12 is a chart that shows you the
existing administrative records that the Census
Bureau has and has obtained over the years, long
history of obtaining these data from the Social
Security Administration, the Internal Revenue
Service and the department of housing and urban
development.

Q  Okay. So some of this stuff like from DHS
that we've been talking about just a couple minutes
ago, those are kind of new requests. This is data
that you've had for a while? Is that right?

A  Yes.

Q  Okay.

MR. DAVIS: Very good. I think this is a
good stopping point. What time would you like to
come back?

MR. SVERDLOV: We are at noon now. Let's
take about an hour.

MR. DAVIS: Sounds good. See you then.

(Recessed at TIME AMPM )

(Renconvened at TIME AMPM )

MR. SVERDLOV: Can folks on the phone hear
us okay?

Voice voice: Yes.
BY MR. DAVIS:

Q    Mrs. Battle, early in the deposition we talked about some populations that tended to it be subject to under counts in the census. Would you remind me what some of those are?

A    Yes. So we know that in the decennial census there tends to be an under count for young children. Those are children under the age of five. And we also know from research that there are certain racial and ethnic population groups that may be under counted, such as young black e-mails or American Indians and Alaska Natives, for example.

Q    Okay. Taking the Alaska natives as an example, if I understand you correctly, research after the census suggestion to the Census Bureau that there is likely an under count of Alaskan Natives in the census; correct?

A    For the 2010 census in recent history there was an under count, yes.

Q    Yes. Okay. Do you know whether that's true for other censuses as well?

A    The Census Bureau does publish after the
decennial census their assessment of coverage of the
decennial census and those reports would have that
information.

Q Okay. And the Census Bureau wants to
count everyone it can, that are supposed to be
counted; correct?

MR. SVERDLOV: Objection. Vague. Calls
for a legal conclusion.

A Yes.

Q Okay. Does the Census Bureau have any
efforts planned to reach harder to count
populations?

MR. SVERDLOV: Objection. Vague.

A Yes.

Q Would you give me an example of efforts
that the Census Bureau has planned to reach a
population that it believes to be more difficult to
count than other populations?

A So the Census Bureau has an advertising
campaign and the Census Bureau develops advertising
directed towards particular hard to count
populations in order to help make awareness more
broad of the decennial census and to encourage participation. The Census Bureau also has a network of partner -- it's called the national partnership program, and the idea there is to partner with particular organizations, local areas, to try to develop ways and approaches to reach the hard to count to get participation improved in the decennial census.

Q    Okay. Are there any efforts by the Census Bureau or any planned efforts to reach as many undocumented immigrants as possible for the count?


A    I am not aware of any activities or programs or advertising that would be focused on that population.

Q    Would you turn, please, Mrs. Battle, to the document behind tab 5 of the notebook?

A    Uh-huh.

MR. SVERDLOV: Counsel, for the record, I'm just going to note here this is also not a document that was identified in the topics and given
its date as noted on the first page of September 18, 1985, we have concerns that questions about this document would venture far outside the scope of the topics negotiated.

MR. DAVIS: Well, it could, but you might listen to my question first and then you could decide whether or not it's within the topics. It would save us a bit of time.

MR. SVERDLOV: I'm noting a concern. I'm happy to give you an opportunity to prove me wrong.

MR. DAVIS: Let's mark this as Exhibit 13, please.

(WITNESS Exhibit Number #
was marked for identification.)

BY MR. DAVIS:

Q Mrs. Battle, this is a statement of the director of the Bureau row of the census before the sub commit on energy TPHAO*UBG pro live KWRAEUGS et cetera dated 1985. I'm going to turn to the page SA*EP, the first page is Bates numbered 1820 produced by the Department of Commerce and I'm looking at the page that's Bates numbered 1827.
And here I'm going to represent to that if you see a paragraph towards the bottom that begins because undocumented aliens, et cetera? On that page as I read this and you can tell me if you disagree the former director is talking about efforts addressed to count as many undocumented aliens as possible. And I just want to see if this refreshes your recollection if you review the steps that he says were taken in the past, I ask you to look at those and see if this refreshes your recollection, if you are aware of any such effort that the census Bureau intends to make as part of the 2020 census?

MR. SVERDLOV: I'm going to object to that question on the basis of foundation and on the basis of scope.

A On page 1828 --

Q Yes, ma'am?

A It mentions enumerating my grant farm camps.

Q Yes.

A And I will say that in the course of the
decennial census the Census Bureau does have a group
quarters in PHO*R rages operation that would include
workers dormitories which may be similar to this
type of facility. SP*ELG.

Q    Okay.

A    I would need to check on any conversations
that the Census Bureau has had with law enforcement
agencies.

Q    Okay. Yes. Because this statement, the
former director said that they discussed with law
enforcement agencies about curtailing law
enforcement on census days to ensure maximum
participation?

MR. SVERDLOV: Objection. Lack of
personal knowledge and foundation and scope. SA*EP
the document says what the document says and the
witness was neither prepared on this document nor is
this document something that you indicated you were
interested in pursuing testimony on.

BY MR. DAVIS:

Q    Are you aware of any conversations the
Census Bureau has had with law enforcement agencies
seeking perhaps a curtailment of law enforcement
with related to immigration absence us day to
ensure, to help ensure maximum participation by
undocumented immigrants?

MR. SVERDLOV: I'm going to object based
on scope and also based on potentially deliberative
process privilege. I will direct the witness not to
answer because at the very at least we are far
outside the scope of the topics listed in this
deposition.

BY MR. DAVIS:

Q    Has the Census Bureau made any decision of
whether or not to work with law enforcement agencies
to curtail enforcement of immigration laws around
census days in order to ensure greater participation
by undocumented immigrants in the census?

MR. SVERDLOV: To protect the deliberative
process I will direct the witness to answer in a
general way.

A    I do not have knowledge regarding that. I
would need to check.

Q    Okay. Who would you check with if you
wanted to find out the answer to that question?

A    I would talk with the deputy director of
the Census Bureau.

Q    And who would that be?

A    Ron Jarmin.

Q    Okay. SP*ELG has the Census Bureau made
any decision of whether or not to reach out to
clergy, for example, the conference of Catholic
bishops, to solicit their support in spreading the
word about the census and the importance of
participating in the census?

MR. SVERDLOV: I will raise the same
objection as before and give a similar instruction
to the witness.

A    Well, in it the national partnership
program that I mentioned earlier there is a faith
based component there, so I do know that the census
bureau has partnered with members of the different
religious communities to help get the word out about
the decennial census.

Q    The date of the census is April 1, did you
say, 2020? That's the date that you are targeting
trying to measure the population on that date?

MR. SVERDLOV: Objection. Compound and

not I'm not clear the witness has testified on that,

so misstates prior testimony.

A  Yes.

Q  Okay. That doesn't mean though that
everyone who fills out a form fills it out on April 1 though, does it?

A  No.

Q  Okay. What if I fill out my form on March the 1st and move on the 15th; on March the 1st I report that I live in Prattville, Alabama, but I
move to Nebraska on the 15th. Where does the census bureau count me for the purposes of the 2020 census
if those things were to happen?

A  Well --

MR. SVERDLOV: Objection. Vague.

A  We do ask people to report as of census
day.

Q  Okay.

A  It could be we collect their data early,

earlier than that or even after that but we always
reference it back to we need your information as of
census day, the reference date.

    Q    Okay. Well, let's say that maybe I didn't
4 see that part or I misunderstood, but I nonetheless
5 report my address in Prattville but I move to
6 Nebraska on the 15th. Does the Census Bureau count
7 me at the state that's on my form?
8
    MR. SVERDLOV: Objection. Vague and
9 misleading.

   A    The -- could you repeat that question, please?
10
    Q    Sure. Let's say in spite of the
11 instruction us that put on my form to reflect my
12 status as of April 1 is, I fill out my form early, I
13 fill it out on March 1 and say I live in Prattville
14 which was true on March 1 but on the 15th I moved to
15 Nebraska. Is the Census Bureau going to count me as
16 a resident of Nebraska or Alabama?
17
    MR. SVERDLOV: Same objection.
18
   A    I think what would happen is that the data
19 would be collected from that original form and if
20 that individual did not fill out another form in
Nebraska, with that information would be held -- in the sense -- I don't know that the Census Bureau would know this this person has moved if they never engaged with the Census Bureau in addition time.

Q Unless it's self reported, is it possible or even likely that the Census Bureau would not be aware of my move to another state?

MR. SVERDLOV: Objection. Compound and misleading.

A If the only information we have for that household has come in on a census form and we have no need to follow up with that individual, then that would be the information that we have.

Q Okay?

A If we never needed to interact with that person again.

Q Okay. What if, just any random person fills out their census form on March 15th, males it in and the next day passes away. Does the Census Bureau have any way that you are aware of to know that someone who filled out a census form in fact
was deceased before census day?

MR. SVERDLOV: Objection. Compound.

A Once that census form has been submitted
and the individual passes away, the Census Bureau
would not have knowledge of that.

Q Okay. I suppose it could also work the
other way, a couple could fill out a census form and
report two people live in a household and before
census day they have a child. In that case that
house would likely be under counted, would it not?

MR. SVERDLOV: Objection. Calls for a
legal conclusion.

A The Census Bureau would have access to the
information that that family provided on their
questionnaire, yes.

Q In that case there may be an additional
resident of that household that the Census Bureau
just has no way of counting; is that correct?

MR. SVERDLOV: Objection. Misleading.

A If that household provided their
information, they responded to the decennial census,
completed the questionnaire and submitted it, then
that would be their record for the census.

Q  Would you turn back, please, Mrs. Battle
to the document behind tab 8? It's been previously
marked as an exhibit, but I didn't write down for
this one which Exhibit Number that was.

A  Five.

Q  Exhibit 5. And going back to the Q and As
at the back on the page numbered P-15, I'm going to
refer you to question number 13 at the bottom. The
question in this question and answer section reads
as follows: Is census confident that administrative
data will be able to it be used to determine
citizenship for all persons EG not all citizens have
Social Security numbers. And the response given is
we are confident that alternative C, use of
administrative data, is viable and that we have
already ingested enough high quality citizenship
administrative data from SSA and IRS. Does the --
is the Census Bureau still confident that the use of
administrative data to impede citizenship is viable
and that you have enough high quality citizenship
data to perform those functions?
MR. SVERDLOV: Objection. Well second.

Objection. SA*EP I think this is verging into the deliberative process privilege. The question by its terms calls upon the witness to testify about efforts that are ongoing, so I will direct the witness not to answer that question.

MR. DAVIS: Okay.

BY MR. DAVIS:

Q This memo is dated January 19, 2018. Was it true on January 19, 2018 that the Census Bureau was confident that alternative C in this memo, quote is, viable and that we, meaning the Census Bureau, have already ingested enough high quality citizenship data from SSA and IRS?

A The Census Bureau knows that, yes, the Social Security Administration data and the Internal Revenue Service data are of high quality but there are still some gaps.

Q Okay. The next sentence of the response says the U.S. CIS data are not required. They would however make the citizenship voting page tabulations page better. Was that is true in 2018?
MR. SVERDLOV: Objection. Vague.

A What I can tell you is that there are gaps in the Social Security Administration data and acquiring information from the citizenship and immigration services agency may be helpful in filling in those gaps.

Q Okay. Then I apologize for this but I want to make sure what I need to ask, Ms. Mrs. Battle, I want to try this another way. The statement that alternative C is viable, that was statement true when it was made?

MR. SVERDLOV: Objection. Vague.

A Alternative C was put forward as an option that the Census Bureau thought should be pursued, additional research would need to be done, additional data would need to be collected to see how that alternative could be then developed to produce information on citizenship status.

Q Well, on this day does the Census Bureau know whether the use of administrative data will allow it to produce citizen voting age population after the 2020 census?
MR. SVERDLOV: Objection. Vague as to
time to the extent that this question concerns a
date other than the date on the memorandum or dates
subsequent to it I will direct the witness not to
answer based on deliberative process privilege.

BY MR. DAVIS:

Q The question is as of today's date does
the Census Bureau know whether it will be able to
use the 2020 census to produce citizen voting age
population data using administrative data? I'm not
asking about deliberations, I'm asking if it knows?

MR. SVERDLOV: As of today's date?

MR. DAVIS: As we sit here right now.

MR. SVERDLOV: So to the extent the
question can be answered without going into
deliberation and answered in a general way the
witness with answer. Otherwise I will direct the
witness not to answer.

A The Census Bureau is pursuing and has
obtained additional administrative records that will
be evaluated to see how those data can be used in
conjunction with the Social Security Administration
data and the Internal Revenue Service data to help us develop the citizenship status information for the purposes of CVAP. So we are injecting data, we are evaluating data and we need to continue that evaluation, in order to make a final determination on what data do we need to help us develop citizenship status.

Q So do I understand that the Census Bureau does not know yet whether it can use administrative data to produce citizen voting age population data?

A The Census Bureau is pursuing that but we need to continue to evaluate all of the data that we have requested and then make sure we have developed the appropriate methodology that will allow us to do that. So we are still evaluating the data.

Q Okay. Are you aware of any memorandum or reports from the Census Bureau or perhaps form prior litigation where the Census Bureau or a representative said in effect we don't know whether we can use administrative to do this but we are going to look at it and see?

MR. SVERDLOV: Objection. Vague and
misleading. To the extent that -- strike the last part.

A I am aware of memos that instruct the Census Bureau to acquire additional administrative records and with the purpose of developing methodology to determine citizenship status with the CVAP data product.

Q Does the Census Bureau expect to know the answer to that question by spring of 2020?

MR. SVERDLOV: Objection. Vague.

A Base the Census Bureau has stated that in the spring of 2020 its goal is to have identified specific administrative record data source asks methodology that will permit it to develop the CVAP data product.

Q When this report or memo dated January 19, 2018 contains the statement that we are confident that alternative C is viable, has anything happened since that date to make the Census Bureau less confident that alternative C is viable?

MR. SVERDLOV: Objection on the basis of deliberative process privilege. To the extent the
witness can answer in general terms, she may try to
do so. But I will direct the witness not to answer
the question to the extent it calls for the internal
deliberative rations and the somebody stance of
those deliberative rations of the Census Bureau.

A  I am not aware of any conversations that
concluded that administrative records are not viable
to help us with those efforts.

Q  Has the Census Bureau made a decision as
to whether any sampling will be involved to measure
or impute citizenship as part of the 2020 census?

MR. SVERDLOV: Objection. Vague and
compound.

A  The Census Bureau has not determined its
final methodology for producing the CVAP yet.

Q  Has the Census Bureau determined whether
CVAP data will be released as part of the P-4, what
was the data file? Dash 171?

MR. SVERDLOV: Objection. Vague and
compound.

A  You are asking me if the CVAP is intended
to it be a part of the redistricting data file, the
PL.

Q Right. PL?

A PL17491.

Q That's it. Thank you?

A The Census Bureau intends for the CVAP data product to be a separate special tabulation.

Q Okay. What form will it be released in?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau is working to finalize the format of the CVAP. I expect that information to be read in the spring of 2020.

Q Okay. So you don't know yet what -- is that correct? SA*EP?

A The specific format, no. SA*EP.

Q Okay. Would you turn now, please, Mrs. Battle, to the document behind tab nine?

A Uh-huh.

(WITNESS Exhibit Number #

was marked for identification.)

BY MR. DAVIS:

Q That, for the record, is a March 1, 2018 memorandum for Wilbur Ross to John Abowd and others.
Let's mark the first page of that, please, Mrs. Battle, as Exhibit 14.

Are you familiar with that document, Mrs. Battle?

A Yes.

Q And one of the sections is, it begins on the page that's Bates numbered P-38. There is a heading what are the witness in alternative C. What was the authorize's response to that question, if you could just summarize it for me?

A So one of the key issues with the numident is whether or not there, the information regarding individuals who are not citizen is up to date. Where as it could be the case that at the time that someone applied for a Social Security Number they were not a citizen, but subsequently they have achieved naturalization but then never updated the Social Security Administration.

So there is a weakness there, there is a gap there.

The -- another issue, a weakness with the Social Security Administration that's listed is that
some people are not required to have a Social
Security Number and so then they would not appear in
the numident data from the Social Security
Administration.

Q  So, I want you to continue but what you
have described so far are groups of people for whom
you may not have citizenship information in the
administrative data; is that correct?

MR. SVERDLOV: I'm sorry. Hold on one
second. I want to read the question. Objection.

Vague.

A  So with the key issue regarding
individuals who are not citizens at the time that
they obtained the Social Security Number, that
information may not be update inned that particular
source of data, but the idea is to search other
administrative records to use in conjunction to then
have more updated information.

Q  Okay. So it's a population who may not be
included in the citizenship information in a
particular set of administrative records? Did I
understand you correctly?
A Yes.

Q Okay. But there could be other administrative records that do contain citizenship information about that individual?

A Yes.

MR. SVERDLOV: Objection. Calls for speculation.

Q And it lists one, two, three, search people starting on -- not people, groups, starting on page P-39. One is U.S. citizens from birth with no Social Security Number or U.S. passport. The second is U.S. citizens from birth born outside the U.S. who do not have a passport and I'm not reading the whole description but you see where I'm talking about?

A Yes.

Q Is the Census Bureau making any efforts to seek particular data to fill the so-called citizenship data gaps?

MR. SVERDLOV: Objection. This question calls for information that is protected by the deliberative process privilege. So to the extent
the witness can answer it in a general way, she may
do so but I will direct her not to go into the
details regarding any efforts that may or may not be
taking place.

A So the Census Bureau has recently acquired
and will acquire additional administrative records
and in the course of evaluating the data the Census
Bureau can assess how many of these gaps we might be
able to fill.

Q And was it in seeking this information,
was it one of the goals of the Census Bureau to fill
as many of these gaps as possible?

MR. SVERDLOV: Objection. That question
calls for information protected by the deliberative
process privilege.

BY MR. DAVIS:

Q It was a goal of the citizen to fill a
goal?

MR. SVERDLOV: It precisely does. SA*EP
it calls for revealing the rational by which the
Census Bureau has been acting on a matter in which
the Census Bureau has not yet completed deliberative
rations. So our view is that it is protected by deliberative process privilege.

MR. DAVIS: Are you instructing the witness not to answer.

MR. SVERDLOV: Let me review the question. I will direct the witness not to answer that particular question. However, there may be general questions that she can answer.

BY MR. DAVIS:

Q. Is it the goal of the Census Bureau to refrain from something for data that it believes would be helpful?

MR. SVERDLOV: Objection. Argumentative.

A. Can you please restate that.

Q. Sure. Is it a goal of the census department to purposefully refuse to ask for administrative data from another agency that it believes would be helpful in producing a more accurate citizen voting age population count in the 2020 census?

MR. SVERDLOV: In addition to being argumentative that question seeks to discover the
deliberations of the Census Bureau. I will direct
the witness not to answer that question.

BY MR. DAVIS:

Q You can refer to this document if you
wish. It's the executive order, Mrs. Battle. What
do you understand the executive order behind tab
4 -- what do you understand this executive order to
direct the census department to do?

A My understanding is that the Census Bureau
is directed to establish an enter agency working
group with the purpose of meeting with federal
departments to discuss acquiring their
administrative records that may be helpful in
helping the Census Bureau meet and comply with the
executive order.

Q And does the Census Bureau intend to do
that?

A Yes.

Q Is there in any respect that the Census
Bureau does not intend to comply with executive
order 13880?

A The Census Bureau is working to comply
with executive order 13880.

Q   And you are not aware of any area or any requirement of the executive order that the Census Bureau intends to refuse?


A   I am not aware of any part of the executive order that the Census Bureau intends to refuse.

Q   Referring, Mrs. Battle, to the efforts of the Census Bureau to obtain administrative data from the various states, let's say there is a case where a particular state has declined to provide requested data. Has the Census Bureau made any decision yet as to what the next steps might or might not be?

MR. SVERDLOV: Objection. Calls for speculation.

A   I'm not aware of any next steps that the Census Bureau plans to take regarding states that have refused to share their administrative records.

Q   Okay. Well, I have to be clear because of the objections. Has there been a decision made that
the Census Bureau is going to take no further steps if a state has declined to provide requested data?

MR. SVERDLOV: Objection to the extent it calls for deliberative information. To the extent the went can answer whether or not there has been a decision made she may answer.

MR. DAVIS: Which is the question that I asked.

A  I am not aware of the Census Bureau making any decisions about whether or not next steps need to be taken.

Q  Okay. Look back, please, Mrs. Battle, at the document behind tab 9. And remind me for the record what Exhibit Number is?

A  14.

Q  14. Thank you. And look back at the list of 1 through 7.

MR. SVERDLOV: For the record, this is the page that's Bates numbered P39.

THE WITNESS: Yes.

BY MR. DAVIS:

Q  Does the Census Bureau know how many
individuals are in any of these categories one through seven?

MR. SVERDLOV: Objection. Vague.

A I am not aware of the Census Bureau having quantified how many people are in each of these categories.

Q To make sure I'm clear, are you aware of any estimates of the number of people in any of these categories?

MR. SVERDLOV: Objection. Vague.

A I'm not aware of any specific estimates for any of these categories that may have been utilized in the development of this memo.

(WITNESS Exhibit Number # was marked for identification.)

BY MR. DAVIS:

Q Would you turn now, please, Mrs. Battle, to it the document that is behind tab 14 of the notebook? And let's mark the first page as Exhibit 15, please. And I'll represent to it you that these are excerpts of a deposition in other litigation. These are excerpts of a deposition taken in other
litigation. The deposition of Dr. John Abowd on Wednesday, August 29th in the lawsuit New York immigration collision ET Al versus U.S. K*FZ.

MR. SVERDLOV: Just for the record I will note this this is another document that has to the been identified for purposes of the topics that the parties negotiated. So to the extent that the witness can answer in general terms, she may do so.

MR. DAVIS: Not helpful because I don't have to tell you what the exhibits are going to be when we negotiate topics. And it --

MR. SVERDLOV: I'm laying groundwork for an objection. I don't know where you are going to go.

MR. DAVIS: Exactly. You don't know. So it's a waste of time. You can still ways the objection after a question if it's objectionable instead of taking up our time flagging potential objections.

BY MR. DAVIS:

Q I will tell you, Mrs. Battle, I find some of the coloring hard to read. This is the form we
were able to receive it in. I think it is because
different parties designated different portions of
the deposition in other litigation.

I'm going to refer you to page 67 of the
deposition it. Do you see the page I mean? The top
line one begins in 2000 and 2010 that was
accomplished?

A   Yes.

Q   Okay. There is testimony here I'll
represent to you, Mrs. Battle, concerning
introducing randomness to see that data to ensure
protection of privacy at least the way I interpret
the testimony.

I would like you to review that and help
me understand, if you know, and if any decision has
been made about this, whether randomness is going to
be injected into CVAP data to protect the privacy of
individuals?

A   Yes. The Census Bureau has determined
that it will use a procedure or methodology called
differential privacy that will be used to infuse
noise into all estimates that come out from the CVAP
as well as all census counts that come out from the
decennial census. So all data products from the
decennial census will have this noise infusion to
protect the privacy of those who are included.

Q Okay. How does that work? What does it
mean to inject -- what I mean by that question is
what does it mean to inject noise into the data?

A The Census Bureau will be using a
mathematical approach to determine how to -- a
mathematical approach in terms of how to take census
responses and then be able to inject noise is the
best way I can describe it, to protect an
individual's information. So it's a way of
preventing an individual from being identified based
on their characteristics that they provided in
response to the decennial census.

Q Okay. I'm sure I'm just slow but I don't
understand that. Let me try to give you an example.
Let's say the Census Bureau reports for a particular
census block that there are 100 people living here,
there are 90 citizens and ten non citizens. Is that
going to be true or will this noise mean that you
are reporting some different number?


A The Census Bureau is going to take the as enumerated information and will use a mathematical approach to take those data and the data will then reflect the population in that area, but some of the specific details may be altered, changed, so that you cannot identify an individual.

Q What is an example of details that my might be altered or changed?

A In particular, we have information on age, information on race, information on Hispanic origin, for example.

Q Do I understand you can't look at the CVAP data for a census block and tell from that who individually is a citizen and who is not? But will the totals for that census block be reported accurately?

MR. SVERDLOV: Objection. Vague.

Compound.

A The Census Bureau has determined that the
only population data coming out of the decennial
census that will not have differential privacy or
noise injection will be the state level population
totals. All other totals will have this
differential privacy applied to it, at least that's
as of today. The Census Bureau's position.

Q And when states are using this CVAP data
to draw districts, and it looks at a census block
and it says we add your census block to this
district, we are adding 100 additional white vote
urges, white voting age citizens and 42 additional
African-American voting age citizens, are those
numbers going to be true?

MR. SVERDLOV: I'm going to object based
on scope and I'm also going to object -- first I'm
going to object to the question as vague and I will
also object to it on the basis of scope because
redistricting is explicitly not one of the things
that we have agreed to proffer a witness to testify
about nor is it something that the census bureau
performed.

Q This is not about redistricting, it's
about the accuracy of the CVAP data that will be
important and I'm having trouble understanding what
injecting noise does to accuracy?

MR. SVERDLOV: Is that a question?

MR. DAVIS: Yes.

Q What does injecting noise have to do with
accuracy? How does it effect it?

MR. SVERDLOV: Objection. Compound.

A So the Census Bureau has talked publicly
about the differential privacy methodology and the
fact that the data will become more accurate as you
aggregate levels of geographic. So data at the
block level may have SA*EP noise in it that’s more
pronounced but as you group those blocks into block
groups and take those block groups and create census
tracks and tach those census tracts and build up to
counsel, the accuracy improves as you aggregate data
and build larger geographic areas.

Q And is there any difference in the process
that you described as injecting noise in what
otherwise may have been referred to as injecting
randomness? Or are those the same thing?
MR. SVERDLOV: Objection. Calls for speculation.

A  You are referring to a statement on page 67 about randomness?

Q  Right.

A  Let's see.

Q  And that's in Exhibit 15. I'm trying to understand if you and this witness are describing the same procedure.

A  Because on the top of page 67 the testimony talks about differential privacy, then we are talking about the same thing.

Q  Okay.

MR. SVERDLOV: Counsel, I think we would benefit from a little bit ever clarification. The document in tab 14 you've designated the excerpt of testimony from Dr. John Abowd, do you know whether that was a 30(b)(6) deposition? It does not appear to be one on its face.

MR. DAVIS: I do not know the answer to that question. And if I intended -- if I represented this as being the testimony of the
department itself, that was not intentional.

MR. SVERDLOV: Okay.

MR. DAVIS: With your permission, counsel, and Mrs. Battle, this would be a good time for a 10 or 15 minute break to get organized. I think the rest of the time would proceed more efficiently if you allow me to do that.

MR. SVERDLOV: That makes sense.

MR. DAVIS: Thank you, Mrs. Battle.

(Recessed at TIME AMPM )

(Reconvened at TIME AMPM )

BY MR. DAVIS:

Q Mrs. Battle, the executive order -- you are free to turn to it if you want -- but it is behind tab 4. In executive order 13880 says on the page that's been marked, that's Bates numbered P-169, it says, before it lists the different categories of administrative records it says the following agencies shall examine relevant legal authorities and to the maximum extent consistent with law provide access to the following records.

MR. SVERDLOV: I'm sorry, counsel. Can
you detect me.

MR. DAVIS: It's under Section 3 just before the list of documents, small little Roman one.

MR. SVERDLOV: Okay.

BY MR. DAVIS:

Q My question to you, Mrs. Battle, is this: Are you aware of any federal agencies that have said we cannot provided requested information because the law couldn't permit us to share it with you?

A I am not aware of agencies stating that they cannot share or send to us their data because of law.

Q Okay. And for the data that you received or that thief agreed to share are you aware of any circumstance where the law would not permit you to use the data in order to impute citizenship?

MR. SVERDLOV: Objection. Calls for a legal conclusion and to the extent it pertains to the ongoing deliberations about the use of data, that this information we would view as protected under the deliberative process privilege so I will
instruct the witness not to answer that portion.

BY MR. DAVIS:

Q    Let's start over. Are you aware of any circumstance where the Census Bureau has determined that it is unable to use a set of administrative data because of some impediment of the law?

MR. SVERDLOV: Objection, vague.

MR. DAVIS: Or some legal requirement.

MR. SVERDLOV: Objection. Compound.

A    I am not aware of that.

Q    Would you look at the document, one of the ones that you brought with you today, that's marked as Exhibit 11? And this, for the record, is a memorandum of agreement between the United States Department of Commerce and the United States Department of Homeland Security. And I will refer you to page 17 of that document, Mrs. Battle.

Do you see that page with the heading attachment one, description of approved research project?

A    Yes. Yes.

Q    With the first paragraph says the Census
Bureau plans to use several administrative data sources of citizenship status in a statistical model that will produce a probability of being a U.S. citizen on April 1, 2020 for each person in the 2020 census.

First, is that in fact the Census Bureau's plans?

A The Census Bureau is acquiring administrative records that it will evaluate and the Census Bureau will then finalize their plans about how they specifically will determine citizenship for those enumerated in the census.

Q Okay. What does it mean to produce a probability of being a U.S. citizen?

A In this general approach the probability would be a value between zero and one.

Q Okay. Well, what if the probability is .5; is that person counted as a citizen or a non-citizen?

MR. SVERDLOV: Objection. Vague and misleading, assumes facts not in evidence.

A The final methodology for how the Census
Bureau will use administrative records and to actually develop the citizenship status for individuals in the census has not been finalized yet to be able to tell it you that information.

Q  Okay. Let me make sure I understand you by asking you a different way. Has the Census Bureau yet decided how high the probability must be of citizenship before a person is counted as a U.S. citizen?

A  I am not aware of the Census Bureau making that decision yet.

Q  Okay. And who would be making that decision?


A  The final methodology that the Census Bureau will use to create the CVAP file will need to be vetted and approved by executive leadership at the Census Bureau as well as at the Department of Commerce.

Q  Okay. So executive leadership has to approve it it. I assume that there are employees of
the Census Bureau who will be working on answers to
these questions to recommend to executive
leadership. Is that true?

MR. SVERDLOV: Objection. Vague.

A Yes.

Q Okay. And do you know who within the
Census Bureau will be working on recommendations to
make to executive leadership?

MR. SVERDLOV: Objection. Vague and
assumes facts not in evidence.

A The Census Bureau will look to an internal
expert team that includes leadership from John Abowd
and the development of the recommendation about how
to develop the statistical models, how to use
probability data if that indeed will be part of the
final methodology.

Q Mrs. Battle, when you talk about in terms
of probability of citizenship and the value between
zero and one, what does zero mean?

MR. SVERDLOV: Objection. Vague.

A The methodology that needs to be finalized
will determine what the values of the range of the
probabilities actually means.

Q Okay. I guess you would give me the same answer if I asked what one means in that scenario?

A Yes. All of that has to be finalized in the methodology.

Q Okay. Let's say, Mrs. Battle, that after the 2020 census the Census Bureau counts in a particular census block 100 voting age white citizens, 40 voting age African-American citizens and ten non-citizens. Are those numbers going to be reported for that census block?

MR. SVERDLOV: Objection. Vague. And compound. To the extent it concerns ongoing deliberations that question would, the answer to that question would be protected by the glib process privilege. I think more percent right now is that this question is verging outside the scope of the negotiated topics and I think we would benefit from you explaining how you view the, that type of count you described as following within one of the topics we negotiated.

MR. DAVIS: I'm making the numbers up. I
don't care what the numbers are. I just want to
know if you count particular numbers in the census
block. This is going back to the injecting noise
and I just want to understand that as well as I can
while with I have the opportunity to speak with you.
So the first step is if you measure X number of,
let's just stick with X number of Caucasian voting
age citizens in a census block, is that X in fact
going to be release Ford that census block or
because of noise will it be changed to some other
number?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau will take enumerated
counts for a block and those data along with all the
other census data collected in the decennial census
will go through the disclosure avoidance process and
noise will be injected.

Q Okay. And after -- how will the numbers
for a block look different after noise is injected?

MR. SVERDLOV: Objection. Calls for
speculation.
BY MR. DAVIS:

Q    I'm going to break that down with
different questions to see if maybe I can make it
sense a little more for me.

      After you inject noise, would the total
population of the block change?

MR. SVERDLOV: Objection. Vague.

A    The current plans for using disclosure
avoidance in the decennial census holds that only
the state's population totals will be as enumerated
in the census and other population totals may change
because of noise that's been injected.

Q    Okay. So the numbers reported for a
particular census block may not be accurate then if
I understand you correctly?

MR. SVERDLOV: I'm going to object based
on scope once again and this time I'm going to
direct the witness not to answer. I do not see how
this bears on the question of state apportionments,
which is the nature of your claims in this lawsuit
and therefore the predicate for --

MR. DAVIS: We will come back to that. We
1 will just skip that for now.

2 BY MR. DAVIS:

3 Q But from what you described, Mrs. Battle, voting age population at the state level will be correct?

4 MR. SVERDLOV: Objection. Vague. SA*EP.

5 A The state population totals will will be as enumerated in the decennial census.

6 Q Okay. Will you be releasing citizen voting age population at the state level?

7 A That level of geography traditionally has been published with the CVAP data file. The final specifications for the 2020 CVAP are not finalized yet.

8 Q Is there any doubt that the Census Bureau will in fact release CVAP data after the 2020 census?

9 MR. SVERDLOV: Objection. Vague.

10 A The Census Bureau plans to release the CVAP data after the census. The goal is to produce that by March 31st of 2021.

11 Q Does the Census Bureau have any intention
that you are aware of to seek information concerning deferred action for childhood arrives programs?

MR. SVERDLOV: Objection. I will direct the witness not to answer both on the basis of scope and deliberative process privilege.

MR. DAVIS: Have you made a decision as to whether or not to seek that data.

MR. SVERDLOV: Objection. Assumes facts not in evidence. And outside the scope. But if --

BY MR. DAVIS:

Q I feel like the administrative data that may be available to address citizenship is well within the scope of the topics. So I will ask again. Has the Census Bureau made any decision as to whether it will seek information related to the deferred action for childhood arrivals program?


A I am not aware of any decision that's been made regarding that topic.

Q Okay. I am almost positive that at times
today I have referred to the census department when it's really the Census Bureau. If I have done that, will we understood each other had? You knew who I was talking about, that I meant the Census Bureau, did you not?

MR. SVERDLOV: Objection. Misleading.

A  Yes.

MR. DAVIS: Do you all need a break?
PWRA*D PWRA*D are you done?

MR. DAVIS: Not quite. But close.

BY MR. DAVIS:

Q  Would you look at tab 17 of your notebook, please, Mrs. Battle?

MR. SVERDLOV: I'm sorry? What tab?

MR. DAVIS: Tab 17.

(WITNESS Exhibit Number #
was marked for identification.)

BY MR. DAVIS:

Q  And, Mrs. Battle, take all the time you want. I really just want to know if you can identify that document for me just so I can get on the record if you know what that document is.
163
ROUGH DRAFT

Let's mark it as exhibit?

MR. DAVIS: For the record, I made a mistake. This document will be marked as Exhibit 16 to Mrs. Battle's deposition.

(WITNESS Exhibit Number #

was marked for identification.)

BY MR. DAVIS:

Q Can you identify the document that's been marked as Exhibit 16, Mrs. Battle?

A This is the Department of Homeland Security immigration related information sharing with U.S. Census Bureau, December 20th, 2019.

Q And how is it that different from the document we marked as Exhibit 11, the memorandum of agreement between the Department of Commerce and the U.S. Department of Homeland Security?

MR. SVERDLOV: Objection. Vague and misleading and assumes facts not in evidence and to it the extent you are asking the witness to testify about the Department of Homeland Security document that you have marked as Exhibit 16, it is outside the scope of this deposition because the witness is
testifying on behalf of the U.S. Census Bureau, not
the Department of Homeland Security.

BY MR. DAVIS:

Q Have you reviewed the document that's been
marked Exhibit 16 before?

A I am not familiar with this particular
document.

Q That's all. That's fine. Then I will
have no other questions about it.

Mrs. Battle, does the Census Bureau know
yet whether it is feasible to produce high quality
citizen voting age population data using
administrative records?

MR. SVERDLOV: Objection. Vague and
misleading, assumes facts not in evidence.

A The Census Bureau will need to continue
evaluating the administrative records that we have
recently acquired before being able to make that
statement.

Q So the answer is the bureau just doesn't
know yet? Is that true?

A Yes.
Q Okay. If it didn't know now, then it didn't know the answer to that question in 2019 or 2018 or 2017, did it?

MR. SVERDLOV: Objection. Argumentative.

A The Census Bureau needs to get access to the data and be able to evaluate that to make that final decision.

Q So if someone said in 2019 that, yes, the Census Bureau can use administrative data and use that to produce high quality citizen voting age population data, that would have been incorrect?

MR. SVERDLOV: Objection. Vague and misleading.

A The goal of the Census Bureau is to use administrative records to produce high quality data on citizenship for the population. But we need to access the data that we believe may be helpful to us and just make sure that it will be of the quality that we need for the purposes that we need.

Q After the 2020 census, Mrs. Battle, does the Census Bureau intend to release a total population count for each state?
After the decennial census the Census Bureau intends to publish a, an apportionment population count for the state, which would include a resident population count for the state as well as the federal fill rated overseas population for the state.

Q Okay. Will it produce as a part of any product a count of the number of U.S. citizens residing in each state?

MR. SVERDLOV: Objection. Vague.

A The Census Bureau in the development of the citizen voting age population file would include data on the number of citizens of voting age. The final format of other information that would be in that CVAP file has to be finalized.

Q The numbers released for citizenship if I understood you correctly will be the number of citizens of voting age; is that correct?

A Yes. That would be in the citizen voting age data product.

Q But does the Census Bureau also intend to count each person, even those not of voting age as a
citizen or a non-citizen?

MR. SVERDLOV: Objection. Vague. And misleading.

A The Census Bureau through the use of administrative records will be determining a citizenship value for all those counted in decennial census.

Q Does the Census Bureau plan to count the number of non citizens who are lawfully present in each state?

MR. SVERDLOV: Objection. Vague and misleading.

A The Census Bureau plans to count in the decennial enumeration all of those who are usual residents of the state regardless of citizenship status.

Q Do you know and does the Census Bureau know whether any of the administrative data that it has sought or obtained would contain administrative data on lawful residents? Let me say by that I mean do you know whether any of the data from any of these other agencies will contain information to let
you impute whether or not a person counted is a non
citizen counted is a lawful resident of the United
States?

MR. SVERDLOV: Objection. Vague and
misleading.

A   I can't speak to whether the Census Bureau
will impute a particular legal status to someone in
a decennial census. The Census Bureau is acquiring
administrative records that will have some of that
information.

Q   Okay. What are some of those? And I will
refer you, Mrs. Battle, to the document that's been
marked as Exhibit 6. I'm not limiting you to that
exhibit, but it may be a place to start. And again
what I'm asking you is to tell me which of these
records either have or may have information related
to the lawful status of a non citizen.

A   So in Exhibit 6 on page 2, in the bottom
part of the table we see data that either has been
acquired or we are waiting to acquire from the
Department of Homeland Security which would include
information on lawful permanent residences and
natural lysed citizens as well as prior lawful my 
grants, people with student visas or temporary work
visas, et cetera.

And page 3 -- at the top the Department of
State, we are waiting to acquire those records on
data regarding the rev gee population.

Q   Any other sources of data listed on
Exhibit 6 that may have information about lawful
residency?

A   I would need to defer back to the
memorandum of understanding withing all of these
agencies which lists the variables specifically that
are being requested to determine that.

Q   If a state agrees to release information
to the Census Bureau, and by information I mean
administrative data requested as part of the effort
to comply with the executive order, is the Census
Bureau interesting into agreements with those states
or memorandums ever understanding?

MR. SVERDLOV: Objection. Vague.

A   The Census Bureau will need to have a
memorandum of understanding or enter, transfer
agreement to document exactly what the Census Bureau
is requesting, yes.

Q  Look. Nebraska is listed on here and
providing you some information; correct?

A  Yes.

Q  Does that mean that Nebraska has entered
into a memorandum of understanding with the Census
Bureau?

A  In order for the Census Bureau to acquire
those data there needs to be a memorandum of
understanding.

Q  Gotcha.

MR. DAVIS:  This is off the record.

- - -

(Discussion off the Record.)

- - -

BY MR. DAVIS:

Q  Back on. Mrs. Battle, if the Census
Bureau determined that it was going to make a count
of non citizens who were lawfully present in each
state, is there additional administrative data that
the Census Bureau would need in order to accomplish
MR. SVERDLOV: Objection. I will skip the form objection asks just object on the basis of deliberative process privilege and instruct the witness not to answer.

Q Mrs. Battle, has the Census Bureau made any decision that should it determine to make a count of persons who were unlawful any present non citizens in each state that it would need additional administrative data to do that?

MR. SVERDLOV: Objection, vague and compound, assumes facts not in evidence. SA*EP.

A The Census Bureau has not made any determination at this point as to additional information that could be produced or published regarding lawful immigrants.

Q We discussed earlier, Mrs. Battle, the different steps that the Census Bureau goes through when it's attempting to make an enumeration, you send out the form, sometimes enumerator, sometime in certain case cans you might ask a neighbor, sometimes the hot deck interpretations. My question
is this: Are each of these steps, each of these
efforts, are they part of the Census Bureau's
efforts to make the census as accurate as possible?

MR. SVERDLOV: Objection. Vague. Calls
for a legal conclusion.

A The Census Bureau strives to conduct as
accurate and as complete a count as possible and
utilizes many different operations and techniques to
help us meet that goal.

Q Certainly. And imputation, for example,
is it true that at least one of the reasons why the
Census Bureau uses characteristic imputation for the
use of administrative records is that because it
results in a more accurate census?

MR. SVERDLOV: Objection. Vague.

A Yes.

MR. DAVIS: Can we go off the record so I
can talk to my colleagues? We can take a break.
Let us chat and we will be right back.

MR. SVERDLOV: Why don't you chat and then
we will figure out next.

(Recessed at TIME   AMPM  )
MR. DAVIS: I think I'm up and I can say we have no further questions. We really appreciate counsel hosting Mrs. Battle. We thank you for taking time to speak to us and helping with these issues. Before I close I would say that there is still documents to be produced or documents that through unavoidable technical difficulties we just received a new copy of today. If in the course ever reviewing those documents there is something that we need additional testimony about, I reserve the right to speak with counsel and seek additional testimony. Although, we would in those circumstances most certainly try to exhaust other ways of getting the information.

MR. SVERDLOV: We understand your position and we certainly do not consent to anything at this time but we are happy to work with you to resolve any issues that may arise.

MR. DAVIS: Thank you.

MR. SVERDLOV: We don't have -- I don't have any questions for Mrs. Battle. We will reserve
the right to read and sign the transcript.

MR. DAVIS: Certainly.

MR. SVERDLOV: And otherwise we have nothing further.

MR. DAVIS: Thank you all.

(Whereupon, at TIME, the deposition of WITNESS NAME was concluded.)

* * * * *
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)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’ MOTION FOR
PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION
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Julie Hirschfeld Davis, Trump Calls Some Unauthorized Immigrants ‘Animals’ in
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Nick Miroff, Trump suspends Global Entry, traveler programs for New York
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Remarks by President Trump at Signing of H.R. 3401 (July 1, 2019),
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INTRODUCTION

This lawsuit challenges Defendants’ flagrantly unconstitutional and unlawful decision to exclude undocumented immigrants from the total-population base that is used to apportion congressional seats among the States. This decision violates the unambiguous mandate in Article I and the Fourteenth Amendment that all “persons in each State” be included “according to their respective [n]umbers” in the apportionment base. U.S. Const. amend. XIV, § 2; id. art. I, § 2, cl. 3. Both this Court and the Supreme Court have already determined that this language requires the federal government “to count every single person residing in the United States, whether citizen or noncitizen, whether living here with legal status or without.” New York v. U.S. Dep’t of Commerce, 351 F. Supp. 3d 502, 514 (S.D.N.Y. 2019), aff’d 139 S. Ct. 2551 (2019); accord Evenwel v. Abbott, 136 S. Ct. 1120, 1129 (2016). The inclusion of all immigrants was expressly discussed and endorsed in the debates over the Fourteenth Amendment. And every decennial census since the Fourteenth Amendment’s adoption has counted all residents without regard to their citizenship or immigration status.

The sheer clarity of this constitutional command entitles Plaintiffs to summary judgment on their constitutional claims against Defendants’ exclusionary policy. Defendants have no discretion or authority to disregard the Constitution’s plain text and extensive history, to flout prior rulings from this Court and the Supreme Court, or to break with more than two hundred years of settled practice.

Plaintiffs are also entitled to summary judgment because Defendants’ exclusion of undocumented immigrants from the apportionment base is an ultra vires violation of the statutory provisions that Congress enacted to implement the Constitution’s clear requirements. Congress has mandated that the decennial enumeration count all persons, regardless of immigration status, and that the President’s apportionment report to Congress must be based

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solely on this enumeration of all persons. See 13 U.S.C. § 141(a), (b); 2 U.S.C. § 2a.
Defendants’ exclusionary policy will necessarily conflict with these statutory requirements.

Finally, in the alternative, Plaintiffs are entitled to a preliminary injunction on their
constitutional and statutory claims. Such relief is essential because Plaintiffs and their residents
or constituents are suffering immediate and irreparable injury from Defendants’ sudden
announcement of their exclusionary policy. Most immediately, Defendants’ actions are deterring
immigrant households from responding to the ongoing enumeration for the 2020 census by
sowing confusion, mistrust, and fear among immigrant households about the consequences of
responding to the census. That deterrent effect is heightened by the plainly xenophobic and
discriminatory purpose animating Defendants’ exclusionary policy—the latest in a long string of
open attacks by this administration on immigrant communities and the cities and States where
they reside. And Defendants have only exacerbated these immediate harms to the ongoing
enumeration and underscored the need for immediate relief with their recent announcement that
they are unilaterally curtailing census follow-up operations by a full month, from October 31 to
September 30.

Under these unusual and pressing circumstances, Plaintiffs are entitled to expedited
summary judgment on their constitutional and statutory claims, or a preliminary injunction to
avert immediate harm.

BACKGROUND

I. Constitutional and statutory framework.

The Constitution requires that seats in the House of Representatives “shall be apportioned
among the several States according to their respective numbers, counting the whole number of
persons in each State, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2; see id. art. I,
§ 2, cl. 3. The number of Representatives apportioned to each State, along with the two Senators
given to each State, determines the allocation among the States of electors in the Electoral College. *Id.* art. II, § 1, cl. 2; *see also* 3 U.S.C. § 3. To apportion Representatives among the States, and in turn to allocate electors among the States, the Constitution requires a decennial “actual Enumeration” of all persons living here—the resulting numbers from which must constitute the apportionment base. U.S. Const. art. I, § 2, cl. 3.

The Constitution provides that the decennial enumeration shall be made “in such manner as [Congress] shall direct by law.” *Id.* In the Census Act, Congress has assigned the responsibility of conducting the enumeration to the Secretary of Commerce, who may delegate authority for establishing census procedures to the Census Bureau. 13 U.S.C. §§ 2, 4, 141.

The Census Act sets specific deadlines for conducting the enumeration and corresponding apportionment of Representatives. The Act requires that the decennial census be taken on April 1, 2020, the “decennial census date.” *Id.* § 141(a). Within nine months of the decennial census date, *i.e.*, by January 1, 2021, the Secretary of Commerce must report to the President “[t]he tabulation of total population by States” that is “required for the apportionment of Representatives in Congress among the several States.” *Id.* § 141(b). Between January 3 and January 10, 2021, the President must transmit to Congress “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” using the method of equal proportions, with each State receiving at least one Member. 2 U.S.C. § 2a(a). Within fifteen days of receiving the President’s statement, the Clerk of the House of Representatives must transmit “to the executive of each State a certificate of the number of Representatives to which such State is entitled.” *Id.* § 2a(b).
II. The Presidential Memorandum.

On July 21, 2020, President Trump issued a memorandum declaring that “[f]or the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude” undocumented immigrants from the congressional apportionment base “to the maximum extent feasible and consistent with the discretion delegated to the executive branch.” 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).\(^1\) The Memorandum asserts 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,” and that “States adopting policies . . . that hobble Federal efforts to enforce the immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives.” Id.

The Memorandum makes clear that the President both understands and intends that excluding undocumented immigrants from the apportionment base will reallocate political power between the States, and specifically that it will weaken political influence for States with larger undocumented immigrant populations. See id. Referring to one State whose residents include more than two million undocumented immigrants,\(^2\) the Memorandum notes that “[i]ncluding 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.

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\(^1\) All docket references are to 20-CV-5770 (JMF) unless otherwise specified.

\(^2\) This State is California, but Texas is similarly situated. See Pls.’ Rule 56.1 Stmt. ¶¶ 3-4. The Governmental Plaintiffs include two local jurisdictions in California and three counties in Texas; and the NGO Plaintiffs have members residing in those States, see id. ¶¶ 23-51.
The Memorandum accordingly directs the Secretary of Commerce, “[i]n preparing his report to the President under section 141(b) of title 13,” to “take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable,” to exclude undocumented immigrants from the final determination regarding the “whole number of persons in each State” that the President transmits to Congress pursuant to 2 U.S.C. § 2(a). Memorandum, 85 Fed. Reg. at 44,679-80.

III. Events precipitating the Presidential Memorandum.

The Presidential Memorandum was not issued in a vacuum, but against the backdrop of prior litigation about the census. In New York v. Department of Commerce, this Court held that Secretary of Commerce Wilbur Ross’s decision to add a citizenship question to the 2020 census violated the Administrative Procedure Act and enjoined the addition of the question, 351 F. Supp. 3d—a decision affirmed in part by the Supreme Court on the ground that the reason the Secretary provided for adding the citizenship question was pretextual. Dep’t of Commerce v. New York, 139 S. Ct. 2551 (2019). After trial, new evidence emerged about the reason for adding the question.

In August 2015, Republican redistricting strategist Thomas Hofeller authored a study advising that a citizenship question on the census was necessary to gather data to exclude noncitizens from the redistricting population base, a result “advantageous to Republicans and Non-Hispanic Whites.”3 He then helped ghostwrite a letter to the Commerce Department requesting a citizenship question that was funneled through several intermediaries before

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3 Pls.’ Mot. for Order to Show Cause, 18-cv-2921 (JMF), ECF No. 595-1 at 63 (May 30, 2019) (citing exhibits).
becoming part of the Secretary’s effort to add a citizenship question. Less than a week after the Supreme Court’s decision, Defendant Trump confirmed that efforts to add the citizenship question was intended to curtail the growing political power of immigrant communities of color. He first stated that the citizenship question was “very important [] to find out if someone is a citizen as opposed to an illegal.” A few days later, Defendant Trump said: “Number one . . . you need it for Congress, for districting. You need it for appropriations. Where are the funds going? How many people are there?” The following week, he noted that “[s]ome states may want to draw state and local legislative districts based upon the voter-eligible population.”

In announcing the Presidential Memorandum, Defendant Trump expressly linked the Presidential Memorandum to the citizenship question effort, proclaiming he was fulfilling his promise that he would “not back down in [his] effort to determine the citizenship status of the United States population.” Defendant Trump has also linked the Memorandum to a broader campaign against so-called sanctuary cities and States—jurisdictions that elect in some circumstances to limit their cooperation with federal immigration enforcement.

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9 Defendant Trump has sought by executive order to bar “sanctuary jurisdictions” from receiving
Memorandum states that one of its objectives is to punish States for enacting policies that the federal government disfavors. Memorandum, 85 Fed. Reg. at 44,680.

The Presidential Memorandum is part of a broader pattern of Defendant Trump’s “expressed animus against non-white, non-European immigrants.” Ramos v. Nielsen, 336 F. Supp. 3d 1075, 1098 (N.D. Cal. 2018); see also id. at 1100 (citing such statements). To take just one example, he asked during a meeting concerning “immigrants from Haiti, El Salvador, and African countries,” why the United States was “‘having all these people from shithole countries come here?’” and “suggested that the United States should instead bring more people from countries such as [mostly white] Norway.” Id. He also asked: “‘Why do we need more Haitians?’ and insisted they be removed from an immigration deal.” Saget v. Trump, 345 F. Supp. 3d 287, 303 (E.D.N.Y. 2018). In 2018, he referred to certain immigrants as “animals.”

ARGUMENT

I. Standard of review.

Summary judgment is warranted when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).


To obtain a preliminary injunction, Plaintiffs must establish that they are likely to suffer irreparable harm absent preliminary relief; they are likely to succeed on the merits; the balance of the equities tips in their favor; and an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

II. **Plaintiffs include jurisdictions and residents of jurisdictions that would lose representation if undocumented immigrants were excluded from the population base used for congressional apportionment.**

Plaintiffs have standing to bring this challenge because—among other injuries—the exclusion of undocumented immigrants from the apportionment base will cause Plaintiffs or the jurisdictions in which Plaintiffs operate to lose seats in the House of Representatives. Such a loss “undoubtedly satisfies the injury-in-fact requirement of Article III standing.” *New York*, 351 F. Supp. 3d at 607 (quotation marks omitted); see also *Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 330 (1999) (holding that the plaintiffs demonstrated standing for purposes of summary judgment by submitting an expert affidavit showing that “it is a virtual certainty that Indiana will lose a seat . . . under the Department’s Plan”).

The Memorandum expressly states that the policy of excluding undocumented immigrants from the apportionment base is intended to, and is certain to cause, California to lose at least one seat in the House of Representatives. And it is certain to have the same effect on Texas. The Memorandum states that “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.” Memorandum, 85 Fed. Reg. at 44,680. According to the Department of Homeland Security, as of 2015, California had 2.9 million undocumented residents and Texas had 1.9 million undocumented residents in 2015. Pls.’ 56.1 Stmt. ¶ 4. According to the Census Bureau’s
most recent estimates, as of July 1, 2019, the total population of California was 39,512,223 and the total population of Texas was 28,995,881. Pls.’ 56.1 Stmt. ¶¶ 12, 14. These estimates from the Census Bureau and DHS indicate that undocumented immigrants constitute approximately 7.3% of the population of California and approximately 6.6% of the population of Texas. 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. Pls.’ 56.1 Stmt. ¶ 5. Based on these facts alone, there can be no dispute that the exclusion of undocumented immigrants will cause California and Texas to lose at least one seat in the House.

Additionally, Plaintiff’s expert, Dr. Christopher Warshaw, confirms that the Memorandum will “almost certainly” cause certain States to lose seats in Congress. Warshaw Decl. ¶ 11 (Ex. 58).11 Dr. Warshaw modeled the effects of excluding undocumented immigrants from the population count used to calculate congressional reapportionment after the 2020 census. Pls.’ 56.1 Stmt. ¶ 20; Warshaw Decl. ¶ 11 (Ex. 56). According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment base, there is a 98.3% probability that Texas will lose a seat in the House of Representatives, and a 72.1% probability for California. Pls.’ 56.1 Stmt. ¶¶ 21–22; Warshaw Decl. ¶ 47 tbl. 8 (Ex. 58).

The Governmental Plaintiff’s include jurisdictions in California (the City and County of San Francisco, and Monterey County) and Texas (Cameron, El Paso, and Hidalgo Counties). See Governmental Plaintiffs’ Am. Compl. ¶¶ 42, 44–46, 48 (ECF No. 34). The NGO Plaintiff’s include organizations with members residing in both States. Pls.’ 56.1 Stmt. ¶¶ 33–34 (ADC); id. ¶¶ 40–41 (FIEL Houston, Inc.); id. ¶¶ 46–47 (Ahri). Residents of these Plaintiff counties

11 Citations in this Memorandum to “Ex. __” are to the exhibits to the accompanying Declaration of Matthew Colangelo dated August 7, 2020.
and the Texas- and California-based members of Plaintiff organizations will suffer a loss of political power if Texas or California lose a congressional seat. Indeed, ADC has members in all 50 states—any change to apportionment is certain harm a member of ADC. Pls.’ 56.1 Stmt.

¶ 34.12

These injuries are traceable to Defendants’ recent actions and redressable by a favorable ruling from this Court. There is no question that the exclusion of undocumented immigrants from the apportionment base will directly affect the apportionment. Indeed, the Presidential Memorandum itself both acknowledges and intends this effect on apportionment, see Memorandum, 85 Fed. Reg. at 44,680. Moreover, this Court previously found—and the Supreme Court agreed—that the predictable effects of defendants’ actions on the accuracy of the ongoing enumeration are sufficient to establish traceability. New York, 351 F. Supp. 3d at 619–25. And all of these injuries will plainly be redressed by a favorable ruling that requires Defendants to do what the Constitution mandates: “counting the whole number of persons in each State.” U.S. Const. amend. XIV, § 2.

III. Defendants’ decision to exclude undocumented immigrants from the apportionment base violates Article I and the Fourteenth Amendment.

A. The Constitution explicitly requires the population base for apportionment to include the whole number of persons in each State.

Defendants’ blanket exclusion of undocumented immigrants from the apportionment base, without regard to their physical residence here, flagrantly violates the Constitution. The Constitution’s plain language requires that all “persons” physically living “in each State” be

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12 Plaintiffs’ representational harms alone suffice to establish injury-in-fact for standing purposes. To the extent Defendants oppose summary judgment on standing grounds, Plaintiffs intend to present additional evidence establishing the other injuries alleged in their complaints. See Governmental Plaintiffs’ Am. Compl. ¶¶ 117–36 (ECF No. 34); NGO Plaintiffs’ First Am. Compl. ¶¶ 19–83 (ECF No. 62).
included in the apportionment count—regardless of their citizenship or immigration status. U.S. Const. amend. XIV, § 2; id. art. I, § 2, cl. 3 (requiring apportionment “according to [the States’] respective Numbers”). The Framers of the Fourteenth Amendment specifically chose to refer to “persons” rather than “citizens” in the Fourteenth Amendment’s text to ensure that noncitizens residing in this country are included in apportioning House seats. The Supreme Court confirmed four years ago that the Constitution requires congressional apportionment based on each State’s total population, including undocumented immigrants. See Evenwel. 136 S. Ct. at 1123. And settled practice for more than two hundred years has adhered to this rule.

Defendants have turned this constitutional and historical consensus on its head. They have treated as dispositive a factor that has always been considered immaterial for apportionment (immigration status). And they have treated as immaterial a factor that has consistently determined the apportionment base since the first census in 1790 (physical residence). Defendants cannot fundamentally alter the constitutional order by decreeing that millions of undocumented immigrants who indisputably live in this country are not “persons.”

1. The Constitution’s text unambiguously mandates counting all persons, including undocumented immigrants, in the apportionment base.

The constitutional mandate to base apportionment on all persons living in the United States, without regard to their immigration status, is clear. Section 2 of the Fourteenth Amendment requires that U.S. House seats “shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2 (emphasis added). And Article I requires that the “respective Numbers” of each State be determined by an “actual Enumeration” of the total population. Id. art. I, § 2, cl. 3.
The Supreme Court has held that the term “person” in the Fourteenth Amendment includes undocumented immigrants. *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The Court explained that, “[w]hatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sentence of that term.” *Id.* Because undocumented immigrants “are clearly ‘persons,’” the plain text of the Fourteenth Amendment is “not ambiguous” in mandating that undocumented immigrants living in this country must be included for apportionment. *Fed’n for Am. Immigration Reform (FAIR) v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C. 1980) (three-judge court). This Court has recognized as much: “[b]y its terms, . . . the Constitution mandates that every ten years the federal government endeavor to count *every single person* residing in the United States, whether citizen or noncitizen, *whether living here with legal status or without,*” and “[t]he population count derived from that effort is used . . . to apportion Representatives among the states.” *New York*, 351 F. Supp. 3d at 514 (emphases added).

By contrast, the Constitution uses distinct language when referring to a subset of persons. For example, the Constitution repeatedly uses the term “citizens” rather than “persons” to describe the subset of persons living here who hold citizenship. *See*, e.g., U.S. Const. art. 1, § 2, cl. 2 (“No Person shall be a Representative who shall not have . . . been seven Years a Citizen of the United States”). The same distinction appears in Section 2 of the Fourteenth Amendment, which requires the apportionment base to include “the whole number of persons in each State,” but then provides that a State that denies the right to vote to “citizens of the United States” will have its basis of representation reduced. U.S. Const. amend. XIV, § 2 (emphasis added).

Similarly, the Constitution originally contained two express exclusions from the apportionment base, neither of which turned on immigration status. First, the original Apportionment Clause excluded all “Indians not taxed,” U.S. Const. art. I, § 2, cl. 3, an
exception that became irrelevant after the Indian Citizenship Act of 1924, Pub. L. No. 68-175, 43 Stat. 253. Second, it infamously counted slaves as only three-fifths of a person for apportionment, U.S. Const. art. I, § 2, cl. 3, an exception overturned by the Fourteenth Amendment. “By making express provision for Indians and slaves, the Framers demonstrated their awareness that” the otherwise “all-inclusive” language delineating the population base for apportionment does not permit the exclusion of any other residents. FAIR, 486 F. Supp. at 576.

2. The Constitution’s broad terms reflected a conscious intent to include all persons, including all immigrants, in the apportionment base.

The choice to base apportionment on total population, regardless of citizenship or immigration status, was no accident. Both the original Framers and the Framers of the Fourteenth Amendment chose to “allocate[e] House seats to States” with “total population as the congressional apportionment base,” a mandate based on their fundamental “theory of the Constitution.” Evenwel, 136 S. Ct. at 1128–29.

“At the time of the founding, the Framers confronted the question” of how to allocate seats in the new government to the States. Id. at 1127. “The Framers’ solution, now known as the Great Compromise, was to provide each State the same number of seats in the Senate, and to allocate House seats based on States’ total population,” that is, “according to their respective Numbers.” Id. (quoting U.S. Const. art. I, § 2, cl. 3) (emphasis in original). In selecting all residents as the basis for apportionment, the Framers specifically considered and rejected other proposals, such as allocating House “representation based on wealth or property.” 1 The Records of the Federal Convention of 1787 (“Farrand’s Records”), at 542 (Max Farrand ed., 1911) (Pierce Butler). As James Madison explained, “[i]t is a fundamental principle of the proposed Constitution that as the aggregate number of representatives allotted to the several
States, is to be … founded on the aggregate number of inhabitants.” The Federalist No. 54 (James Madison) (emphasis added).

The Framers made clear that basing apportionment on total population guaranteed every person representation in the House, regardless of their legal status, thus ensuring that the House will “be the most exact transcript of the whole Society,” 1 Farrand’s Records, supra, at 142 (James Wilson), and provide representation to “every individual of the community at large,” id. at 473 (Alexander Hamilton). Thus, as the Supreme Court has explained, “the basis of representation in the House was to include all inhabitants,” Evenwel, 136 S. Ct. at 1127, including women, children, indentured servants, and many other individuals who did not have the right to vote or full legal status. See Garza v. County of Los Angeles, 918 F.2d 763, 774 (9th Cir. 1990); see also Wesberry v. Sanders, 376 U.S. 1, 13 (“[W]hen the delegates agreed that the House should represent ‘people’ they intended that in allocating Congressmen the number assigned to each State should be determined solely by the number of the State’s inhabitants.”).

When drafting the Fourteenth Amendment, Congress reconsidered the proper basis for apportioning House seats and reaffirmed that apportionment must be based on all persons living in each State—including noncitizens. “Concerned that Southern states would not willingly enfranchise freed slaves, and aware that ‘a slave’s freedom could swell his state’s population for purposes of representation in the House,’” the Fourteenth Amendment’s Framers “considered at length the possibility of allocating House seats to states on the basis of voter population” or citizen population. Id. (quoting Joseph T. Sneed III, Footprints on the Rocks of the Mountain: An Account of the Enactment of the Fourteenth Amendment 28 (1997)). For example, on December 5, 1865, Thaddeus Stevens proposed apportioning Representatives among the States “according to their respective legal voters,” specifying that “for this purpose none may be named
as legal voters who are not either natural-born citizens or naturalized foreigners.” Cong. Globe, 39th Cong., 1st Sess. 10 (1865).

Later, on January 16, 1866, the Joint Committee of Fifteen on Reconstruction that drafted the Fourteenth Amendment initially voted to adopt a proposal that would have required apportioning House seats based on “the whole number of citizens of the United States in each state.” Benjamin B. Kendrick, The Journal of the Joint Committee of Fifteen on Reconstruction, 39th Congress, 1865-1867, 49–52 (Ex. 52). After further deliberations, however, Representative Conkling “moved to amend the proposed article by striking out the words ‘citizens of the United States in each state,’ and inserting in lieu thereof the words, ‘persons in each State, including Indians not taxed.’” Id. at 52. The Joint Committee adopted Conkling’s amendment by a vote of 11-3. Id.

Representative Conkling explained that basing apportionment on “persons” rather than “citizens” was essential to passage of the Fourteenth Amendment:

It has been insisted that “citizens of the United States” and not “persons” should be the basis of representation and apportionment. These words were in the amendment as I originally drew it and introduced it, but my own judgment was that it should be “persons,” and to this the committee assented.

There are several answers to the argument in favor of “citizens” rather than “persons.” The present Constitution is, and always was opposed to this suggestion. ‘Persons,’ and not ‘citizens,’ have always constituted the basis.

Again, it would narrow the basis for taxation and cause considerable inequalities in this response, because the number of aliens in some States is very large, and growing larger now, when emigrants reach our shores at the rate of more than a State a year.

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13 Where indicated, Plaintiffs have filed certain of the original sources cited in this discussion as Exhibits to these papers. Plaintiffs can provide the Court with copies of other legislative or historical materials if it would assist the Court’s review.
Again, many of the large States now hold their representation in part by reason of their aliens, and the Legislatures and people of these States are to pass upon the amendment. It must be acceptable to them.


The Framers of the Fourteenth Amendment further made clear that the Amendment requires including all immigrants in the apportionment base. As Representative John Bingham explained, the “whole immigrant population should be numbered with the people and counted as part of them” because “[u]nder the Constitution as it now is and as it always has been, the entire immigrant population of this country is included in the basis of representation.” Id. at 432 (emphases added); see also id. at 2944 (Sen. Williams) (“Representation is now based upon population,” including “foreigners not naturalized.”). Proponents of maintaining the total-population apportionment base repeatedly declared their refusal to “throw[] out of the basis at least two and a half millions of unnaturalized foreignborn men and women.” Id. at 1256 (Sen. Henry Wilson); see also, e.g., id. at 2987 (proposal to apportion based on voting population was “blow which strikes the two million one hundred thousand unnaturalized foreigners who are now counted in the basis of representation from that basis”); id. at 411 (Rep. Burton Cook) (representation based on voters improperly “takes from the basis of representation all unnaturalized foreigners”).

The Framers believed that excluding residents from the apportionment base, including immigrants, would fatally undermine a cornerstone of the Constitution—“equal representation for equal numbers of people.” Wesberry, 376 U.S. at 18. A basic “idea of the Constitution” has always been, and continues to be, that “the whole population is represented; that although all do not vote, yet all are heard.” Cong. Globe, 39th Cong., 1st Sess. 705 (1866) (Sen. William Fessenden). No matter a person’s legal status, the Framers emphasized, “[a]ll the people, or all the members of a State or community, are equally entitled to protection; they are all subject to its
laws; they must all share its burdens, and they are all interested in its legislation and government.” *Id.* at 2962 (1866) (Sen. Luke Poland). As Senator Jacob Howard explained when introducing the amendment’s final language on the Senate Floor:

     Its basis of representation is numbers . . . that is, the whole population. The committee adopted numbers as the most just and satisfactory basis, and this is the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers; and such . . . is the safest and most secure principle upon which the Government can rest. Numbers, not voters; numbers, not property; this is the theory of the Constitution.


Defendants’ actions to exclude an entire category of persons living in this country from apportionment break this foundational promise and flout the explicit intent of the Framers of the Fourteenth Amendment.

3. **The Supreme Court has determined that the Constitution requires counting all persons, including undocumented immigrants, for apportionment.**

   Just four years ago, the Supreme Court confirmed that the Fourteenth Amendment requires including all immigrants in apportioning House seats. In *Evenwel*, the plaintiff's argued that Texas was required to exclude noncitizens—many of whom are undocumented—in equalizing population for legislative districts within the State. The Supreme Court rejected this claim on the ground that, with respect to *inter*-state apportionment, Section 2 of the Fourteenth Amendment “retained total population as the congressional apportionment base.” *Evenwel*, 136 S. Ct. at 1128. The Court emphasized: “[i]t cannot be that the Fourteenth Amendment calls for the apportionment of congressional districts based on total population, but simultaneously prohibits States from apportioning their own legislative districts on the same basis.” *Id.* at 1128–29. The concurring Justices agreed that “House seats are apportioned based on total population.”
Id. at 1148 (Alito, J., concurring in the judgment); see also id. at 1138 (Thomas, J., concurring in the judgment) (similar).

Thus, all nine Justices in Evenwel agreed that apportionment of House seats among the States must be based on total population, including noncitizens. And that constitutional determination was central to the Court’s rejection of the plaintiffs’ claim there. The Presidential Memorandum thus defies the Supreme Court’s decision of just four years ago.

4. **Centuries of established practice further confirm that the apportionment base must include undocumented immigrants.**

*Evenwel* is consistent with not only the Constitution’s clear text and extensive history, but also more than two hundred years of unbroken practice that has always included all persons residing in each State, regardless of their citizenship or immigration status, in the apportionment base. See *Evenwel*, 136 S. Ct. at 1133 (relying on “settled practice”). Judicial “interpretation of the Constitution” may be “guided by a Government practice that has been open, widespread, and unchallenged since the early days of the Republic.” Dep’t of Commerce, 139 S. Ct. at 2567 (internal quotation marks and citations omitted). And the Supreme Court has emphasized “the importance of historical practice in” understanding the Enumeration Clause specifically. *Wisconsin v. City of New York*, 517 U.S. 1, 21 (1996).

Since the first census in 1790, “[t]he Census Bureau has always attempted to count every person residing in a state on Census day, and the population base for purposes of apportionment has always included all persons, including aliens both lawfully and unlawfully within our borders.” *FAIR*, 486 F. Supp. at 576; see, e.g., Census Act of 1790, S. 101, 1st Cong. § 5, (1790). Both Congress and the Executive Branch have long made clear that this unbroken historical practice is constitutionally required.
Congress has repeatedly rejected statutory proposals to exclude all noncitizens or undocumented immigrants from the apportionment base on the ground that the Constitution forbids any such exclusion. For example, in 1929, Congress rejected proposals to amend the Census Act to exclude noncitizens from apportionment after members of the House and Senate repeatedly declared that “the plain mandate of the Constitution” requires counting all persons, including all noncitizens, for apportionment. 71 Cong. Rec. 1910 (May 25, 1929) (Sen. Bratton); see, e.g., id. at 1958 (May 27, 1929) (Sen. Reed), 2451-52 (June 6, 1929) (Rep. Griffith). The Senate’s legislative counsel provided a legal opinion confirming that all immigrants living here must be included given the Constitution’s “‘natural and obvious’ meaning,” “the history of the fourteenth amendment, the evidence of the records of the Constitutional Convention, and the uniform past congressional construction of the term by Congress in its apportionment legislation.” Id. at 1822 (May 23, 1929).

In 1940, in enacting a bill to amend the 1929 Act, see Pub. L. No. 76-481, Congress again rejected a proposal to exclude noncitizens from apportionment. See H.R. Rep. No. 1787, at 1 (1940) (Ex. 55) (committee report showing proposed exclusion of noncitizens). As Representative Emanuel Celler explained in opposing the proposal:

For 150 years we have included aliens in the count. We cannot, by mere resolution of this body or the adjoining body, change that constitutional requirement. If you strike out aliens you have parted with a principle of government upon which the fathers agreed some 150 years ago...When we use the word “persons” we include all peoples.

Cong. Rec. H4372 (Apr. 11, 1940); 86 Cong. Rec. at 4384-86 (voting 209-23 to strike exclusion).

And in 1980, a bill to exclude undocumented immigrants from the apportionment base failed after New York Senator Jacob Javits explained that there is no plausible way to construe the Constitution’s words as meaning “anything other than as described in Federalist papers, the

The Executive Branch has likewise consistently maintained that the Constitution requires counting all persons, regardless of immigration status, in the apportionment base. For example, in FAIR v. Klutznick, the Department of Justice, on behalf of the President, Secretary of Commerce, and Director of the Census Bureau, urged a district court to reject claims demanding exclusion of undocumented immigrants from the apportionment base. Defs.’ Mem. of Points & Authorities in Support of Mot. to Dismiss or for Summary Judgment, No. 79-3269 (D.D.C.), reprinted in 1980 Census, supra, at 125-156. The government explained that “the plain language of the Constitution, as well as the intent of its framers, establishes that all inhabitants, including illegal aliens, must be enumerated for the purpose of apportioning Representatives.” Id. at 131.

Similarly, the Department of Justice’s Office of Legislative Affairs has opined that the Constitution “require[s] that inhabitants of States who are illegal aliens be included in the census count.” Letter from Assistant Attorney Gen. Carol T. Crawford to Honorable Jeff Bingaman (Sept. 22, 1989), in 135 Cong. Rec. S22,521 (daily ed. Sept. 29, 1989).

Defendants have acknowledged that the decennial enumeration that necessarily determines the apportionment base must count all persons living in the United States, without any exclusions. For example, on March 14, 2019, Secretary Ross testified under oath during a congressional committee hearing that “[t]he constitutional mandate, sir, for the census is to try to count every person residing in the U.S. at their place of residence on the dates when the census is conducted.” Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 31 (Mar. 14, 2019) (emphasis added); see id. (“We intend to try to count every person taking all necessary
actions to do so.” (emphasis added)). During a congressional committee hearing in February 2020, Census Bureau Director Dillingham testified that the Bureau will “count everyone, wherever they are living,” including undocumented immigrants. *Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 12 (Feb. 12, 2020) (emphasis added).

In multiple filings in this Court, many of the Defendants here repeatedly admitted that the Constitution requires enumerating every person residing in the United States, no matter their immigration status, for inclusion in the apportionment base. *See, e.g.*, *New York v. Dep’t of Commerce*, Defs.’ Post-Trial Proposed Findings of Fact and Conclusions of Law 1, 18-CV-2921 (JMF) (S.D.N.Y. Nov. 21, 2018), ECF No. 546 (“Constitution requires the federal government to conduct a Decennial Census counting the total number of ‘persons’—with no reference to citizenship status—residing in each state.” (internal citations omitted)).

And, under a final rule adopted for the 2020 census, the Census Bureau has already decided to count undocumented immigrants for apportionment purposes. *See Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525, 5533 (Feb. 8, 2018).

Defendants’ attempt to reverse course at the last minute after the actual enumeration is already underway, and to exclude undocumented immigrants from the apportionment base for the first time in our country’s history, reflects a radical break from the consistent understanding and practice of the federal government for more than two centuries. There is simply no textual or historical support for this abrupt break in one of our country’s foundational principles.

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14 *See also, e.g.*, *New York v. Dep’t of Commerce*, Memo. of Law in Support of Defs.’ Mot. to Dismiss 25, 18-CV-2921 (JMF) (S.D.N.Y. May 25, 2018), ECF No. 155 (“Constitution supplies a simple judicial standard for determining the constitutionality of [Census Bureau] practices—the Secretary must perform a person-by-person headcount” (emphasis added)).
5. Defendants do not have any “discretion” to exclude undocumented immigrants from the apportionment base.

Contrary to the President’s Memorandum, the Executive Branch does not have “discretion” to categorically exclude undocumented immigrants from the “whole number of persons in each State” based solely on their immigration status, without any regard to their physical residence here. 85 Fed. Reg. at 44,679.

The Memorandum reasons that apportionment should be based only on the number of “inhabitants” of each State, and that the President purportedly has discretion to deem undocumented immigrants who reside here as not “inhabitants.” Id. But even if being an “inhabitant” were the relevant criterion, millions of undocumented immigrants who live in this country are indisputably inhabitants because they live here, many for years or even decades. An “inhabitant” is “a person . . . that lives in a particular place.” Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/inhabitant. The President has no discretion to declare that undocumented residents of this country are not “inhabitants.”

The text of the Constitution and an unbroken line of history also foreclose any discretion here. The Supreme Court has held that “[u]sual residence” is “the gloss given the constitutional phrase ‘in each State’” in Section 2 of the Fourteenth Amendment—meaning all persons whose “usual residence” is in the United States “must be included in the enumeration of the population and the apportionment of House seats.” Franklin v. Massachusetts, 505 U.S. 788, 805 (1992). And “usual residence” has always been the criterion for enumeration and apportionment since “the first enumeration Act.” Id. Conversely, the Framers specifically considered and rejected the notion that a person’s legal status—including voter, citizenship, or immigration status—could ever override their physical residence in the United States and result in their exclusion from the apportionment base. See 85 Fed. Reg, at 44,680. Defendants lack any authority to
exclude undocumented immigrants who maintain their usual residence in the United States from the apportionment.

The Memorandum’s conclusory attempts to support its invocation of “discretion” rely on inapposite examples. For example, the Memorandum asserts that noncitizens who are only temporarily in the United States for a vacation or a business trip are not included in the decennial enumeration used for apportionment even though they may be “physically present.” 85 Fed. Reg. at 44,679. But temporary visitors are not included in the apportionment base precisely because the United States is not their “usual residence.” See 83 Fed. Reg. at 5533. By contrast, the millions of undocumented immigrants whom Defendants seek to exclude from apportionment are not merely “physically present” as a fleeting matter but rather are residents here—many for years or even decades. The policy of excluding temporary visitors provides no support for Defendants’ attempt to exclude actual residents of this country who happen to be undocumented immigrants.

Defendants also point to the Secretary of Commerce’s decision, “at various times, to include” in the apportionment federal military and civil personnel who are not physically present in this country but are temporarily serving overseas. 85 Fed. Reg. at 44,679. But the policy of including overseas federal personnel takes as a given the principle that all persons living in the United States must be counted for apportionment purposes, and simply extends that principle to persons who can be deemed to maintain a “usual residence” in the country—because they have “retained their ties to the States”—even though they have been “temporarily stationed abroad” by the government. Franklin, 505 U.S. at 806 (emphasis added). In no sense does this inclusionary policy to include persons who are not currently physically present in their home
States authorize Defendants to *exclude* persons who indisputably reside here and thus are part of the “whole number of persons in each State.” U.S. Const. amend. XIV.

**B. Apportioning Representatives based on numbers other than the actual enumeration from the decennial census is also unconstitutional.**

The Presidential Memorandum violates the Constitution for a second, independent reason: it requires the use of data other than the “actual Enumeration” of the population ascertained by the decennial census to apportion Representatives. The actual enumeration in the 2020 census indisputably will include undocumented immigrants, and the Constitution requires Defendants to rely solely on this “actual Enumeration” for congressional apportionment. The subtraction of undocumented immigrants to create an apportionment base that is different from the population included in the actual enumeration violates this constitutional requirement.

Article 1, Section 2 mandates that House seats be allocated based on the “numbers” determined by the “actual Enumeration” of the decennial census. U.S. Const. art 1, § 2. While the Executive Branch may maintain some discretion over the manner of conducting the census, *see Franklin*, 505 U.S. at 799; *Utah v. Evans*, 536 U.S. 452 (2002), once the decennial census determines the “actual Enumeration,” Defendants must use those numbers—and only those numbers—to apportion House seats. As the Supreme Court has explained, “the Constitution provides that the results of the census shall be used to apportion the Members of the House of Representatives among the States.” *Wisconsin*, 517 U.S. at 5 (emphasis added). And “[t]he decennial census is the only census that is used for apportionment purposes.” *Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 341 (1999) (quotation marks omitted) (emphasis added).

The Framers required that apportionment be based solely on the numbers from the actual enumeration to provide a fixed rule “that would limit political chicanery.” *Utah*, 536 U.S. at 500
(Thomas, J., concurring in part and dissenting in part). The Framers’ “principal concern was that the Constitution establish a standard resistant to manipulation.” *Id.* at 503. George Mason described having a “permanent and precise standard as essential to fair representation,” because absent such a standard, “those who have power in their hands will not give it up while they can retain it.” *Id.* at 502 (quoting The Founders’ Constitution 102-03 (P. Kurland & R. Lerner eds. 1987)). Roger Sherman agreed that “the rule of revising the Representation ought to be fixt by the Constitution.” *Id.* (quoting The Founders’ Constitution 104). And Alexander Hamilton, writing about the Enumeration Clause’s apportionment of direct taxes among the States, explained that “*an actual Census or enumeration of the people must furnish the rule,*” so as to “shut[] the door to partiality or oppression.” The Federalist No. 36 at 220 (emphasis added).

For the 2020 census, the actual Enumeration will continue to include undocumented immigrants. Defendant Dillingham recently confirmed in congressional testimony that the Memorandum “does not change the Census Bureau’s plans for field data collection across the nation,” and that the Bureau will “continue full steam ahead with . . . counting every person,” including undocumented immigrants. Prepared Statement of Dr. Steven Dillingham Before the House Oversight and Reform Committee (July 29, 2020). Dillingham reaffirmed that the Census Bureau will continue to adhere to its Residence Rule for the 2020 census, see *id.*, which requires enumerating undocumented immigrants “at the U.S. residence where they live and sleep most of the time.” 83 Fed. Reg. at 5533. And Defendants confirmed to this Court in this case that “[t]he Census Bureau is conducting a complete enumeration of the total population and

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15 https://docs.house.gov/meetings/GO/GO00/20200729/110948/HHRG-116-GO00-Wstate-DillinghamS-20200729.pdf.

The Presidential Memorandum, however, directs the use of population totals excluding undocumented immigrants for apportionment—which are different from the actual Enumeration. To implement the Memorandum, Defendants would need to take the actual Enumeration numbers and subtract some estimate of the undocumented immigrants who live in each State, using administrative data or statistical models from sources other than the decennial actual Enumeration. See 85 Fed. Reg. at 44,679-80. Defendants would then use the resulting figures—rather than the actual Enumeration numbers—as the apportionment base. See id. Defendants’ recent submission to this Court confirmed that, under the Memorandum, “an apportionment number . . . will be chosen by the President after the census is complete.” Joint Letter 5, New York v. Trump, 20-CV-5770 (JMF), ECF No. 37 (S.D.N.Y. filed Aug. 3, 2020). In other words, the President will “choose” a “number” for the apportionment base that differs from the “complete enumeration of the total population.” Id. at 9.

The Constitution prohibits Defendants from apportioning seats in this manner. The President does not have “discretion” to add to, subtract from, or otherwise alter the numbers of persons actually enumerated through the decennial census to “choose” a separate apportionment base of his own liking. As the Census Bureau has recognized for decades, there is unbroken

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16 If Defendants assert, contrary to Dillingham’s congressional testimony, the Residence Rule, and Defendants’ recent submission, that the “actual Enumeration” is the numbers derived after subtracting undocumented immigrants from the 2020 census count, that also would violate the Enumeration Clause. The Enumeration Clause prohibits Defendants from subtracting enumerated people out of the actual Enumeration numbers, and it certainly prohibits Defendants from doing so based on statistical estimates that rely on sampling and administrative data from outside agencies. See, e.g., U.S. House of Representatives, 525 U.S. at 346-47 (Scalia, J., concurring in part) (“an ‘enumeration’ requires an actual counting”).

Indeed, Defendants’ scheme to deviate from the actual Enumeration numbers in shaping political power for the next decade represents precisely the type of “political chicanery” and “manipulation” that the Framers prevented by adopting the Enumeration Clause. *Utah*, 536 U.S. at 500, 503 (Thomas, J., concurring in part and dissenting in part). The Memorandum makes no secret that Defendants seek to exclude undocumented immigrants from the apportionment base for political reasons. The Memorandum explicitly seeks to prevent certain States from being “rewarded with greater representation in the House of Representatives,” and even singles out a particular state—California—whose political power Defendants wish to reduce. 85 Fed. Reg. at 44,680. The Framers foresaw that leaders could seek to manipulate congressional apportionment for their own political benefit, and they guarded against such abuse by mandating that apportionment be determined by the actual Enumeration of the population ascertained through a decennial census, and nothing else.

IV. The Memorandum is *ultra vires* under the statutory scheme Congress enacted to implement the required decennial census and reapportionment of House seats.

The President’s Memorandum also violates statutory provisions Congress enacted to implement those constitutional requirements. See 13 U.S.C. § 141(a), (b); 2 U.S.C. § 2a. The Memorandum is *ultra vires* under these statutes in at least three ways.

A. The Memorandum violates the statutory requirements to count the total population, and to report and use that total for apportionment purposes.

Congress enacted a statutory scheme directing that the whole population of the States—including undocumented immigrants who reside here—must be counted in the decennial census
and then used to apportion representatives. 13 U.S.C. § 141; 2 U.S.C. § 2a. As Congress explained in enacting predecessors to these two provisions in a single statute,\textsuperscript{17} “the functions served by them interlock,” because “there is but one basic constitutional function served by the census. It is to provide an enumeration of the people for the purpose of redistributing congressional representatives proportioned thereto.” S. Rep. No. 71-2, at 2 (1929) (Ex. 53).

As codified at 13 U.S.C. § 141(a), the Census Act instructs that the Secretary of Commerce “shall . . . take a decennial census of population . . . .” Subsection (b) then specifies that “[t]he tabulation of total population by States under subsection (a) . . . as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.” Id. § 141(b); see also Act of June 18, 1929, § 2, 46 Stat. 21, 21 (requiring same tabulation). These provisions together require that there be a “census of population” under subsection (a), that this census include a “tabulation of total population by States as required for” apportionment, and that this tabulation then be provided in a report to the President.

In turn, 2 U.S.C. § 2a(a) directs the President to provide Congress an apportionment report that is based solely on the census’s tabulation of population and application of a mathematical apportionment method to that result. As the statute provides, “the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent 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 . . . .” 2 U.S.C. § 2a (emphases added); see also Act

\textsuperscript{17} See Act of June 18, 1929, §§ 2, 22.
of June 18, 1929, § 2, 46 Stat. 21, 21; Pub. L. No. 77-291, § 1 (amending provision of 1929 Act to require use of “equal proportions” method). The “method of equal proportions” is a method of apportionment based on each State’s population designed to minimize disparities in “population per Representative” among States. 71 Cong. Rec. at 4965 (Mar. 2 1929) (“Memorandum on the Method of Equal Proportions’’ by Professor Edward Huntington noting unanimous adoption of method by Advisory Committee of the Census); 67 Cong. Rec. at 7078 (Apr. 7, 1926) (Advisory Committee report describing method as providing “an apportionment in which the ratios between the representation and the population of the Several States are as nearly alike as possible”). The Department of Justice has recognized that the method of equal proportions relies on each State’s population. Br. for Appellants, Dep’t of Commerce v. Montana, 503 U.S. 442 (1992), 1992 WL 672939, at *9-*11 (“Under all of the methods, the formula for establishing each State’s priorities has as its numerator the population of the State.”).

By requiring the exclusion of undocumented immigrants from the statutory phrases “total population” and “whole number of persons in each State,” the Memorandum directs the President and the Secretary of Commerce to perform unlawful, ultra vires actions.

The Commerce Secretary is not empowered to provide the President with information “as required for the apportionment” other than a “tabulation of total population.” 13 U.S.C. § 141(b) (emphasis added). And the President is not empowered to exclude undocumented immigrants from “the whole number of persons in each State” or from the apportionment numbers in his apportionment report to Congress. 2 U.S.C. § 2a(a). The reason is simple: undocumented immigrants are persons. As a matter of plain language, the word “person” in § 2a makes no distinction based on citizenship or immigration status. See also supra Part III.A. (same discussion in context of Fourteenth Amendment). At no point has Congress had trouble
distinguishing among persons, citizens, and noncitizens when it wishes to do so—and it certainly had no such trouble in 1929 when §§ 141 and 2a were initially enacted. See, e.g., Pub. L. No. 71-962, § 6(b) (prohibiting “alien” from “being admitted to citizenship” without being “a person of good moral character” as shown by, inter alia, testimony of two “citizens of the United States”). Similarly, the single exception reflected in § 2a’s text—“Indians not taxed”—suggests no other exclusions were intended. See Greene v. United States, 79 F.3d 1348, 1355 (2d Cir. 1996) (“mention of one impliedly excludes others”).

Congress is also “presumed to legislate with familiarity of the legal backdrop for its legislation.” Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela, 863 F.3d 96, 114 (2d Cir. 2017). That backdrop speaks volumes. Congress adopted the “whole number of persons” statutory language in 1929 (and again in 1941) against (1) its own unbroken legislative practice to count noncitizens, including undocumented immigrants, for apportionment purposes; and (2) Supreme Court precedent holding that “person” in the Fourteenth Amendment includes undocumented immigrants. See supra Part III.A. This further shows that the statute requires including such individuals in apportionment. When “Congress used the materially same language [in a statute] it presumptively was aware of the longstanding judicial interpretation of the phrase and intended for it to retain its established meaning.” See Lamar, Archer & Cofrin, LLP v. Appling, 138 S. Ct. 1752, 1762 (2018) (unanimous court on this point); see also New York v. U.S. Dep’t of Homeland Sec., __ F.3d __, 2020 WL 4457951, at *21 (2d Cir. Aug. 4, 2020) (Congress “ratified the settled meaning” of a term in immigration law “[i]n light of the judicial, administrative, and legislative treatments” of that term from 1882 to 1996).

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18 For the vast majority of the nation’s history, Congress apportioned seats in the House by statute enacted shortly after the decennial census. See Br. for Appellants, Dep’t of Commerce v. Montana, 503 U.S. 442 (1992), 1992 WL 672929, at *4-*15.
The Memorandum also contradicts Congress’s unambiguous rejection of proposals to exclude noncitizens from the apportionment base. As discussed above, in enacting the 1929 Act in which 2 U.S.C. § 2a originated, both the Senate and House considered and rejected amendments to exclude noncitizens from the “whole number of persons in each State” for apportionment purposes. Congress again rejected such a bill in 1940, and again in 1980. See supra Part III.A.4. These votes show that Congress understood that the ordinary meaning of the phrase “persons in each state” included noncitizens: “at the time of the [Fourteenth Amendment’s adoption] and since, an alien was and has been a ‘person.’” 71 Cong. Rec. at 1821 (May 23, 1929). They also show that Congress understood that its own historical legislative practice had “been uniformly in favor of inclusion of aliens,” id. at 1822, such that enactment of the “whole number of persons” language would continue that unbroken practice.

The Census Bureau’s longstanding interpretation of its statutory obligations further confirms that undocumented immigrants residing in the United States are part of the enumerated population used to apportion House seats. “Congress is presumed to be aware of an administrative . . . interpretation of a statute.” Lorillard v. Pons, 434 U.S. 575, 580 (1978); see also New York, __ F.3d __, 2020 WL 4457951, at *21. On February 8, 2018, after notice-and-comment rulemaking, the Census Bureau promulgated its “Residence Rule” for the 2020 census, which is used to “determine where people are counted during each decennial census” in order “to apportion the seats in the U.S. House of Representatives among the States.” Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018). Its

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19 See 71 Cong. Rec. 2065 (vote on amendment by Sen. Sackett fails, 29-48) (1929); id. at 2360-63 (House adopts alienage exclusion as amendment to section 22 on June 4, 1929); id. at 2448-2445 (Rep. Tilson of Connecticut offers substitute for section 22 of the bill without alienage exclusion, House by vote of 202-129 sustains ruling of the chair against point of order against Tilson amendment, House adopts Tilson amendment 212-102, and House passes bill).
purpose is “to ensure that the concept of usual residence is interpreted and applied, consistent with the intent of the Census Act of 1790, which was authored by a Congress that included many of the framers of the U.S. Constitution and directed that people were to be counted at their usual residence.” *Id.* at 5526.

Under the Residence Rule, “[c]itizens of foreign countries living in the United States” must be “[c]ounted at the U.S. residence where they live and sleep most of the time.” *Id.* at 5533. The Census Bureau elaborated that the “Census Bureau is committed to counting every person in the 2020 Census,” including citizens of foreign countries living in the United States. *Id.* at 5526. And it considered comments “express[ing] concern about the impact of including undocumented people in the population counts for redistricting because these people cannot vote,” *id.* at 5530, but declined to make any changes to its residence criteria and indicated that it “will retain the proposed residence situation guidance for foreign citizens in the United States.” *Id.*

The Memorandum attempts to manufacture ambiguity on whether undocumented immigrants “inhabit” a State such that they constitute a “person[] in each State” for constitutional purposes. 85 Fed. Reg. at 44,679. But there is no such ambiguity: the phrase “whole number of persons in each State,” as used in 2 U.S.C. § 2a, has always been understood to include people who reside in a particular State regardless of alienage or immigration status. *See supra* Part III.A. Congress has repeatedly rejected measures to exclude aliens from § 2a—measures that would have made little sense if § 2a already excluded categories of aliens. Moreover, it would be inconsistent with § 2a—under which the President has a ministerial role to report the census’s count of total population and mandated to use a method designed to minimize per-district population disparities—to grant him discretion to exclude whole classes of persons.
B. The Memorandum violates the Census Act by producing apportionment figures that are not based solely on the decennial census.

The Memorandum’s reliance on non-census data to determine the number of undocumented immigrants to be removed from the apportionment base violates the requirement under 2 U.S.C. § 2a to use census data only.

Section 2a is clear that both the “whole number of persons” and the apportionment data must be ascertained from the decennial census. The provision specifies that this number must be “ascertained under the . . . decennial census of the population.” In Franklin v. Massachusetts, 505 U.S. 788 (1992), the Supreme Court affirmed that “Section 2a . . . expressly require[s] the President to use . . . the data from the ‘decennial census.’” Id. at 797.

The broader statutory scheme makes clear that the apportionment data reported by the President must come from the census alone. The Census Act specifies that “[t]he tabulation of total population by States” is “required for the apportionment of Representatives in Congress among the several States.” 13 U.S.C. § 141(b). As the Senate Report for the 1929 bill explained, “[t]he census would be taken in November, 1929. One year later, with these figures in

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20 The President’s statement must “show[] the whole number of persons in each State . . . as ascertained under the seventeenth and each subsequent decennial census of the population.” 2 U.S.C. § 2a. Apportionment must be based on “the method of equal proportions,” relying on that data. Id.

21 Franklin held that certain elements of 2 U.S.C. § 2a(a) are non-ministerial, but the Court appeared to limit those to circumstances in which the Secretary of Commerce has exercised policy judgment. See 505 U.S. at 799 (“§ 2a does not curtail the President’s authority to direct the Secretary in making policy judgments that result in ‘the decennial census’; he is not expressly required to adhere to the policy decisions reflected in the Secretary’s report.”).

Whatever those non-ministerial duties may be, Franklin is equally clear that use of the census data and the calculation of apportionment figures are ministerial. Id. at 797 (“Section 2a does not expressly require the President to use the data in the Secretary’s report, but, rather, the data from the “decennial census.”); id. at 799 (the President’s apportionment calculation is of a “ministerial nature”).
hand, the President would report the census figures, together with a table showing how, under these figures, the House would be apportioned.” S. Rep. 71-2 at 4 (emphases added) (Ex. 53).

The President’s use of the census’s count of the whole number of persons in each State, and application of the chosen mathematical method (equal proportions), are not discretionary matters. “The Department of Commerce counts the people (as it always has done),” and “the President reports upon a problem in mathematics which is standard, and for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer.” S. Rep. 71-2, at 4-5 (Ex. 53); see also H.R. Rep. 70-2010, at 7 (official providing report “is left with no discretionary power” and must use “without deviation, the population of each State” as reported in census) (Ex. 54). The Supreme Court has made equally clear that, under 2 U.S.C. § 2a, the President must use census data and that an apportionment based on that data is “admittedly ministerial.” Franklin, 505 U.S. at 797, 799.

The Supreme Court has further confirmed that the President’s apportionment report must be based on the population figures from the census, noting that the Apportionment and Census Acts “mandat[e] a population count that will be used to apportion representatives.” Dep’t of Commerce, 139 S. Ct. at 2568-69; see also U.S. House of Representatives, 525 U.S. at 321-22 (“Using this information [from the Census], the President must then “transmit to the Congress a statement showing the whole number of persons in each State . . . and the number of Representatives to which each State would be entitled.”).

The Department of Justice has also historically recognized that the apportionment must be based on the total population figures produced by the census. Reply Br. for the Federal Appellants at 15, Franklin v. Massachusetts (“[I]t is true that the method of equal proportions calls for application of a set mathematical formula to the state population totals produced by the
census”); Tr. of Oral Argument at 12, *Franklin*, 505 U.S. 788 (Deputy Solicitor General Roberts) ("The law directs [the President] to apply, of course, a particular mathematical formula to the population figures he receives . . . ."); *id.* at 12 ("It would be unlawful [for the President] . . . just to say, these are the figures, they are right, but I am going to submit a different statement."); *id.* at 13 ("I think under the law he is supposed to base his calculation on the figures submitted by the Secretary.").

The President’s Memorandum violates these requirements. To exclude undocumented immigrants from the apportionment base, *see* 85 Fed. Reg. at 44,680, the President will necessarily have to rely on information that is not contained within the census, because the 2020 census questionnaire is not gathering information concerning citizenship or immigration status. *See, e.g.*, Order, *New York v. U.S. Dep’t of Commerce*, 18-CV-2921 (JMF) (S.D.N.Y. Aug. 7, 2019), ECF No. 653 (permanently enjoining the inclusion of a citizenship question on the 2020 decennial census questionnaire).

Further, the Memorandum itself concedes that it will rely on information other than that obtained by the census. The Memorandum distinguishes between the enumeration information gathered by the census under the governing Residence Rule, and the information the President will use to exclude undocumented immigrants from the census count of whole persons:

> [T]he Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President’s discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary *shall also* include in that report information tabulated according to the methodology set forth in [the Residence Rule].

85 Fed. Reg. at 44,680 (emphasis added). The Memorandum additionally indicates that other “data on illegal aliens . . . relevant for the purpose of conducting the apportionment” may be available as a result of Executive Order 13,880, in which the President “instructed executive
departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country.” 85 Fed. Reg. at 44,680.

Simply put, the Memorandum violates statutory requirements by requiring the reporting to the President and the subsequent Presidential use of non-census data to calculate a whole number of persons in each State that is different from census results, and to apportion seats in Congress according to that latter figure.

C. The Memorandum violates 2 U.S.C. § 2a by producing apportionment figures that are not based solely on a ministerial calculation.

The President is required to report an apportionment calculation “by the method known as the method of equal proportions.” 2 U.S.C. § 2a. In Franklin, the Supreme Court made clear that the President’s apportionment calculation is of a “ministerial nature.” See Franklin, 505 U.S. at 799. Franklin noted that the Senate Report for the bill that presaged 2 U.S.C. § 2a, states that the President is to report “upon a problem in mathematics which is standard, and for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer.” Id. (quoting S. Rep. No. 2, 71st Cong., 1st Sess., at 4–5) (emphasis added).

The legislative history confirms the point. In 1920, for the first time, Congress failed to pass a reapportionment act. Montana, 503 U.S. at 451–52. Accordingly, in 1929, in passing the modern precursor to 13 U.S.C. § 141 and 2 U.S.C. § 2a, Congress ensured “an automatic reapportionment through the application of a mathematical formula to the census.” Franklin, 505 U.S. at 809 (Stevens, J., concurring in part and concurring in the judgment). “The automatic connection between the census and the reapportionment was the key innovation of the Act.” Id.
In 1941, the Act was modified to change the allocation formula to the current method of equal proportions. See id. at 809 n.5 (citing Montana, 503 U.S. at 451–52 & n.25).

Indeed, congressional debate makes clear that Congress intended to give the President no discretion in how reapportionment figures would be calculated. The sponsor of the bill, Senator Vandenburg, explained that the President had no discretion in such a calculation and that “as a matter of indisputable fact, th[e] function served by the President is as purely and completely a ministerial function as any function on earth could be.” 71 Cong. Rec. 1858 (1929); see also supra IV.B. (noting similar statements in committee reports).

As discussed supra, the Memorandum establishes a policy under which the President will perform additional calculations beyond those set forth by the method of equal proportions in order to derive an apportionment figure that excludes undocumented immigrants. 85 Fed. Reg. at 44,680 (“[I]t is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”). But Congress designed a system with only “one mathematical answer” to the question of apportionment, S. Rep. 71-2, at 4-5 (Ex. 53). By altering Congress’s required apportionment computation to add calculations not specified by 2 U.S.C. § 2a, the Memorandum causes the President to violate his ministerial duty to report apportionment figures under the “rigid specifications” provided by the method of equal proportions. S. Rep. No. 71-2, at 4–5 (Ex. 53). Such calculations therefore violate the “automatic connection between the census and the reapportionment” that Congress established. Franklin, 505 U.S. at 809 (Stevens, J., concurring in part and concurring in the judgment).
D. This Court has equitable authority to correct the Presidential Memorandum’s ultra vires mandates.

Because the Memorandum requires Defendants Trump and Ross to act beyond the plain scope of their statutory authority, the equitable jurisdiction of this Court is available to correct this ultra vires action and provide redress to Plaintiffs.

The Supreme Court has long recognized that federal courts have inherent equitable authority to grant relief to enjoin ultra vires action, such as that ordered by the Memorandum, even in the absence of an express statutory provision. The Court most recently reaffirmed this authority in Armstrong v. Exceptional Child Center, which explained that federal courts may grant injunctive relief absent a statutory cause of action “with respect to violations of federal law by federal officials.” 575 U.S. 320, 326-27 (2015). This inherent equitable authority, the Court noted in Armstrong, has been recognized for centuries “and reflects a long history of judicial review of illegal executive action, tracing back to England.” Id. at 327; see also generally Am. Sch. of Magnetic Healing v. McAnulty, 187 U.S. 94, 108, 110 (1902); Carroll v. Safford, 44 U.S. 441, 463 (1845).

The core purpose of inherent equitable authority is not just to provide redress for individuals whose statutory or constitutional rights are violated, but also to ensure the proper separation of powers and require “the executive to obey [Congress’s] statutory commands.” Bowen v. Mich. Acad. of Family Physicians, 476 U.S. 667, 681 (1986); see also Leedom v. Kyne, 358 U.S. 184, 191 (1958) (“This Court cannot lightly infer that Congress does not intend judicial protection of rights it confers against agency action taken in excess of delegated powers.”).

The modern doctrine of ultra vires review provides inherent, nonstatutory review for executive action in excess of statutory authority. See, e.g., Mountain States Legal Found. v. Bush, 306 F. 3d. 1122, 1136 (D.C. Cir. 2002) (“the Supreme Court has indicated generally that
review is available to ensure that the Proclamations are consistent with constitutional principles and that the President has not exceeded his statutory authority”); *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1327-28 (D.C. Cir. 1996) (“When an executive acts *ultra vires*, courts are normally available to reestablish the limits on his authority”). Such review exists independently from the Administrative Procedure Act (“APA”), and the APA does not restrict or “repeal the review of *ultra vires* actions.” *Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988); see also *Hawaii v. Trump*, 878 F.3d 662, 682 (9th Cir. 2017) (finding equitable cause of action “which exists outside of the APA”), *rev’d on other grounds*, 138 S. Ct. 2392 (2018); *Mittleman v. Postal Regulatory Comm’n*, 757 F.3d 300, 307 (D.C. Cir. 2014) (“the absence of a cause of action for judicial review under the APA does not necessarily foreclose all judicial review”); *Reich*, 74 F.3d at 1326-27 (engaging in *ultra vires* review where APA claim not pled).

Further, courts have consistently acknowledged that *ultra vires* review extends to review of actions taken by the *President*, not just subsidiary executive branch actors. *See, e.g.*, *Hawaii*, 878 F.3d at 682-83 (finding equitable cause of action “allows courts to review *ultra vires* actions by the President that go beyond the scope of the President’s statutory authority”); *Mountain States Legal Found.*, 306 F.3d at 1136 (finding equitable review generally available to determine whether presidential executive memoranda exceed statutory authority); *Reich*, 74 F.3d at 1327-28 (finding, under equitable review, that presidential executive order violated National Labor Relations Act). Indeed, the Supreme Court has often reviewed whether presidential actions comply with congressional statutes without specifying or identifying a cause of action. *See, e.g.*, *Sale v. Haitian Ctrs. Council*, 509 U.S. 155 (1993) (reviewing presidential actions relating to Haitian migrants for compliance with the INA without discussing cause of action); *Dames &
Moore v. Regan (453 U.S. 654 (1981)) (upholding executive orders, including their conformity with various statutes, without discussing causes of action).

Ultra vires review may be inappropriate in two circumstances, but neither exception applies here. First, inherent equitable authority is unwarranted where Congress has demonstrated an “intent to foreclose” equitable relief by providing alternate enforcement mechanisms and because the statute is judicially unadministrable. See Armstrong, 575 U.S. at 327-29. Here, there is no alternate mechanism for enforcing the statutory provisions at issue, and the statutory mandate and remedy—to include undocumented immigrants with all other people in the apportionment base—is eminently administrable.

Second, equitable review may be inappropriate “[w]here a statute . . . commits decisionmaking to the discretion of the President.” Dalton v. Specter, 511 U.S. 462, 477 (1994). But that is plainly not the case here, where Congress has mandated that the Secretary and the President perform specifically prescribed actions without any meaningful discretion. Indeed, the Supreme Court has held that by “mandating a population count that will be used to apportion representatives” under 13 U.S.C. § 141(b) and 2 U.S.C. § 2a, Congress did not commit unreviewable discretion the executive. Dep’t of Commerce, 139 S. Ct. at 2568-69.

It is beyond any question that the Memorandum requires action in excess of the authority granted by statute to the President and the Commerce Secretary. As such, this Court has ample power to grant the requested relief to ensure compliance with the law.

V. **Alternatively, a preliminary injunction is warranted to prevent irreparable harm.**

In the alternative, Plaintiffs are entitled to a preliminary injunction on their claims that the Memorandum violates the Constitution and federal law. Plaintiffs are likely to succeed on the merits of their claims that the decision to exclude undocumented immigrants from the apportionment base violates the Constitution and federal law, and that the Presidential
Memorandum violates Article I and Section 2 of the Fourteenth Amendment and violates the Census Act, for the reasons set out in Part III and Part IV above.

As this Court has recognized, “[a] showing of irreparable harm ‘is the single most important prerequisite for the issuance of a preliminary injunction.’” *XL Specialty Ins. Co. v. Level Glob. Inv’rs, L.P.*, 874 F. Supp. 2d 263, 270 (S.D.N.Y. 2012) (quoting *Faiveley Transport. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009)). Plaintiffs need only show a “threat of irreparable harm, not that irreparable harm already [has] occurred.” *Mullins v. City of New York*, 626 F.3d 47, 55 (2d Cir. 2010).

Plaintiffs will suffer irreparable and imminent harm because the Memorandum discourages immigrant households from responding to the 2020 census. The well-publicized Memorandum will produce a chilling effect on response rates by sowing confusion, mistrust, and fear among immigrant households about the consequences of responding to the census. The resulting decline in response rates will both degrade the quality of census data—thereby compromising the Governmental Plaintiffs’ policy and planning decisions that rely on that data—and result in an ultimate undercount of immigrant communities that will reduce the federal funds flowing to those communities.\(^{22}\) Plaintiffs will also suffer imminent, irreparable harm because the Memorandum will dilute the political power of Plaintiffs’ constituents.

\(^{22}\) This Court may take judicial notice of the evidentiary record from the related case of *State of New York v. Department of Commerce*, 18-CV-2921 (JMF), under the “established . . . approach that permits courts in subsequent related cases to rely upon the evidence presented in earlier litigation . . . to reach their own, independent findings of fact in the cases before them.” *Haim v. Islamic Republic of Iran*, 784 F. Supp. 2d 1, 6 (D.D.C. 2011); see *Hake v. Citibank, N.A.*, No. 19-MC-125 (JGK), 2020 WL 1467132, at *5 (S.D.N.Y. Mar. 26, 2020) (“[T]he court could ‘take judicial notice of the evidentiary record in another similar case and, from that, make certain factual findings that obviate the need for Plaintiffs to re-present the same evidence.’”) (citation, brackets, and internal quotation marks omitted).
A. The Presidential Memorandum will deter immigrants and their households from responding to the 2020 census.

The Memorandum, and Defendants’ corresponding public statements, are already predictably deterring participation in the ongoing decennial census and undermining the Census Bureau’s efforts to count immigrants and their families. Just as adding a citizenship question to the decennial census would have made non-citizen and Hispanic households “unlikely to respond (or to give a complete response) to in-person NRFU enumerators,” New York, 351 F. Supp. 3d at 585, so too will the exclusion of undocumented immigrants from the apportionment base make immigrant households less willing to respond to the census or to NRFU enumerators. Barreto Decl. ¶ 85 (Ex. 56).

Defendants’ decision to exclude undocumented immigrants from the apportionment base sends a clear message that this community does not count and should be left out of the democratic process. Bird Decl. ¶ 9 (Ex. 9); Choi Decl. ¶¶ 16-18 (Ex. 14); Colon Decl. ¶ 11 (Ex. 16); Cullinane Decl. ¶ 7 (Ex. 17); Espinosa Decl. ¶ 11 (Ex. 18); Khalaf Decl. ¶¶ 12 (Ex. 26); Matos Decl. ¶ 11 (Ex. 30); Mostofi Decl. ¶ 8 (Ex. 34); Oshiro Decl. ¶¶ 12-13 (Ex. 36); Sarmiento Decl. ¶ 5 (Ex. 42); Seon Decl. ¶¶ 13-14 (Ex. 43); Soto Decl. ¶ 12 (Ex. 45); Torres Decl. ¶ 19 (Ex. 47). This message, and its import, is widely known across immigrant communities, particularly those that consume Spanish-language media. Barreto Decl. ¶ 14 (Ex. 56); Oshiro Decl. ¶ 12 (Ex. 36); Torres Decl. ¶ 18 (Ex. 47). The Memorandum undercuts Plaintiffs’ messaging that “everyone counts” and effectively discourages immigrant households from responding to the census at all. Alvarez Decl. ¶ 11 (Ex. 1); Baldwin Decl. ¶ 8 (Ex. 4); Bird Decl. ¶ 12 (Ex. 9); Broughton Decl. ¶ 6 (Ex. 10); Brower Decl. ¶ 11 (Ex. 11); Bysiewicz Decl. ¶ 8 (Ex. 12); Choi Decl. ¶¶ 16-18 (Ex. 14); Colon Decl. ¶ 7 (Ex. 16); Espinosa Decl. ¶¶ 7, 12-13 (Ex. 18); Matos Decl. ¶ 9, 12 (Ex. 30); Murray Decl. ¶ 5 (Ex. 35); Oshiro Decl. ¶¶ 12-13 (Ex. 36);
Sarmiento Decl. ¶ 5 (Ex. 42); Seon Decl. ¶¶ 9, 14 (Ex. 43); Sivongxay Decl. ¶ 12 (Ex. 44); Soto Decl. ¶ 6 (Ex. 45); Torres Decl. ¶¶ 12, 13, 19 (Ex. 47); Barreto Decl. ¶¶ 33, 54 (Ex. 56). As the Chief Demographer for New York City has explained, the Memorandum “discredits the essential message that everyone’s response matters and makes an already fearful group more apprehensive about the perceived risks associated with responding [to the census].” Salvo Decl. ¶ 10 (Ex. 41).

As Dr. Matthew A. Barreto, a Chicano/a Studies professor with decades of experience in public opinion research in the Latino community, writes, the Memorandum both reduces the benefits and raises the risks of Census participation for undocumented immigrants because “the July 21 PM states they won’t count, and there is now a risk of their information being linked to immigration records and facing immigration enforcement.” Barreto Decl. ¶ 62 (Ex. 56); see also Torres Decl. ¶ 20 (Ex. 47). Following the issuance of the Memorandum, immigrant community members living in Monterey County, for example, expressed that “[w]e don’t matter, why be counted if at the end of the day being counted doesn’t matter in terms of political power, which is where we need it most.” Soto Decl. ¶ 12 (Ex. 45). And immigrant community members in Virginia explained that “they don’t see a benefit in filling out the [census] form if they will not be counted.” Sarmiento Decl. ¶ 6 (Ex. 42).

Furthermore, the Memorandum sows fear that the Trump Administration is again seeking to identify the location and numbers of undocumented immigrants, ostensibly for exclusion from apportionment (a grave harm in its own right), but also potentially for immigration enforcement purposes. Alvarez Decl. ¶ 10 (Ex. 1); Bird Decl. ¶ 6 (Ex. 9); Cullinane Decl. ¶ 8 (Ex. 17); Espinosa Decl. ¶¶ 12-13 (Ex. 18); Matos Decl. ¶ 12 (Ex. 30); Mostofii Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 10, 14 (Ex. 36); Roche Decl. ¶ 6 (Ex. 38); Sarmiento Decl. ¶ 12 (Ex. 42); Sivongxay Decl. ¶ 13 (Ex. 44). As Dr. Barreto explains, the Memorandum is likely to “generate a chilling
effect and incentivize households with undocumented immigrants to provide no additional information to the Federal Government that they feel would implicate their immigration status,” particularly with respect to census questionnaire items “asking about nativity or ethnic/racial group.” Barreto Decl. ¶ 31 (Ex. 56). Since the Memorandum was issued, mixed-status families have questioned “whether they should participate in the Census as a result of their fears that the Government could probe into the undocumented individuals in [their] extended famil[ies].” Espinosa Decl. ¶ 13 (Ex. 18); see also Choi Decl. ¶ 19 (Ex. 14); Oshiro Decl. ¶ 10 (Ex. 36); Torres Decl. ¶ 20 (Ex. 47). As with the citizenship question, these fears will predictably reduce census response rates in these communities, particularly with respect to government-related NRFU efforts.

Plaintiffs have already begun to see signs that the Memorandum is deterring census response in their own communities. See Baldwin Decl. ¶¶ 8-9 (Ex. 4); Bird Decl. ¶ 12 (Ex. 9); Choi Decl. ¶ 27 (Ex. 14); Espinosa Decl. ¶¶ 10-13 (Ex. 18); Khalaf Decl. ¶¶ 11-12 (Ex. 26); Mostofi Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 11-14 (Ex. 36); Sarmiento Decl. ¶ 7 (Ex. 42); Seon Decl. ¶¶ 13-17 (Ex. 43); Sivongxay Decl. ¶ 13 (Ex. 44); Soto Decl. ¶ 12 (Ex. 45); Torres Decl. ¶¶ 2, 16 (Ex. 47); Aranda-Yanoc Decl. ¶ 7 (Ex. 51). Plaintiffs have also observed an appreciable increase in the number of questions from immigrant and Latinx constituents and media (particularly Spanish-language media) about the privacy and confidentiality of their census responses, Barreto Decl. ¶ 16 (Ex. 56); Baldwin Decl. ¶ 8 (Ex. 4); Banerji Decl. ¶ 5 (Ex.5); Choi Decl. ¶ 19 (Ex. 14); Mostofi Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 10, 12, 14 (Ex. 36); Seon Decl. ¶ 16 (Ex. 43); Sivongxay Decl. ¶ 22 (Ex. 44); Torres Decl. ¶ 18 (Ex. 47); Aranda-Yanoc Decl. ¶ 7 (Ex. 51); as well as how the Administration would identify undocumented immigrant populations for exclusion from the apportionment count. Alvarez Decl. ¶ 10 (Ex. 1); Choi Decl.
¶ 18, 27 (Ex. 14); Cullinane Decl. ¶ 8 (Ex. 17); Espinosa Decl. ¶¶ 12-13 (Ex. 18); Oshiro Decl. ¶ 10 (Ex. 36); Seon Decl. ¶ 16 (Ex. 43). These concerns about privacy, confidentiality, and potential immigration consequences reflect further reluctance to respond to the census among an already hard-to-count population at a critical point in the enumeration—right before the start of NRFU operations. 23

Because of the Memorandum’s chilling effect on immigrant communities, the NGO Plaintiffs will have to divert resources from mission critical programs—including education, housing, and pandemic-related assistance—to additional census outreach. See New York, 351 F. Supp. 3d at 616-17; Choi Decl. ¶¶ 20-26 (Ex. 14); Espinosa Decl. ¶¶ 14-17 (Ex. 18); Khalaf Decl. ¶¶ 14-15 (Ex. 26); Oshiro Decl. ¶¶ 15-16 (Ex. 36); Seon Decl. ¶¶ 17-18 (Ex. 43); Torres Decl. ¶ 23 (Ex. 47). Plaintiffs’ census outreach efforts have centered on publicizing the importance of counting every person, regardless of citizenship or immigration status, including for apportionment purposes. See Choi Decl. ¶ 12; Espinosa Decl. ¶ 7 (Ex. 18); Oshiro Decl. ¶ 7 (Ex. 36); Seon Decl. ¶ 9 (Ex. 43); Torres Decl. ¶ 12 (Ex. 47). The Memorandum directly contradicts these messages, which has resulted in members of the communities that the NGO Plaintiffs serve expressing reluctance to respond to the census. Choi Decl. ¶¶ 17, 27 (Ex. 14); Espinosa Decl. ¶¶ 13-14 (Ex. 18); Khalaf Decl. ¶¶ 12-15 (Ex. 26); Oshiro Decl. ¶¶ 10-14 (Ex. 36); Seon Decl. ¶¶ 12-15 (Ex. 43). The NGO Plaintiffs are diverting resources to increase or revise their outreach efforts to overcome the Memorandum’s damage because once the enumeration period closes the opportunity for Plaintiffs to ensure their communities are counted—and receive the political power and government funding to which they are entitled—is


Defendants’ recent decision to accelerate the conclusion of nonresponse followup operations heightens the urgency—and exacerbates these injuries—because it limits the timeframe in which this Court can grant meaningful relief to redress these harms. The Bureau announced earlier this year that it would collect census responses through October 30. Thompson Decl. ¶ 14 (Ex. 57). On August 3, Defendants abruptly reversed course, opting to end field operations even earlier—on September 30, just 54 days from the date of this filing. See *Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count* (Aug. 3, 2020), https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html. This change dramatically reduces the remaining time during which individuals can respond to the census and the time for Plaintiffs to conduct outreach efforts to ensure a complete count. Bird Decl. ¶¶ 10-11 (Ex. 9); Choi Decl. ¶ 24 (Ex. 14); Espinosa Decl. ¶¶ 15, 21 (Ex. 18); Oshiro Decl. ¶ 18 (Ex. 36); Seon Decl. ¶ 22 (Ex. 43); Torres Decl. ¶ 24 (Ex. 47); Thompson Decl. ¶ 16 (Ex. 57). Furthermore, many of the Governmental Plaintiffs’ jurisdictions have already observed low response rates in immigrant communities. Alvarez Decl. ¶ 9 (Ex. 1); Baldwin Decl. ¶ 7 (Ex. 4); Brower Decl. ¶ 10 (Ex. 11); Bysiewicz Decl. ¶ 10 (Ex. 12); Hardcastle Decl. ¶ 5 (Ex. 21); Mohamed Decl. ¶ 8 (Ex. 33); Murray Decl. ¶ 7 (Ex. 35); Salvo Decl. ¶ 4 (Ex. 41); Sivongxay Decl. ¶ 10 (Ex. 44). The compounding deterrent effect of the Memorandum on response rates and the short window of time remaining to encourage response requires emergency relief.
B. By depressing response rates, the Presidential Memorandum will irreparably degrade the quality of census data vital to public policymaking and cause Plaintiffs to lose federal funding.

The Memorandum’s harm to response rates will inflict irreparable injury on Plaintiffs by degrading the quality of the resulting Census Bureau data and reducing the funding streams guided by that data. First, the decline in self-response and the decreased NRFU effectiveness resulting from the Memorandum’s chilling effect on immigrant communities will degrade the quality of the data that the Governmental Plaintiffs rely upon to “allocate educational and public health resources efficiently and effectively,” *New York*, 351 F. Supp. 3d at 610-11, as well as other critical public resources. Salvo Decl. ¶ 8 (Ex. 41); Aragon Decl. ¶ 5 (Ex. 2); Arwady Decl. ¶ 4 (Ex. 3); Baldwin Decl. ¶ 28 (Ex. 4); Bayer Decl. ¶ 6 (Ex. 6); Bell Decl. ¶ 5 (Ex. 7); Bird Decl. ¶ 13 (Ex. 9); Brower Decl. ¶ 13 (Ex. 11); Bysiewicz Decl. ¶ 9 (Ex. 12); Cassidy Decl. ¶ 5 (Ex. 13); Cline Decl. ¶ 5 (Ex. 15); Freedman Decl. ¶ 5; ¶ 5 (Ex. 20); Hardcastle Decl. ¶ 6 (Ex. 21); Jimenez Decl. ¶ 3-4 (Ex. 24); Kanef Decl. ¶ 5-6 (Ex. 25); Lundine Decl. ¶ 4 (Ex. 29); Medina Decl. ¶ 4 (Ex. 32); McCaw Decl. ¶ 7 (Ex. 31); Rapoza Decl. ¶ 7 (Ex. 37); Rodriguez Decl. ¶ 5 (Ex. 39); Rynerson Decl. ¶ 13; Sternesky Decl. ¶ 9 (Ex. 46); Wheeler Decl. ¶ 9 (Ex. 48); Wyatt Decl. ¶ 13 (Ex. 49); Wortman Decl. ¶ 5 (Ex. 50). Indeed, the decennial census is the “statistical backbone of our country”; census data allows the Government Plaintiffs to “guide[] policy decisions, assists in the direction of city resources generally, and informs responses to public health emergencies and disasters.” Salvo Decl. ¶ 13 (Ex. 41). The Governmental Plaintiffs rely upon the census to produce accurate characteristics data to make decisions about housing (Wyatt Decl. ¶¶ 3, 6-7, 11-12 (Ex. 49); Lopez Decl. ¶ 12 (Ex. 20); Sternesky Decl. ¶ 3 (Ex. 46)); school resources (Bird Decl. ¶¶ 14-15 (Ex. 9); Cassidy Decl. ¶ 3 (Ex. 13); Howell Decl. ¶ 2 (Ex. 23); Lane Decl. ¶ 5 (Ex. 27); Lopez Decl. ¶¶ 14-15 (Ex. 28); McCaw Decl. ¶ 6 (Ex. 31); Mohamed Decl. ¶ 6 (Ex. 33); Salvo Decl. ¶ 15 (Ex. 41)); public
health (Arwyad Decl. ¶ 6 (Ex. 3); Hammond Decl. ¶ 3 (Ex. 20); (Ex. 29); McCaw Decl. ¶ 6 (Ex. 31); Salvo Decl. ¶ 14 (Ex. 41)) and infrastructure and transportation (Aragon Decl. ¶ 5 (Ex. 2); Baldwin Decl. ¶ 16 (Ex. 4); Biagi Decl. ¶¶ 4-5 (Ex. 8); Brower Decl. ¶ 15 (Ex. 11); Lopez Decl. ¶ 13 (Ex. 28); Kanefl Decl. ¶ 3 (Ex. 25); McCaw Decl. ¶ 6 (Ex. 31); Mohamed Decl. ¶ 6 (Ex. 33); Salvo Decl. ¶ 17 (Ex. 41); Wheeler Decl. ¶ 4 (Ex. 48)), among other key decisions. A decline in the quality of that data will impair the Governmental Plaintiffs’ “ability to make and implement such policies.” New York, 351 F. Supp. 3d at 600.

Moreover, as with the citizenship question, reduced response rates among immigrant households due to the Memorandum will result in a net differential undercount of these households, as “each of NRFU’s steps will replicate or exacerbate the effects of the net differential decline in self-response rates among noncitizen households.” New York, 351 F. Supp. 3d at 583; Barreto Decl. ¶ 70 (Ex. 56) (“[T]he PM increases the likelihood that Latinos, immigrants, and noncitizens are less likely to self-respond to the 2020 census” and that “non-responding individuals are also unlikely to respond after household visits by census enumerators because of fear of government interaction.”); Thompson Decl. ¶ 13 (Ex. 57) (explaining that the Memorandum will impact the macro environment and undermine NRFU, “significantly increas[ing] the risk of larger total and differential undercounts”). This undercount will disproportionately deprive Plaintiffs and their constituents of federal funding for education and social services. New York, 351 F. Supp. 3d at 597-98; see also Aragon Decl. ¶ 6 (Ex. 2); Baldwin Decl. ¶ 15 (Ex. 4); Brower Decl. ¶ 25 (Ex. 11); Kanefl Decl. ¶ 4 (Ex. 22); Lopez Decl. ¶ 11 (Ex. 28).
C. Plaintiffs will be irreparably harmed by Defendants’ efforts to reallocate political power away from their jurisdictions.

The Memorandum’s stated goal—to shift political power away from jurisdictions that are home to substantial numbers of undocumented immigrants, 85 Fed. Reg. at 44,680—effectively concedes that Plaintiffs will be irreparably harmed by Defendants’ actions. “The Supreme Court has squarely held that the loss of a seat or seats in the House of Representatives” imposes direct harms “because of the dilution of political power that results from such an apportionment loss.” New York, 351 F. Supp. 3d at 595, 607; see also Carey v. Klutznick, 637 F.2d 834, 836-38 (2d Cir. 1980) (finding irreparable harm based on the “deprivation of [the plaintiffs’] right to a fair apportionment” based on the likelihood that New York would lose a congressional seat). The likely loss of political power as a result of the exclusion of undocumented immigrants in the apportionment count constitutes a “concrete,” “actual or imminent” injury that is “not ‘conjectural’ or ‘hypothetical.’” U.S. House of Representatives, 525 U.S. at 332 (quoting Whitmore v. Arkansas, 495 U.S. 149, 155 (1990)).

There is no dispute that an apportionment excluding undocumented immigrants will result in the loss of congressional seats in states in which at least some of the Plaintiffs are located—this is the express purpose of the Memorandum. Dr. Christopher Warshaw confirms that the Memorandum will “almost certainly” cause states with large undocumented immigrant populations to lose congressional seats—its intended impact. Warshaw Decl. § 11 (Ex. 58); see U.S. House of Representatives, 525 U.S. at 330 (affirming summary judgment based on expert testimony concerning the loss of congressional seats in apportionment). Dr. Warshaw found that if undocumented immigrants are excluded from the apportionment count, Texas—home to three of the Governmental Plaintiffs’ jurisdictions and numerous members of the NGO Plaintiffs—has a 98.3% chance of losing a congressional seat. Warshaw Decl. § 43, Tbl. 7 (Ex. 58). Dr.
Warshaw further found that New Jersey and California are highly likely to lose seats under the Memorandum, and Florida, Illinois, New York and Arizona are also at risk of losing seats. *Id.*

These harms require immediate relief, as “time is of the essence,” and “[d]elayed review would cause hardship to Plaintiffs.” *New York*, 351 F. Supp. 3d at 502. The President must report to the Clerk of the House the apportionment population counts for each state within one week of the opening of the next session of Congress, and the Clerk of the House must inform each state governor within fifteen days of receiving the apportionment population counts. 2 U.S.C § 2a(a). Where an invalid apportionment base count threatens to yield a misallocation of congressional seats, “the possibility of irreparable harm . . . is likely, if not certain.” *U.S. House of Representatives v. U.S. Dep’t of Commerce*, 11 F. Supp. 2d 76, 88 (D.D.C. 1998). Waiting until Defendants actually alter the apportionment in January 2021 by excluding undocumented immigrants will only create confusion and disruption.

**D. The balance of equities and public interest favor a preliminary injunction.**

In deciding a motion for a preliminary injunction against the federal government, the inquiries into the “balance of equities” and whether “an injunction is in the public interest” merge. *See Make the Road N.Y. v. Cuccinelli*, 419 F. Supp. 3d 647, 665 (S.D.N.Y. 2019) (citations omitted). In this merged inquiry, the court must “‘balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief,’” as well as “‘the public consequences in employing the extraordinary remedy of injunction.’” *Id.* (quoting *Winter*, 555 U.S. at 24). Here, the balance of the equities and public interest tip sharply in Plaintiffs’ favor.

The public interest in a complete and accurate census is paramount. “The integrity of the census is a matter of national importance. As noted, the population count has massive and lasting consequences. And it occurs only once a decade, with no possibility of a do-over if it turns out to
be flawed.” New York, 351 F. Supp. 3d at 517. Defendants’ actions drive immigrants away from responding to the census and, in so doing, degrade the accuracy and integrity of the resulting headcount. This harm is cumulative and irreparable; each day the Memorandum remains in effect, it will continue to drive down response rates and undermine the “statistical backbone” of the country. Salvo Decl. ¶ 13 (Ex. 41). Likewise, Plaintiffs and the public have an interest in ensuring that the apportionment count and resulting distribution of political power accurately reflects the population at large.

By contrast, Defendants will suffer no injury at all if the Memorandum is enjoined pending a final decision on the merits. As discussed supra, the Memorandum’s exclusion of undocumented immigrants from the apportionment count violates the Constitution and the Census Act, and “the Government does not have an interest in the enforcement of an unconstitutional law.” New York Progress & Prot. PAC v. Walsh, 733 F.3d 483, 488 (2d Cir. 2013) (quoting ACLU v. Ashcroft, 322 F.3d 240, 247 (3d Cir. 2003)). Moreover, the current crisis is one of Defendants’ own making, if not their own design. Despite issuing an Executive Order calling for the collection of citizenship data for redistricting purposes more than a year ago, President Trump waited to announce the Memorandum until the middle of the counting period, just as the census was poised to begin critical NRFU operations. Nearly simultaneously, Defendants chose to end the response period a month earlier than scheduled, further limiting the Bureau’s ability ensure an accurate headcount. The Memorandum is part of a pattern of conduct by Defendants that is directed at undermining the enumeration, particularly with respect to the counting of immigrants and communities of color. Among other remedial value, a preliminary

injunction will serve the “strong interest in ensuring that the census proceeds in an orderly, transparent, and fair manner—and, relatedly, that it is conducted in a manner that bolsters public confidence in the integrity of the process and helps strengthen this mainstay of our democracy.” *New York*, 339 F. Supp. 3d at 150-51 (quotation marks omitted). In particular, a preliminary injunction will help restore some measure of trust in the census that Defendants have repeatedly attempted to erode among immigrants and give Plaintiffs an opportunity to conduct outreach in an atmosphere less polluted by Defendants’ misinformation and attempts to intimidate and marginalize immigrants. Barreto Decl. ¶¶ 66-69 (Ex. 56); Espinosa Decl. ¶ 15 (Ex. 18); Choi Decl. ¶ 24-25 (Ex. 14); Seon Decl. ¶ 22 (Ex. 43); Torres Decl. ¶ 24 (Ex. 47).

**CONCLUSION**

For the foregoing reasons, the Court should grant partial summary judgment in favor of Plaintiffs, or alternatively a preliminary injunction.

DATED: August 7, 2020

Respectfully submitted,

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Expert declaration of Matthew A. Barreto, Ph.D.

I. Background and Qualifications

1. I am currently a Professor of Political Science and Chicana/o Studies at the University of California, Los Angeles. I am the co-founder and faculty director of the Latino Politics and Policy Initiative (LPPI) in the Luskin School of Public Affairs, a national research center that studies policy issues that impact the Latino and immigrant community.

2. Before I joined UCLA in 2015, I was a professor at the University of Washington for more than nine years, where I was promoted to Associate Professor with tenure, and then Full Professor with tenure. At the University of Washington, I was an affiliated faculty member of the Center for Statistics and the Social Sciences, and an adjunct Professor of Law at the UW School of Law. I am also the co-founder of the research firm Latino Decisions.


4. I earned a Ph.D. in Political Science at the University of California, Irvine in 2005, with an emphasis on racial and ethnic politics in the United States, political behavior, and public opinion.

5. I have published multiple peer-reviewed academic research papers on Latino participation in the U.S. Census, immigrant public opinion and immigrant political engagement (among other topics).

6. In 2018 I provided expert reports and testimony in three federal lawsuits challenging the Department of Commerce’s inclusion of a citizenship status question on the 2020 Census, which included an extensive literature review and evaluation of how immigrants react to changes to the U.S. Census. In all three federal trials, the courts recognized my expertise in studying immigrant political and civic participation, and cited my literature review in ruling in favor of the plaintiffs.

August 7, 2020
7. I have conducted research nationwide and in New York, California, Indiana, Wisconsin, Pennsylvania, Alabama, Texas, North Dakota, and North Carolina in connection with litigation assessing, among other things, how the public responds to, and is affected by, changes in the law. Courts have accepted my research studies as viable and methodologically accurate instruments to understand how the public responds to changes in state law. In particular, my previous research has focused on understanding sub-group analysis to evaluate differential impacts by race and ethnicity. Recently in North Carolina, a federal court relied on my research in issuing an injunction against the state’s voter ID law. In addition, the United States District Court for the District of North Dakota stated in Brakebill v. Jaeger (No. 1:16-cv-008) that “the Court gives the findings of the Barreto/Sanchez Survey, and the other studies and data presented by the Plaintiffs, considerable weight.” Prior to this, in 2014 in Veasey v. Perry (No. 13-CV-00193), the United States District Court for the Southern District of Texas, and in findings affirmed by the Fifth Circuit Court of Appeals, found that my survey was statistically sound and relied upon my survey findings to evaluate the impact of Texas’s voter ID law. Likewise, in Frank v. Walker (No. 2:11-cv-01128), a survey I administered and included as part of my expert report was given full weight by the United States District Court for the Eastern District of Wisconsin in a voter ID case in Wisconsin.

8. In Fish v. Kobach (No. 16-2105-JAR-JPO), the plaintiffs retained me as an expert witness to evaluate the methodology of the defendant’s survey, and the United States District Court for Kansas found me to be an expert on best practices of survey research and credible and qualified to discuss survey methodology.

9. I have also regularly presented my expert review and summary of social science literature as part of expert witness reports and declarations, which have been accepted as valid and relied upon by the courts. Review of published social science literature is a well-established method among political scientists and social scientists in general for drawing valid conclusions regarding the general consensus in the field. Literature reviews are an essential component of all academic research and a requirement for publishing peer-reviewed academic research because they
establish the baseline set of knowledge and expectations within the field. As noted above, in litigation challenging the addition of a citizenship question to the 2020 decennial census, three federal courts in New York, California, and Maryland relied upon my literature review as providing credible and valid evidence to help the courts form their opinions.

10. Earlier in 2020, in New York v. Immigration and Customs Enforcement, I provided an in-depth literature review examining how immigrant communities respond to increased immigration enforcement, surveillance and monitoring of undocumented immigrants.

11. My full professional qualifications and activities are set forth in my curriculum vitae, a true and correct copy of which I have attached hereto as Appendix A.

II. Scope of Work

12. Plaintiffs in this action retained me to evaluate whether the Presidential Memorandum (PM) issued by President Donald Trump on July 21, 2020 to exclude undocumented immigrants from the apportionment base in 2020 would have a negative impact on the Census participation rates of immigrant communities, including undocumented immigrants, legal permanent residents, and naturalized U.S. citizens. To conduct my evaluation, I reviewed two sources of information. First, I compiled an analysis of news coverage of the PM to assess the reach of the announcement. Second, I conducted a comprehensive literature review on survey methodology, response rates, sensitive questions and methodology, and census procedures addressing missing data and imputation.

13. I worked on this project with Mr. Marcel Roman, a Ph.D. student in the department of Political Science at UCLA and Mr. Chris Galeano, a J.D. student in the UCLA School of Law. Mr. Roman and Mr. Galeano both helped me compile sources for the literature review and news coverage of the aforementioned PM.
III. Executive Summary

14. Based on my review of the news coverage of the PM, the extant literature published in the social sciences, and my own extensive experience with immigrant civic engagement, I conclude that the July 21 PM will reduce participation in the 2020 census, and ultimately will reduce the accuracy of the 2020 census. The PM generates the perception of real and immediate threat for undocumented immigrants that will erode their trust in the census, which will lead to increased non-response in immigrant communities. Calling attention to the citizenship or immigration status of immigrants in a negative light causes immigrants to reduce their civic engagement. The new PM sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count, eroding trust that was restored after the threat of a citizenship question on the Census was removed. The strength of that negative signal is visible in coverage of the PM in Spanish-language media, which is a trusted source of news within Latino and immigrant communities. Signals of a threat to the status of undocumented immigrants generate a well-documented “chilling effect” on public participation for immigrants, i.e., the perception of threat will erode trust that leads to a reduction in immigrant engagement with government programs and officials. However, subsequent official action to counteract such threats--either court orders or changes in agency policy--have positive effects on trust and engagement. The perception of immigration status-related threat generated by the PM will make undocumented and mixed-status households less likely to engage with the Census—particularly with enumerators conducting in-person Non-Response Follow-Up (NRFU). The reduction in response rates among undocumented immigrant and mixed-status households will result the Census Bureau using proxy-response and imputation techniques that are error-prone and tend to undercount immigrant households.

15. My review of news accounts following President Trump’s July 21 PM finds there was widespread coverage, particularly within Spanish-language news media. Whether through television, print, or online outlets, the message relayed by the media was that the PM singled out immigrants through a process that invoked citizenship status, or a lack thereof, as part of the 2020 census.
Census, in an effort to exclude them from the apportionment process. Spanish-language news journalists reported that as a result of the PM there was confusion, fear, and anxiety in immigrant communities about fully participating in the 2020 Census. According to a journalist for Telemundo\(^1\) who spoke with many people familiar with the PM, “activists have already reported that this attempt may have scared many people off from responding to the Census, which is particularly detrimental to states with high immigrant populations such as California, Texas, and New York.” This sentiment was widely reported across Spanish-language news in the days and weeks following the July 21 PM.

16. Extensive research studies show Spanish-language media acts as a catalyst for engaging, informing and mobilizing Latino and immigrant communities. Spanish-language journalists and news anchors act as a medium for the feelings and concerns prevalent within Latino immigrant communities, specifically those who are undocumented. Spanish-language media plays a central role in mobilizing and educating the immigrant community on immigration issues in particular. The high levels of trust in Spanish-language media amongst immigrants plays a key role when listening and learning about the issues that matter most to them, in particular those related to immigration policy. Research studies have documented that many immigrants take direct cues related to civic engagement and participation from what they hear, read, and watch on Spanish-language media.

17. Undocumented immigrants are deeply intertwined into the fabric of American communities. Research and statistical reports have repeatedly found that undocumented immigrants see themselves as part of American society and indeed have longstanding ties in the cities and towns in which they permanently live. A clear majority of undocumented immigrants have lived in the United States for over five years and have families, hold jobs, own houses, and are part of their community. A survey of Latino undocumented immigrants\(^2\) found that 89% had

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lived in the U.S. over five years, that 74% have children living with them in the U.S. and 85% have a family member in the U.S. who is a U.S. citizen, and indeed that 87% of undocumented immigrants themselves said they hoped to one day become U.S. citizens if legislation were passed to provide that opportunity.

18. Following the June 2019 ruling by the U.S. Supreme Court blocking the inclusion of a citizenship question, Census partners known as Trusted Voices conducted extensive outreach to undocumented immigrants to assure them that the federal government would not be monitoring their citizenship status as it relates to the 2020 Census. The new PM sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count, significantly eroding trust.

19. The published literature is quite clear: a critical component to ensure an accurate response rate on any survey, including the census, is trust between the public and the survey administrator. The prior published studies conclude that response rates will fall without a high degree of trust. The new PM erodes the trust that many community-based organizations with experience serving immigrants had built up over the past year.

20. Trust is particularly important in communities with undocumented populations as many prior reports and publications by the Census Bureau have made clear. The Census Bureau has identified vulnerable population subgroups concerned about the potential misuse of personal information provided to the Census as at-risk for low participation rates and for undercounts. From this perspective, the new PM lowers trust and makes it much harder to stimulate participation in the census from vulnerable populations such as immigrant\(^3\) and minority communities, if such communities do not trust the Census.

21. Far-ranging social science research documents a phenomenon called “the chilling effect” in which immigrant communities withdraw and avoid interactions with government officials or agencies if they believe there could be a risk of adverse consequences for their own

\(^3\) Here we mean persons who are foreign-born and emigrated to the United States.
immigration status or the status of others in the community. Specifically, some studies have found that Census participation rates drop in immigrant communities when federal immigration enforcement is perceived to be connected to the Census. In fact, the Census Bureau has published studies pointing to fears over the federal government learning their about citizenship status as a major obstacle in some immigrant communities.

22. Social science research since the 1990s, but especially so in more recent years, is near consensus in finding evidence of the “chilling effect,” i.e., strong patterns of avoidance, withdrawal, and exclusion during times of increased immigration enforcement. This research is often community-focused and highlights how increased attention to immigration status or immigration monitoring by authorities, results in noticeable withdrawal in that specific context. Immigrants, and often their children and others in their close network, will purposely avoid or withdraw from an environment where they fear potential immigration enforcement. The fear associated with detention, separation from their children or family, and possible deportation is so paralyzing that many immigrants – when faced with possible immigration enforcement – avoid even necessary public services such as police protection, health services, going to work, sending their children to school, or attending court to defend their rights. The takeaway is clear – increased negative attention to citizenship status issues decreases trust in those specific agencies or actors and leads to immigrant withdrawal.

23. If trust is low, attempts to re-interview or re-contact households will be far less successful either. Census respondents must believe that there is no jeopardy or threat of disclosure to ensure their participation in a survey, regardless of how many attempts one might make to prompt their participation.

24. Already, a prior study from 2018 about perceptions of the 2020 Census found that levels of trust in immigrant and minority communities in the United States were low as a result of concerns over citizenship. The extensive media attention to the citizenship question resulted in high levels of fears among immigrants. When asked about the protection of their and their family members’ sensitive information, including citizenship status, immigrant respondents were
statistically less likely to trust that the Trump administration will protect their information and not share it with other federal agencies (just 35% were trusting). Among Latino respondents overall, just 31% trust the Trump administration to protect their personal information, which is statistically lower than among non-Latinos. While the June 2019 SCOTUS decision may have alleviated these fears by striking the citizenship question, the July 2020 PM effectively re-confirms those immigrant fears because it sends a signal to immigrant communities that the Trump administration will be monitoring their citizenship status so they may subtract these participants from the 2020 base population count for the apportionment base. In essence, Trump has returned the immigrant community to a condition of wariness similar to when the citizenship question was to appear on the census. They believe their participation is either no longer safe, or not required due to the PM of July 2020 to specifically single out undocumented immigrants.

25. The survey also found that large percentages of immigrants and minorities are concerned specifically that their personal information reported on the census will be shared with Immigration and Customs Enforcement (ICE). Overall, 41% of immigrants surveyed state they are concerned about this, along with 40% of Latinos.

26. When households do not initially self-respond to the census, the Census relies on nonresponse follow up (NRFU) to re-contact households to encourage them to respond. In simulated re-contact, my research has demonstrated that a majority of non-responders to the 2020 census will not switch and become participants when asked again to do so. In particular, research has found that NRFU is less successful when immigrant communities have fears about information concerning their citizenship status being collected or revealed.

27. Larger households will be the most difficult to successfully convert from non-participation to participation if there are fears about citizenship status data being collected or monitored, further undermining an accurate count. Existing research has found that among immigrants who would take the census upon NRFU recontact, their average household size is 2.91 compared to an average household size of 3.94 for immigrants who would not participate upon recontact, leaving them, and their larger households uncounted.
28. One of the ways Census Bureau officials try to account for people who refuse to respond to the census is to mathematically account for non-responders through statistical methods such as “substitution” or “imputation.” Both of these methods use information on responding households to estimate population information on non-responding households. However, when there are fears about citizenship status are introduced, non-responding households are statistically different than responding households on a variety of critical demographics, which violates an important assumption of substitution or imputation. For these methods to serve as viable alternatives, missing units and reported units should be roughly equivalent. However, the existing research reveals that when fears over citizenship status emerge, non-responding households are more likely to be larger in size, be foreign-born, and have different age and educational outcomes than responding households. This will make substitution and imputation inaccurate and unreliable, and makes it highly likely that there will be a net undercount of households refusing to respond to the census due to the citizenship question.

IV. Literature Review and Research Findings

A. The July 21 Presidential Memorandum Received Wide Coverage in Spanish News Media and Created Confusion and Fear About the 2020 Census

29. On July 21, 2020 President Trump issued a Presidential Memorandum declaring that undocumented immigrants will be excluded from the decennial census for apportionment purposes.\footnote{Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census (July 21, 2020), https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/} Specifically, following the completion of the 2020 Census, the PM requires that individuals without lawful immigration status be excluded from the apportionment base for the purpose of the reapportionment of the U.S. House of Representatives. The PM refers to last year’s Executive Order 13880,\footnote{Collecting Information About Citizenship Status in Connection With the Decennial Census (July 11, 2019), https://www.whitehouse.gov/presidential-actions/executive-order-collecting-information-citizenship-status-connection-decennial-census/} which instructed executive departments and agencies to share...
information with the Department of Commerce . . . to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country." This order signals to hard-to-count populations, such as undocumented immigrants and mixed status families, that the federal administration is compiling citizenship related data on them, and that they are to be excluded from the 2020 Census. While there are technicalities that an undocumented immigrant may fill out the Census form, and then be deducted later, this nuance is lost on a community that has been under constant attack and threat from President Trump and his administration. A memorandum issued by the President stating that undocumented immigrants will be identified in specific communities and then excluded from the official Census population count sends a clear message of exclusion.

30. In particular, the PM reverses recent progress that has been made by community-based organizations following the June 2019 Supreme Court ruling which blocked the citizenship question from being added to the 2020 Census. In an effort to mitigate the challenge posed by the citizenship question, outreach advocates also sought to use the U.S. Supreme Court’s decision as a starting point “to convince everyone to participate in the census count” and emphasize the benefits of participating in the census. Because the highest and definitive court in our country had struck down the citizenship question, outreach to immigrant communities could emphasize this as a selling point to fill out the census without any fears about someone’s immigration status being reported. For the Census Bureau’s part, they would enact a public outreach plan that involved “working with local organizations to encourage census participation among immigrants, communities of color and other groups the bureau considers hard to count” to combat the mistrust by these communities.

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6 Some point out that matching census and administrative data will lead to matching errors and exclude millions of U.S. citizens from the apportionment process. Randy Capps et al., Millions of U.S. Citizens Could Be Excluded under Trump Plan to Remove Unauthorized Immigrants from Census Data, Migration Policy Institute (July 2020), https://www.migrationpolicy.org/news/millions-us-citizens-could-be-excluded-under-plan-remove-unauthorized-immigrants-census
7 https://www.huffpost.com/entry/2020-census-citizenship-question_n_5d2f378ce4b02f71ddfd974
31. The new PM undermines these efforts and implies the government is attempting to enumerate the undocumented immigrant population, which could undercut participation. Because of the 2019 Supreme Court decision, there is no direct mechanism for assessing whether a Census response includes data from an undocumented immigrant using Census responses. If the federal government is attempting to exclude undocumented immigrants from the Census count, immigrant communities are likely to draw two conclusions. First, undocumented immigrants, the people they live in the same household with, and others in immigrant communities may be worried the government is attempting to find out their legal status through other means. This is not beyond the realm of possibility, given that the Trump administration has instructed federal agencies to use existing state and federal records to determine citizenship status (Levine, 2020). This could generate a chilling effect and incentivize households with undocumented immigrants to provide no additional information to the Federal Government that they feel would implicate their immigration status. Second, undocumented immigrants and those with ties with undocumented immigrants may think the government will use other means to find them, such as their responses to questions asking about nativity or ethnic/racial group. Therefore, they will not fill out the Census form writ large since probabilistically, providing information on other characteristics might facilitate government efforts to track and identify undocumented immigrants.

32. After the President announced the PM, widespread reports about how the PM would seek to exclude undocumented immigrant populations from the reapportionment process were published by major news outlets throughout the U.S. Major Spanish-language media and

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9 For instance, Nebraska, South Dakota, and South Carolina voluntarily agreed to transfer citizenship data from their state driver’s license and state ID records to the U.S. Census Bureau (Wang, 2020).

print news outlets throughout the nation also reported on the PM. They included Telemundo,\textsuperscript{11} Univision,\textsuperscript{12} Azteca America,\textsuperscript{13} and Estrella TV\textsuperscript{14}—all major media sources for Spanish-speaking viewers with hundreds of local television stations and affiliates throughout the U.S.\textsuperscript{15} Newspapers and online media outlets for Spanish-speaking readers also reported on the PM’s intention to leave out undocumented immigrants from the reapportionment process.\textsuperscript{16} Whether

\begin{itemize}
  \item [\textsuperscript{11}] Trump Ordena Al Censo Que No Incluya a Los Indocumentados En El Recuento Que Determina El Reparto De Escaños Del Congreso, TELEMUNDO (July 21, 2020), \url{https://www.telemundo.com/noticias/noticias-telemundo/immigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-trum-3823616/}.
  \item [\textsuperscript{12}] Trump Firma Decreto Para Excluir a Indocumentados del Censo 2020, TELEMUNDO SAN ANTONIO (July 21, 2020), \url{https://www.telemundosanantonio.com/noticias/la-casa-blanca/presidente-trump-decreto-indocumentados-censo-2020/2068275/}.
  \item [\textsuperscript{13}] UNICEF (July 21, 2020), \url{https://www.UNICEF.org/noticias/elecciones-en-eeuu-2020/trump-ordenca-al-censo-no-contar-a-los-indocumentados-en-un-memo-de-dudosas-legalidad-y-dificil-de-cumplir}.
  \item [\textsuperscript{14}] María Teresa Sarabia, Inmigrantes Indocumentados No Serán Contados, ESTRELLA TV (July 21, 2020), \url{http://noticiero.estrellatv.com/noticias/inmigrantes-indocumentados-no-seran-contados-noticiero-estrella-tv/}.
  \item [\textsuperscript{15}] \textit{Owned Stations}, TELEMUNDO, \url{https://www.nbcunym.com/owned-stations/telemundo-station-group/about?network=5266626} (last visited July 31, 2020).
  \item [\textsuperscript{16}] Jesús García, Trump Firma Memando Para Excluir a Inmigrantes Indocumentados del Censo, LA OPINION (July 21, 2020), \url{https://laopinion.com/2020/07/21/trump-firma-memando-para-excluir-a-inmigrantes-indocumentados-del-censo/}.
  \item [\textsuperscript{17}] Jesús García, Trump Firma Memando Para Excluir a Inmigrantes Indocumentados del Censo, El Diario (July 21, 2020), \url{https://eldiaron.com/2020/07/21/trump-firma-memando-para-excluir-a-inmigrantes-indocumentados-del-censo/}.
  \item [\textsuperscript{18}] Kevin Freking and Mike Schneider, Trump Firma Memo Que Afectaría Conteo de Migrantes, El Nuevo Herald (July 21, 2020), \url{https://www.elnuevoherald.com/noticias/estados-unidos/article244382772.html}.
  \item [\textsuperscript{19}] Kevin Freking and Mike Schneider, Trump Firma Memo Para Excluir a Inmigrantes Indocumentados del Censo, Dallas Morning News (July 21, 2020), \url{https://www.dallasnews.com/estados-unidos/estadounidenses/2020/07/21/donald-trump-pedira-al-censo-2020-que-no-}
\end{itemize}

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through television, print, or online mediums, the message relayed by the media was that the order single out immigrants through a process that invoked citizenship status, or a lack thereof, as part of the 2020 Census, in an effort to exclude them from the apportionment process. Since the PM was signed, it has prompted discussion by Spanish-language news segments on its implications for the immigrant community. These reports have conveyed to Spanish-speaking audiences that millions of undocumented immigrants living in the U.S. would not be counted when deciding how to apportion congressional seats because of the PM, affecting states such as California, Florida, and Texas, each of which includes large undocumented immigrant populations within their communities.

33. Across these news accounts, immigrants, as well as individuals who worked with community-based organizations that serve immigrants, and even journalists, all stated that they believed the July 21 PM was an effort to sow confusion and distrust, and to reduce the count of Latinos and immigrants on the 2020 Census. Examples of some of the direct quotations from these news sources include:

a. “Este memo obviamente causa miedo entre esta población en particular, te pregunto, ¿podría ser el miedo una de las razones por la que la comunidad hispana no participe en el Censo 2020 o se siente que su participación sea baja? Lamentablemente no es la primera vez que el Presidente Trump amenaza y amedrenta nuestra comunidad inmigrante indocumentada... y sí, fomenta el miedo en nuestras comunidades. Una vez más, le dice a nuestra comunidad inmigrante, no se cuenten, no los necesitamos.” “This memo obviously causes fear among this particular population, I ask you, could fear be one of the reasons

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why the Hispanic community does not participate in the 2020 Census or feels that their participation is low? Unfortunately, this is not the first time that President Trump has threatened and intimidated our undocumented immigrant community... and yes, he has fostered fear in our communities. Once again, he tells our immigrant community, don't count yourselves, we don't need you.” 19

b. "Hay varias organizaciones que están reaccionando y no están de acuerdo con esta movida de la casa blanca porque ya llevan más de un año tratando de incentivar a la comunidad de indocumentados para que participen del censo, para que no tenga miedo y hagan escuchar su voz, ahora esta acción prácticamente se convierte en un golpe bajo para la comunidad de inmigrantes indocumentados en este país.” “There are several organizations that are reacting and do not agree with this move by the White House because they have been trying for more than a year to encourage the undocumented community to participate in the census, so that they are not afraid and make their voice heard, now this action practically becomes a low blow to the undocumented immigrant community in this country.” 20

c. “Además, afirman que el anuncio del presidente "claramente" tiene la intención de promover el miedo y disuadir la participación en el censo de inmigrantes y sus familias, ya que se produce solo unas semanas antes de que los enumeradores estén programados para salir y alentar a los hogares a responder al censo.” “In addition, it claims that the president's announcement is "clearly" intended to promote fear and discourage participation in the census by immigrants and their families, since it comes just weeks before enumerators are scheduled to leave and encourage households to respond to the census.” 21

d. “Algunos oponentes afirman que es un intento para suprimir el creciente poder político de los latinos en Estados Unidos y discriminar a las comunidades inmigrantes de otras minorías no blancas.” “Some opponents claim it is an attempt to suppress the growing political power of Latinos in the United States and to discriminate against other non-white, minority immigrant communities.” 22

e. “Es una manera de tratar de eliminarlos numéricamente del mapa, borrarnos en cuanto a números” “It is a way of trying to wipe us out numerically, wipe us out in terms of numbers”

34. The PM has threatened to upend a year's worth of outreach efforts by groups focused on hard-to-count populations. These groups now face a big challenge: reach out to

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people who haven’t filled out their census form yet who are now worried the federal administration will use whatever information they provide in the 2020 Census to target them. Solving this challenge is now more urgent for these groups given the Census Bureau’s recent decision to shorten the period for collecting responses, including NRFU operations, by 31 days.23

35. According to Arturo Vargas, the CEO of NALEO, one of the nation’s top civic engagement organizations in the Latino and immigrant community, the new PM is a setback that creates fear in the immigrant community. NALEO has been identified by the Census Bureau itself as one of the most important “trusted voices” to earn trust in the Latino community. Vargas stated on Twitter24: “With a successful #NALEOVirtual Conference done, time now to refocus on #Census2020 - which just got even MORE DIFFICULT with @POTUS effort to exclude immigrants from the apportionment numbers and cutting short @uscensusbureau's time to finish the count. Our community is scared.” Vargas went further to note25 that the new PM was undoing progress made after striking the citizenship question, “#Census2020 is the most challenging to promote participation I have seen in my career. After @SCOTUS stopped a citizenship question, we had a fighting chance. Now @POTUS has made it much harder by his July 21 memo and by cutting off @uscensusbureau's field work early. @NALEO”

B. Spanish-Language News Media is a Trusted Source for Immigrants

36. Studies show Spanish-language media acts as a catalyst for engaging and mobilizing Latino and immigrant communities. Spanish-language journalists and news anchors act as a medium for the feelings and concerns felt amongst Latino immigrant communities, in particular among undocumented immigrants. Green-Barber discuss these trends in Spanish-speaking media.26 She found that Spanish-speaking households have high utilization of internet

24 https://twitter.com/ArturoNALEO/status/1291764313405812737?s=20
25 https://twitter.com/ArturoNALEO/status/1291792560390797287?s=20
26 Lindsay Green-Barber, Latinos and the media: Patterns, changes and ideas for more connection, Center for Investigative Reporting.
and Spanish TV and radio, indicating the large presence and critical role of the Spanish-language media has in Spanish speaking homes. She also found that the Spanish-speaking media plays a central role in mobilizing and educating Latino communities on immigration issues in particular.

37. Research shows that households who more closely follow Spanish-language news rely on that information when it comes to civic and political engagement.\(^\text{27}\) Garcia-Rios and Barreto (2016) investigated media habits of Latino immigrants and found that people with high rates of Spanish-language news consumption were more informed and had high rates of immigrant identity, meaning that they were particularly aware and responsive to immigration-related news and current affairs.\(^\text{28}\) In 2012, a positive association between Spanish news coverage of President Obama’s DACA program and immigrant identity spurred naturalized citizens to vote at higher rates. In other instances, exposure to negative information can lead to withdrawal.

38. Research on Spanish-language media by Federico Subervi-Velez (2008) notes “the intersection between media and Latinos when assessing political socialization and mobilization of Latinos.”\(^\text{29}\) To put simply, Spanish-language media is a critical bridge that informs and influences immigrants in politics and is often a direct reflection of Latino immigrant opinion in America. One example is the reliance of Spanish-language radio to share and spread information about anti-immigrant legislation in the U.S. Congress (Felix et. al, 2008). Research found that Spanish media personalities such as Almendarez Coello (El Cucuy), Eduardo Sotelo (El Piolin) and Christina Saralei presented and educated the community on the anti-immigration rhetoric that was becoming prominent in politics (Felix et al, 2008). Coello and Sotelo’s provided daily updates and created awareness about H.R. 4437, a bill that could negatively impact immigrant communities. In particular, research has found that the high levels of trust in


Spanish-language media plays a key role when Latino immigrants read or hear about the issues that matter most to them, like immigration policy.

C. Trust and Socio-Political Context are Two Key Factors That Impact Survey Response Rates and Accuracy

39. The decennial census is a population survey. There have been extensive studies across the social sciences documenting the best practices and potential pitfalls in collecting accurate survey data. With respect to evaluating the 2020 Census there are two key takeaways that are quite clear in the published literature. First, trust between the public and the survey administrator is crucial. Prior studies conclude that response rates will fall without a high degree of trust, leading to a biased survey project because it excludes people from the data and is no longer representative. Second, the social and political context during survey implementation can greatly impact trust, confidence, and participation rates. This is especially the case for vulnerable populations when they perceive an unwelcoming environment or context. Of these key takeaways, the hallmark of cooperation in any survey is trust. Subjects are more likely to participate in a survey, to complete survey items accurately, and respond fully to survey items when they trust the survey administrator. When potential respondents are suspicious, uncertain, anxious or untrusting, non-response rates significantly increase. An early study on this topic framed the issue as how much threat potential respondents perceive through the source of the survey (Ball 1967; Bradburn et al. 1978). When subjects identify the survey as being implemented on behalf of authorities who they perceive could use their answers against them, they are likely to not-respond, or to respond untruthfully (Ball 1967). From this perspective, newfound fears about citizenship status due to the July 21 PM will make securing participation of immigrant communities much harder than if the PM had never been issued.

40. A research study by the U.S. Government Accountability Office in 2003 (GAO-03-605) laid out the most appropriate approaches to surveying the Latino population specifically. The report was commissioned because prior government surveys, in particular the Census, were
characterized by high rates of non-response with Latino respondents. The report stated that distrust – especially of those representing the government – was a leading factor in Latino immigrant non-response. To fix this, the report recommended increasing trust so that potential survey respondents are not fearful of their participation, and not suspicious of the census questions being asked, or the census enumerators visiting their community. The July 21 PM related to undocumented immigrants does precisely the opposite, increasing distrust and, therefore, making it substantially less likely that members of the Latino immigrant subgroups will respond to the census.

41. De la Puente (1995) examined issues related to trust, confidentiality, and fear among potential census respondents in El Paso, Texas and found that fear and apprehension on part of the sample area residents led to concealment of information from the Census Bureau and from the ethnographers, due to their belief that the government will not keep their information private or confidential when it comes to highly sensitive questions. This research establishes that the Census Bureau already knows it has challenges with trust in some immigrant communities and attempts to overcome those challenges by not asking sensitive questions that make it very difficult to persuade communities with low trust. While the threat of a citizenship question was dropped, this brand new PM of July 21 instills a new sense of confusion and fear and will result in increased problems with trust in such communities and a corresponding reduction in Census response.

42. In a follow-up study a decade later, de la Puente (2004) concluded that individuals with unstable immigration statuses were much less likely to trust the government and specifically less likely to fill out the census questionnaire. Indeed, properly counting undocumented immigrants has long been a concern for the Census Bureau. De la Puente’s research demonstrated that respondents with irregular immigration statuses are unlikely to directly cooperate with the Census if they perceive their immigration status will be revealed. The July 21 PM does precisely this; it sends a strong signal to undocumented immigrants that the federal government is collecting data about them, and will match various government records to find and exclude certain immigrants. One respondent in the de la Puente study, who did have legal status as a student, was afraid to participate in the Census because she feared that at some point in the future she may go out of
status and that the information she provided to the Census Bureau might be used to track her down. According to de la Puente, it is critical that immigrant respondents clearly understand that their immigration status is not associated with the Census population count.

43. An important practice that ensures higher participation rates in surveys is respondent anonymity, particularly when there might be concerns over immigration status. The Census violates anonymity by requiring the respondent to list the names of all household members. If respondents do not trust the survey administrator, and there is no anonymity, vulnerable respondents are far less likely to participate. Tourangeau and Yan (2007) explain how the “threat of disclosure” can result in non-response. Generally, people have concerns about the possible consequences of participating in a survey, or giving a truthful answer should information become known to a third party with enforcement powers. The authors explain a survey may be “sensitive” if it raises fears about the likelihood or consequences of disclosure of the answers to agencies or individuals directly, or not directly involved in the survey. As an example, Tourangeau and Yan (2007) discuss asking a question about marijuana use to a group of teenagers. If the teens suspect that the answers could be shared with their parents, they opt out of the survey or lie. But if the survey is completely anonymous and implemented by their peers, they are much more likely to participate and be truthful. The perceived threat of disclosure to authorities is what matters. With the July 21 PM, the federal government has clearly created a perception of threat for immigrants and the 2020 Census.

44. A review of findings across different surveys suggest that the likelihood of survey response largely depends on timing and contextual factors, including the respondent’s personal situation and the features of the data collection, such as the degree of privacy it offers. The exact same survey might be highly sensitive and risk non-participation in one setting, but be acceptable and proper in another. To this point, a comprehensive review of survey environment research indicates that highly sensitive surveys will be disruptive, produce non-response, or result in biased data when the respondent is concerned that their answers could be known by authorities. However, if the respondent feels secure and has total privacy and anonymity, they are likely to participate.
and provide truthful answers (Tourangeau and Smith 1996). In particular, Krysan (1998) found evidence that respondents greatly modified their answers to questions and issues related to views about race, ethnicity, and immigration based on how they felt the interviewer would perceive or judge their responses.

45. Concerns about confidentiality are likely to exacerbate the unwillingness of certain communities to respond to the Census in the current socio-political context created by the July 21 PM. A study of immigrant communities’ knowledge and awareness of the Census found that one major concern was confidentiality of personal information (Raines 2001). Beyond the Latino immigrant community, this study reported evidence that immigrants from Laos, Somalia, Iraq, Bosnia, and Haiti expressed concerns over anonymity and confidentiality. The general takeaway is that as additional private, personal, or sensitive questions are added, the degree of concern over anonymity and confidentiality raises considerably. Even if the Census Bureau provides assurances, many may not believe or trust those assurances. In part, this might be due to the current social and political context (laid out above in paragraphs 29-34) or could also be due to prior experiences in their home country with authoritarian regimes and government data collection. Thus, for a population survey to be accurate, it is critical that respondents truly believe their answers to questions will always remain confidential and not used against them. The July 21 PM opens the door to that exact fear because the federal government plans to use administrative data and records to exclude undocumented immigrants from the base population count.

D. The Threat of Non-Response is Real and Immediate

46. The overall national sociopolitical environment has raised awareness and alertness among immigrant communities, but by itself, the national context does not depress immigrant participation. Instead the published literature is clear that immigrants react to specific threats as they develop, and they engage fully when those threats are removed. Indeed, in areas with low levels of immigration enforcement and threat of deportation, or in so-called sanctuary cities, research does not find evidence of a chilling effect or withdrawal (e.g. Garcia 2019). However,
the national context does cause immigrants to take more notice of their surroundings and be aware of the potential for a negative interaction with immigration officials. When immigration enforcement is heightened, the current (2017-2020) national sociopolitical climate can result in a more significant withdrawal. Put simply, President Trump has put the immigrant community on edge. In June of 2019, they had the protection of the U.S. Supreme Court which gave assurances that their citizenship status could not be connected to the 2020 Census. The July 21 PM changed the risk of threat in the minds of many immigrants who hear Trump’s words as connecting a federal monitoring program of undocumented immigrants to the 2020 Census. They may not do the full research to realize they can still fill out the Census safely, because they hear the news which is connecting the July 21 PM to Trump’s longstanding desire to increase deportation of undocumented immigrants. Further, the July 21 PM sends the signal to undocumented immigrants to avoid the Census because they will not be counted. If the President issues a memorandum saying you will not be counted on the Census base population count, and you have a lingering fear over your citizenship status, there is virtually no reason at all to transmit your entire household’s personal information to the federal government. Existing research makes clear that when new threats emerge due to changes in policy, immigrants take note and withdraw.

47. Perhaps the best summary of how the combination of federal policies and political environments interact is found in a new book by Angela Garcia, *Legal Passing: Navigating Undocumented Life and Local Immigration Law* (2019). In this book, Garcia reviews a plethora of data and research on how immigrant communities respond and react to both threatening and accommodating environments, and how a national climate of hostility does not automatically create a chilling effect for immigrants everywhere. Rather, Garcia showed with extensive evidence that specific context and the proximate threat of immigration enforcement versus accommodation is what matters the most.Instances with the highest levels of threat produce the most withdrawal. In her study of more accommodating or welcoming environments, Garcia finds immigrants are able to navigate life effectively, writing “At the same time, this book also argues against the popular depictions of undocumented immigrants being pushed underground, their perception of
threat so strong that they avoid engaging in public life… As compared to restrictive destinations, the integrative outcomes of accommodating locales that I describe in this book are evident in undocumented Mexicans’ ease of physical navigation, deeper willingness to interact with local police, and place-based sense of belonging.” Of particular importance is the timing of when threats pop up or become visible. Garcia describes “initial reactions immediately after new clampdowns – sweeps, raids, and checkpoints” being the most intense periods of avoidance. However, eventually immigrants learn how to navigate their communities, and to avoid locations of particular threat, but otherwise effectively go about their day.

48. Thus, the literature demonstrates that the current era is a particularly anxiety-inducing period in American history for undocumented immigrants, and those concerned about immigration enforcement. However, this just serves to frame the environment, it does not by itself lead to wholesale withdrawal. Rather, the literature points to the importance of specific instances of threat that result from new policies that create fear, anxiety and avoidance.

49. Prior survey research in January 2020\textsuperscript{30} assessed how Latinos in New York reacted to information about whether or not ICE was present in and around state courthouses. The question there was whether increased threat of immigration enforcement resulted in immigrant withdrawal. ICE was sporadically conducting immigration-related searches in or near state courthouses across New York. In our survey experiment, we randomly assigned one set of respondents to a condition in which we reminded them of ICE presence at state courthouses, while other respondents were randomly assigned to a condition without the information about ICE presence.

50. Across the full sample of Latinos in New York, the survey experiment results demonstrate that being informed about ICE presence at state courthouses has a strong, and statistically significant causal effect on increasing avoidance behavior and withdrawal. This effect is consistent across eight different types of engagement. When confronted with information about

\footnote{Survey conducted as part of the expert declaration by Matthew A. Barreto in NY v. ICE lawsuit.}
ICE conducting arrests and detention at courts in New York, Latino participants reduced their intention to attend state court as a witness, as a defendant, to accompany a family member, to protect their rights, or to testify about a housing complaint. In addition, they were less likely to go to the police as witness, or to call the local police if they witness a crime, or to submit a police report as a victim. This suggests that when Latinos and immigrants learn about a new threat, they respond immediately with reduced intention to participate or engage.

51. Because the overall sample size of the survey was large (n=1,001) the New York courthouse research included additional analyses on immigrant segments within the main sample. The results of the subset analysis are consistent with the extant literature and expectations, with much stronger causal effects of avoidance and withdrawal among the foreign-born Latinos, and much stronger effects among non-citizens, and the strongest causal evidence of the chilling effect among Latinos are acquainted with an undocumented immigrant. These analyses provide very strong evidence that is theoretically motivated and consistent with decades of social science research on the immediate chilling effect of immigration enforcement.

52. A newer study conducted during the period of Trump’s presidency finds similar results. The Violence Against Women Act (VAWA) allows women who are victims of domestic violence to petition to change their immigration status and was used effectively when women felt safe enough to call immigration officials. However, in February 2017 the Trump administration reactivated the Secure Communities program which coordinated local police databases with ICE. As such, in areas of increased ICE presence, the study found that fewer and fewer women initiate police reports of domestic violence. The authors explain this is due to fears over being reported to, or detained by ICE. As the authors conclude, “intensified immigration enforcement might increase misreporting due to fear of being over scrutinized and, potentially, placed in a position that jeopardizes the possibility of staying in the country.” (Amuedo-Dorantes and Arenas-Arroyo 2019). This is yet another example of a before/after study which finds direct and immediate evidence of immigrant withdrawal after a change in policy, in this case, by the Trump administration.
E. Extensive Research Confirms Fears About Immigration Enforcement and
The Chilling Effect

53. Additional ethnographic research has revealed that undocumented immigrants and mixed-status households are likely to avoid government contact when they suspect it is not safe to participate (de la Puente 1995). This is especially the case when sensitive topics will be potentially discussed or revealed. Velasco (1992) maintains that undocumented immigrants in his sample area in San Diego, CA avoided contact with government. He argues that this avoidance was one of the important contributing factors to census omission and estimates that over half of the sample area residents were undocumented immigrants. Similar situations were also reported in the Miami, FL sample area (Stepick 1992) and in the 26 rural Marion County, OR sample areas (Montoya 1992). However, the ethnographic research all concludes that participation barriers can be overcome by not including worrisome questions about citizenship status and by working with community based organizations and cultural facilitators to increase trust and confidence in data privacy.

54. Levels of trust in immigrant and minority communities are very low with respect to issues related to citizenship. In a prior national survey about the 2020 Census, when asked about protecting sensitive information, including citizenship of themselves and family members, only 35% of immigrants expressed trust that the Trump administration will protect their information and not share it with other federal agencies. Among Latino respondents overall, just 31% trust the Trump administration to protect their personal information. According to my prior survey research, a very large percent of immigrants and minorities believe the Trump administration will share their personal information with other federal agencies.

55. Research related to the 2020 Census suggests that the Census Bureau was well aware of potential issues related to non-response over immigration fears. A comprehensive study by the Census Bureau’s Center for Survey Measurement presented at the National Advisory Committee on Racial, Ethnic, and Other Populations Fall Meeting 2017 (Meyers 2017) reported an increase in respondents expressing concerns to researchers and field staff about confidentiality and data
access related to immigration, legal residency, and citizenship status, and their perception that certain immigrant groups are unwelcome. There was an observation of increased rates of unusual respondent behaviors during pre-testing and production surveys, including item-nonresponse, break-offs, and refusals, especially when the questions involved citizenship status. The most commonly occurring finding was that respondents appeared visibly nervous about disclosing their private information and who would have access to such data. The current political climate was of concern to respondents: in one Spanish interview, a respondent stated, “the possibility that the Census could give my information to internal security and immigration could come and arrest me for not having documents terrifies me.”

56. As this finding makes clear, immigrant communities can be especially vulnerable to the social and political context surrounding the implementation of a survey. A study of immigrants in California and Texas found that respondents’ fear over citizenship status correlated with their non-participation in the health sector (Berk and Schur 2001). This study found strong evidence that a threatening context can lead immigrants to withdraw and limit their access to public services, including access to medical care which they greatly needed. Likewise, anxiety and fear over immigration status has been found to reduce utilization of services related to health care, law enforcement, and education (Pedraza and Osorio 2017). In particular, research has identified the context of heightened “immigration policing” as one that erodes trust in other public institutions and creates an environment in which immigrant communities are very selective as to where, when, and how they engage with government agencies (Cruz Nichols, LeBrón and Pedraza 2018). The finding is not just limited to first-generation immigrants themselves; the research also finds a strong spillover effect to U.S.-born Latinos who have immigrant parents, or feel connected to the immigrant community, and also demonstrates non-participation during times of threatening context.

57. Studies have shown that the political context after 2016 and the election of Donald Trump has significantly diminished Latinos’ trust of the federal government. For instance, Michelson and Monforti (2018) find that Latinos, including those who are undocumented, were
less trusting of government in 2016 than in 2012. In 2012, trust amongst Latinos was strong across all subgroups of Latino immigrants---citizens, non-citizens with legal status, and undocumented immigrants. Four years later, Latinos registered lower levels of trust in government, with fewer than 1 in 20 Latinos in any subgroup responding that they trust the government “just about always.” In addition, Sanchez and Gomez-Aguinaga (2017) report that an overwhelming majority of Latinos described Trump and his policies as scary (74%), dangerous (77%), hostile (78%), and unwelcoming (80%) and they conclude that the current context is creating tension, anxiety, and nervousness among Latinos and immigrants. While the June 2019 Supreme Court decision striking the citizenship question allowed community outreach groups to push reset and create a campaign that citizenship would not be associated with the Census at all, the new PM reinjects concerns about citizenship status into the 2020 population count.

58. Beyond the Latino and immigrant communities, there is also reason to expect that increased fears about citizenship could increase non-response rates among Arab and Middle Eastern Americans. Research by Oskooii (2016) and Lajevardi and Oskooii (2018) demonstrates that American Muslims and those of Arab and Middle Eastern ancestry currently perceive a high rate of discrimination and an unwelcoming environment. Oskooii (2016) explains how perceived social exclusion can result in withdrawal and non-participation by these communities and documents this fact empirically in his published research. In research by the Center for Survey Measurement, focus groups conducted in Arabic among immigrants from the Middle East revealed the potential for Census non-response due to questions about citizenship status in light of the current political climate. (Meyers 2017). Some focus group participants referred to the “Muslim Ban” when expressing why they would be nervous about reporting their immigration and citizenship status to the federal government.

59. This context is particularly important as it relates to the issues about citizenship status, because this is the point of tension for many in the immigrant community today. That is, there is grave concern over providing information to the federal government given the perceived high rates of immigrant policing. And now that newfound distrust and fear is directly related to citizenship
status as a result of the July 21 PM, a considerable non-response is the likely outcome.

60. A clear implication identified in the relevant literature on surveys is that when respondents perceive a threatening survey, and if trust is low, non-participation will result in an inaccurate survey. Further, attempts to re-interview or re-contact households will not be successful, and some re-contact may only serve to further erode trust. Survey respondents must believe that there is no potential jeopardy before participating. Once a respondent believes that participation in the survey could bring them harm, and that the survey enumerator is acting on behalf of an official agency, attempts at repeated re-contact typically do not result in a completed survey (Ball 1967). In interviews with the enumerators themselves, there is a sense that the issues related to citizenship status will make their jobs harder, if not impossible (Meyers 2017).

61. Prior experiences with census data collection efforts that overlapped with anti-immigrant contexts provide evidence that non-response follow-up (NRFU) will be much more difficult in 2020 given the political climate and the PM. Terry et al. (2017) describe the connection between a threatening context and Census non-response in Arizona and Texas among immigrant communities: “the wider social context also had an important role in enumeration. Just before the NRFU enumeration program started in 2010, Arizona passed a very strong anti-immigration law that coincided with legal ordinances in two Dallas-area cities. These ordinances were aimed at identifying illegal immigrants through police stops or the reporting of immigration status of applicants wishing to rent apartments. The new law provoked heightened tensions around the country, particularly in the Dallas/Fort Worth-area Hispanic community. As a result, these reports conclude that non-response was high and that NRFU was less successful.

62. Undocumented immigrants may already fear providing their information to the government. They are a hard-to-reach population that is difficult for enumerators to gain access to and follow-up on in the event of non-response. To overcome these difficulties, non-governmental organizations and the Census Bureau have engaged in targeted messaging toward immigrant communities that participation in the Census would help increase access to public resources, federal funding, and political representation (Levine, 2020; Liptak et al., 2020; Smith,
2020). However, the PM, by excluding the count of undocumented immigrants from the apportionment base, completely undercuts this incentive to participate. If the government is going to remove them from the base population count, why bother filling out the 2020 Census at all? Undocumented immigrants are likely to perceive that there is no benefit to participation, as the July 21 PM states they will not count, and there is now an increased risk of their information being linked to immigration records and facing immigration enforcement.

63. It is important to note undocumented immigrants and their social ties are often risk-averse, assume the worst-case scenario, and are highly suspicious about whether their information would be shared with Federal immigration authorities (Yoshikawa, 2011; Dreby, 2015; Torres-Ardila, Bravo, and Ortiz, 2020). For example, even U.S.- citizen Latinos reduced their participation in Medicaid as a result of a punitive immigration enforcement environment (Watson, 2014; Vargas, 2015). It is unlikely Medicaid service providers will use their records to find undocumented friends or family, but the perception of legibility to immigration authorities was sufficient to produce system-avoiding behaviors. In another research paper, U.S.-born children of undocumented immigrants avoided a variety of record-keeping institutions (e.g. banking, formal employment, voter registration) as a result of their social ties with an undocumented parent (Desai, Su, and Adelman, 2019).

64. Undercounting undocumented immigrants will have spillover effects on effectively counting the broader legal non-citizen and citizen population. Mixed-status households are affected by the PM. The PM suggests the government may be using various forms of information to identify undocumented immigrants. If undocumented immigrants are the head of the household or if the head of household is responsible for undocumented immigrant friends and/or family members, they may not respond or allow themselves to be contacted by follow-up enumerators in order to protect the anonymity of their undocumented social ties. This means citizen children, documented spouses of undocumented immigrants, documented partners of undocumented immigrants, and/or documented family of undocumented immigrants will be less likely to be counted in the census.
65. One implication of the fear and unrest in the immigrant community is the increased mobility which could render any attempt at imputation or substitution incomplete and inaccurate. For imputation to work, the missing unit household cannot be vacant, and likewise cannot be a second home or vacation home of someone already counted. The missing unit household should have someone living there as their primary residence. However, as Frost notes that many undocumented immigrants who receive government letters or notices may pick-up and move their entire family, rather than wait around and figure out a way to interact with public officials. Similarly, this is documented by O’Hare (2017) who notes that Latino children are especially susceptible to being undercounted due to mobility. There is evidence that if immigrants are fearful of attempts by the federal government to obtain the personal information, identities, and citizenship statuses of all members of their household, they may vacate their homes and move to avoid being contacted again (Meyers 2017). To the extent this happens, attempts at imputation or substitution will be inaccurate, both on the national level, but especially on state and local levels.

F. When Subsequent Official Action is Taken to Remove Threats Related to Immigration Status, Immigrants Respond with Participation

66. On January 9, 2018, a federal court in the Northern District of California issued a nationwide preliminary injunction against the Trump administration effort to phase-out DACA. The January 2018 decision allowed existing DACA recipients to apply for renewals. Later, on February 13, 2018 a second federal court in the Eastern District of New York also issued a nationwide preliminary injunction to allow DACA renewals to continue. When the court enjoined the effort by the Trump administration to repeal DACA and allowed undocumented immigrants to begin applying for DACA, there was an immediate rush of applications by undocumented immigrants who held DACA status, but were expired. According to data from the United States Customs and Immigrant Services (“USCIS”), 64,210 immigrants applied for renewal immediately after the January 2018 injunction, and 31,860 were approved by March 31,
2018 and 32,280 were pending, with only 70 having been denied.\textsuperscript{31} Over the course of 2018, USCIS reported 287,709 total requests for DACA renewal were made by undocumented immigrants.\textsuperscript{32} Despite additional legal challenges, throughout 2019 the injunctions from Northern California and Eastern New York remained in place nationwide and 406,586 persons applied for DACA renewals across 2019.\textsuperscript{33} Despite the Trump administration’s continued legal challenges to DACA, public statements denigrating immigrants, once the courts issued the injunctions to protect DACA, undocumented immigrants became trusting of this program.\textsuperscript{34}

67. On July 2, 2015, the Priority Enforcement Program (PEP) was implemented by U.S. Immigration and Customs Enforcement (ICE). It was announced by then-DHS Secretary Jeh Johnson in a November 2014 memo, and was meant to replace the then-existing Secure Communities program, which coordinated local police databases with ICE. PEP implemented a series of mandates that immigration enforcement should prioritize individuals who have engaged in serious criminal activity or who pose national security threats. In short, it mandated that ICE cast a smaller net in identifying, detaining, and deporting undocumented immigrants. In addition, PEP made it more difficult for ICE to execute immigration detainers. ICE had to state probable cause (via reference to the priorities) in order to execute a detainer in addition to the local law enforcement agency having to serve a copy of the detainer request on the individual in order for it to take effect. The intent of the new policy was for police to collaborate less with ICE and to only focus their detention efforts on serious criminals. The Dallas County Sheriff, which controls the county jails and oversees the processing of immigrants detained agreed to participate in the PEP program to reduce the local prominence of ICE in Dallas.\textsuperscript{34} A research paper

\textsuperscript{31} Approximate Count of DACA Receipts: Since January 10, 2018, As of Mar. 31, 2018
\textsuperscript{32} Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012-Mar. 31, 2020
\textsuperscript{33} Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012-Mar. 31, 2020
\textsuperscript{34} Dallas County jails complied with the PEP. Dallas County Sheriff Lupe Valdez formally agreed to participate in the program after meeting with ICE representatives in July and August 2015. In August 2015, Dallas County
analyzing Dallas Police Department (DPD) police reports finds clear evidence that the implementation of PEP increased crime reporting to DPD by Hispanic and immigrant subjects in Dallas.35 The data shows Hispanic and immigrant engagement with police increased significantly in the immediate quarter after PEP was implemented. And in the six quarters following the change in policy, Hispanics and immigrants voluntarily reported around 6,000 more incidents to the police than they would have been if the enforcement priorities had not changed. Thus, reversals or limitations imposed on executive actions may have measurable consequences on promoting trust among immigrant communities and influencing behavioral interactions with various aspects of government.

68. In prior survey research in 2018 to test the impact of a citizenship question being included or excluded from the 2020 Census, there was a clear finding of increased Census participation after removing any fear of immigration status being exposed.36 Initially, after being told about the citizenship question, a sizable share of respondents said they would not participate in the 2020 Census. Later in the survey, respondents were randomly assigned to a condition in which they were told the government changed their mind and a citizenship question would NOT be included after all. A second set of participants were randomly assigned to a condition in which it was reaffirmed that the government would in fact include a citizenship question.

<table>
<thead>
<tr>
<th>Q7 - with citizenship</th>
<th>Total</th>
<th>White</th>
<th>Latino</th>
<th>Black</th>
<th>AAPI</th>
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<td>Q8 Yes</td>
<td>45.2</td>
<td>49.5</td>
<td>38.9</td>
<td>62.2</td>
<td>0.2</td>
<td>17.2</td>
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<tr>
<td>Q7 Yes - without</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>citizenship</td>
<td>84.3</td>
<td>89.3</td>
<td>80.1</td>
<td>78.6</td>
<td>53.3</td>
<td>94.9</td>
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<td>-39.7</td>
<td>-41.2</td>
<td>-16.5</td>
<td>-53.1</td>
<td>-77.7</td>
</tr>
</tbody>
</table>

90. Table 7: Percent of Non-Responders Who Change to Responders at Q7 / Q8

officials began reviewing ICE’s request prior to honoring them with the vetting guidelines being similar to PEP priorities, ensuring only individuals who posed a threat to public safety were transferred to ICE’s custody. This is evidenced in data by Jacome (2018), who finds total detainers dropped by roughly 1,000 by the end of 2015 due to decreases in detainers issued for individuals convicted of misdemeanors and those with no conviction.


Among Latinos who said they would **not** participate in the census with a citizenship question, 80 percent changed their mind and said they **would** participate once they learned that the citizenship question would be removed. The mechanism here is whether or not those in the immigrant community believe their participation creates increased risk of exposing themselves to immigration enforcement. Members of immigrant communities are very concerned about their citizenship status being monitored or revealed. When they believe the threat is real, they will withdraw from the Census, and when that threat has been removed, they reengage. This provides very strong evidence that when fears about citizenship status being revealed are removed, a large share of Latinos will indeed increase their participation in Census 2020.\textsuperscript{37}

69. Across the wide-ranging literature, a key finding is that immigrants are normally eager to engage in public life and with political institutions, but when there is a threat of negative consequences for their immigration status, avoidance behavior is likely. (e.g. García 2019).

**G. Non-Response Follow-Up (NRFU) and Imputation of Non-Responding Households**

70. The Census Bureau is aware that some households will not respond to the initial request for participation, and as such they have long had a program called Non-Response Follow-Up (NRFU) which provides follow-up contact with any households that do not initially respond. The Census Bureau estimates they conducted follow-up with around 50 million households in 2010 (Rao 2017). NRFU is critical for the Census Bureau to increase participation rates, but it is a costly and difficult undertaking by their own admission. Any increased non-response at initial contact makes NRFU much more difficult, especially if non-responding households come to not trust the survey questions that enumerators are attempting to ask. What’s more, NRFU is now profoundly more difficult due to COVID-19 and the time available has been shortened. As discussed in this report, the PM increases the likelihood that Latinos, immigrants, and noncitizens are less likely to self-respond to the 2020 census. These non-responding individuals are also unlikely to respond

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\textsuperscript{37} See *id.*
after household visits by census enumerators because of fear of government interaction. (de la Puente 1995; 2004).

71. In fact, with the new focus on excluding undocumented immigrants directed by the PM, the Census outreach efforts after July 21, 2020 could actually create more fear and anxiety in immigrant communities and further drive down response rate and increase the net undercount. For example, the Census Bureau plans to send enumerators into non-responding communities on behalf of the federal government, and if nobody is home, they will leave a “Notice of Visit” from the federal government which includes a unique household “census identification number.” Further, they inform the household that additional visits will be made back to their house by enumerators on behalf of the federal government. This sends a clear signal of federal government monitoring of the household and will result in increased anxiety and concern over cooperating (e.g. Menjivar 2011; Szkupinski Quiroga et al. 2014). Research by Hagan et al. (2011) documents with clear evidence the extensive chilling effect of increased presence of government officials who appear to be monitoring immigrants and checking on their status. They find immigrants “withdrawing from the community” as well as “avoiding public places” and that they “spend most of their non-working hours in their homes because it is the safest way to avoid detection.” (Hagan et al. 2011.) According to Abrego (2011), undocumented immigrants will go to great lengths to reduce their visibility in society when they perceive a potential threat of deportation. Her research identifies withdrawal from interactions with government agencies as awareness of immigration checks increases. From the perspective of an anxious immigrant, each additional household visit from a government Census worker, following a PM directing the exclusion of undocumented people, is the exact environment that would produce withdrawal. According to Abrego: “In effect, their well-being and stability are perennially threatened because, as they are constantly reminded, there may be an ICE raid... at any time” (2011).

72. Research also finds that increased presence and visibility of government officials who appear to be collecting immigration information creates withdrawal and also misreporting on government forms (Rodriguez and Hagan 2004). Increased presence of immigration officials in
the community lead to a decline of student attendance in the nearby school to avoid any contact with the government officials. However, in communities without ICE presence, school attendance is not impacted. The research study observed this trend across three different cities in Texas and attributed increased withdrawal to an increased visibility and presence of government officials asking about immigration status. Further, the same study reported that Hispanics began to change their racial identification to White on government forms at health clinics to avoid any risk of association with immigration officials (Rodriguez and Hagan 2004).

73. Another study specifically examined the willingness of immigrants to participate in surveys and data collection efforts, in particular examining how fear of deportation impacted response rates and general engagement with government services (Arbona et al. 2010). One of the most important findings of this study was that if immigrants fear their participation could somehow lead to their deportation, they will not participate unless they are fully comfortable and trusting of the survey taker. As the research study progressed, Arbona et al. reported, through quantitative data, that fear of deportation was a strong motivating factor for avoidance and that over 80% of immigrants in their sample stated that they avoided activities such as “ask[ing] for help from government agencies, report[ing] an infraction to the police, attend[ing] court if requested to do so,” and other items. The more census enumerators visit immigrant communities to attempt household counts, following the July 21 PM to exclude undocumented immigrants, the more likely they will be to not participate. That is, the outreach itself will produce further non-response as a result of the socio-political climate following the PM.

74. NRFU enumerators may not be able to make contact with adult households. Enumerators may not be sufficiently linguistically or culturally competent in order to persuade undecided households to respond. For example, they may not be able to effectively convince Latinos who may be concerned about immigration issues or enforcement to respond. Many Latinos, in the context of heightened immigration enforcement, are told to not open the door to strangers due to commercial scams and guidance from immigration legal advisors regarding ICE visits (Kissam et al., 2019). Moreover, even if enumerators are able to convince members of
immigrant communities to respond despite the existence of a chilling effect, it may be logistically difficult for enumerators to make contact with adult householders. In many immigrant communities, work hours are long and weekend work is common, increasing the difficulty for NRFU enumerators to conduct a direct interview of the household (Kissam et al., 2019).

75. NRFU also cannot account for households omitted from the Master Address File as a result of “complex households” in low-visibility unconventional and/or hidden housing units (Kissam, 2019). These complex households may be more likely to be made up of immigrants and their direct social ties. Kissam (2019) notes in the San Joaquin Valley, only 95% of the Latino immigrant study population live in housing units included in the Census Bureau’s Master Address File, resulting in a 5% household omission rate. The only way these households can be counted in the Census is if they proactively respond via online non-ID processing operations or by phone. However, these alternative mechanisms may not work if these complex households are concerned about the prospect of providing information to a government seeking to identify their citizenship status or exclude them from the count for specific purposes, such as apportionment, as required by the PM.

76. Even if NRFU results in data production, it may be faulty data. High levels of non-response force the Census Bureau to rely on alternative statistical procedures such as triangulation via administrative records, proxy interviews with neighbors, and, imputation. Some of these alternative efforts might fail in immigrant communities. Proxy interviews may fail to resolve undercounting due to mistrust of Federal authorities and lack of willingness to provide information on neighbors. Indeed, only 17% of respondents in a survey of the San Joaquin Valley immigrant community indicated they were willing to provide an enumerator with information about neighbors in the San Joaquin Valley (Kissam, 2019). It is important to note proxy interview efforts are error-prone, since they are, at best, estimates by neighbors of the number and characteristics of neighboring households. The same survey of immigrant communities in the San Joaquin Valley indicates less than half of potential Census respondents believe they know enough about their
neighbors to provide accurate responses (Kissam, 2019).

77. Moreover, finding administrative records that match households is likely to be more difficult for immigrant households, who may be less prone to providing personal or household information to various aspects of government and may not be eligible for a variety of government programs that keep records (Kissam, 2019; Asad, 2020). While the Trump administration may assume they can rely on administrative records, the reality is that this creates major methodological problems for NRFU and then imputation. The data is fraught with errors and inconsistencies and will lead to lower quality data and undercounts. Research by Bhaskar, Fernandez, and Porter (2018), who are Census Bureau researchers, indicates matching an administrative record to a household requires a Personal Identification Key (PIK). They also find foreign-born households are less likely to have a PIK than U.S.-born households. Lack of having a PIK is associated with more people in a household, living in a Census tract with a high density of foreign-born individuals, Latino/Hispanic race/ethnicity, non-citizen status, limited English or no English proficiency, and being a recent immigrant. IRS administrative records may not serve as effective proxies for enumeration given not all undocumented immigrants file income tax returns on a regular basis (Gee, Gardner, and Wiehe, 2016). Social Security Administration (SSA) records may be incomplete if immigrant workers have only worked in the informal or underground economy. Parents also may never apply for an SSN for foreign-born children without legal status. Foreign-born non-working spouses may have never applied for an SSN (Kissam, 2019). Often, the use of borrowed SSNs is prevalent among immigrant workers, which may result in potential undercounts or discrepancies in the count. Moreover, employer reports of employee’s earnings do not provide reliable or exhaustive information on household size.

78. Even if a match to an administrative record is found for a specific address, it may not accurately enumerate household size and composition because the record may be out of date or exclude peripheral household members who are not part of the primary core family living in the housing unit (Kissam, 2019). There may be discrepancies via administrative matching in neighborhoods where low-income renter households move often and administrative records may
not update frequently in immigrant communities such that newly born children will be disproportionately omitted (Kissam, 2019). If information via administrative records or proxy interviews do not bear fruit, the Census Bureau may attempt to use hot-deck imputation to determine the characteristics of households that did not respond. The problem is that non-responding households in immigrant communities may be systematically larger than those that do respond. Thus, each imputation will contribute to a differential undercut given that “donor” households have less inhabitants (Kissam, 2019).

79. In addition to trying to match households to their administrative records, the Census Bureau has indicated that it may employ statistical imputation techniques to address nonresponse. During the collection of any survey, two types of nonresponse can emerge: unit nonresponse and item nonresponse. Unit nonresponse concerns an entire missing case resulting from either non-contact, refusal, or inability to participate. Item nonresponse concerns missing values on certain questions in the survey. Bias, or incorrect and faulty data, can emerge from nonresponse when the causes of the nonresponse are linked to the survey statistics being measured, which is referred to as nonignorable nonresponse (Groves et al 2004). By way of illustration, public health officials designed a survey to measure the prevalence of HIV in the population during the early days of the HIV epidemic. Despite incentives, cooperation rates among those who were HIV-positive were extremely low because of the stigma of the disease. Thus, the key statistic sought – namely, the percentage of HIV-positive people – was causally related to the likelihood of self-response; specifically, in that case, those who were HIV-positive did not want to participate in the study at all. Non-ignorable nonresponse is particularly egregious because even if the causal influence is known “there is no way that the statistic among respondents can be made free of nonresponse bias (without making heroic assumptions about the status of the nonrespondents)” (Groves et al. 2004). What this means is that if a factor influencing the decision to not respond is correlated with an important outcome variable, imputation is impractical because you cannot observe the existence of the precise variable you are trying to count. In the case of the 2020 Census, the key outcome variable is producing an accurate count of total household size; yet, prior research establishes that
larger households are more likely to not respond when the responder’s citizenship status may be implicated. Thus, the decision whether to respond is correlated with household size, a key outcome variable of interest.

80. Some statistical tools are available to deal with nonresponse. At one end of the spectrum, if every variable of interest is known for the nonrespondent, except one, then we can use these variables to form an imputation model that will predict a value for the missing value—for example, we may know the existence of the respondent and that person’s age, but may not know their income level and can use predictive models to impute income for that respondent. At the other end of the spectrum we have entire missing cases (unit nonresponse), where the existence of the person is unknown. Imputation for unit nonresponse, sometimes called “whole person imputation,” is used almost exclusively in longitudinal surveys where ample data from prior waves exists for a missing respondent. It is extremely rare to impute for unit nonresponse if little is known about the nonrespondent case (Groves and Couper 1998). Unit nonresponse is typically dealt with by some form of post-stratification or response rate weighting adjustment38 (Kalton 1983). While imputation can be useful for missing values in an otherwise completed survey form (item nonresponse), it is particularly problematic for imputing the existence of whole persons, and is especially likely to end up with an undercount in vulnerable communities. This is part of the reason that social scientists and government statisticians want the decennial census to be as non-burdensome and non-sensitive as possible, to ensure an overall accurate count through high rates of participation (Wines 2018).

81. In general, whole-person imputation itself relies on a number of assumptions to work correctly. If data is missing completely at random (MCAR) (Rubin 1976), then non-response generally introduces less bias. Models are of less help with non-ignorable nonresponse, as noted above, where nonresponse depends on the values of a response variable. In this case, models can

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38 After the survey data are collected, statisticians can use the known universe of respondent demographics to apply weights and possibly correct for non-response, however this only corrects the dataset for use in a data analysis project or academic research paper, not necessarily population counts, which are supposed to serve as the baseline universe estimate in the first place.
help but never eliminate all nonresponse bias (Lohr 1999). Indeed, recent reviews of cutting edge imputation procedures like “hot deck imputation” argue that “hot deck” methods for situations where nonresponse is non-ignorable have not been well explored (Andridge and Little 2010). Whole person imputation, then, has its dangers. The Census Bureau currently acknowledges that “whole person substitutions and whole person imputations are not very accurate.” (See Abowd 30(b)(6) Deposition 2018)

82. With respect to the U.S. census and counts of Latino and immigrant households, previous research has shown that whole person imputation efforts are seriously error-prone. Because family arrangements, housing styles and total household sizes vary considerably, attempts to impute the population of non-respondent households have been shown to undercount the population (Kissam 2017). First, many non-traditional housing units are simply not included in the imputation, leaving them as vacant when in reality they had tenants or dwellers. Second, the household size of missing units tends to be larger, on average, than of reported units. Reports also document differences by socioeconomic status. The end result is that even with imputation, there can still be a significant undercount of the Latino immigrant population.

83. Beyond the raw count being inaccurate, there is also evidence of misattribution of those imputed, because they rely on higher acculturated units for which there is data to make adjustments (i.e. substituting data on U.S.-born, English-speaking and college educated households when in fact missing cases are more likely to be foreign-born, Spanish-speaker, less educated households), suggesting the imputed data do not accurately describe the true population (Kissam 2017). The U.S. Government Accountability Office has itself admitted this is a problem with respect to getting a complete count of Latinos. In the 2003 report on trying to improve the Latino count, they wrote “even with the Bureau’s guidelines and training, deciding whether a house is unfit for habitation or merely unoccupied and boarded-up can be very difficult. An incorrect decision on the part of the census worker could have caused the dwelling and its occupants to get missed by the census.” U.S GAO Report (2003) (GAO-03-605).

84. By examining data from a prior 2018 survey specifically about the Census, we can
conclude that unit non-response on the 2020 census will not be at random. Households that do not respond and represent missing units, are certain to have very different characteristics and demographics than the households that do respond. In this event, it makes it nearly impossible to impute or infer the population totals or any other demographic information about missing units (e.g. missing households) because we do not have enough reliable information on “matched” or similar units. Further, it is quite likely that unit non-response in 2020 will be clustered geographically, meaning that there will be fewer available adjacent units for imputation, and that analysts will have to rely on dissimilar households for imputation, thus violating the most important assumption needed for accurate imputation. In particular, non-responders were found more likely in dense urban areas and locales with high numbers of renters. These factors are known to be related to census undercounts and make NRFU difficult and result in erroneous imputation (U.S. GAO Report, 2003).

85. It is virtually certain that the reduced self-response caused by the July 21 PM related to citizenship status will lead to a net undercount among those populations with lower rates of self-response. Previous census reports have documented that high rates of non-response to the initial questionnaire result in undercounts, and that NRFU is not always successful in converting those cases into respondents. In addition, matching household to administrative records can be an unreliable method of enumerating the household, particularly for immigrant communities. Prior census reports have also documented that errors are made in imputation and that undercounts persist even after attempted imputation. Ultimately, the worse the initial non-response is, the worse the initial undercount is, making it increasingly more difficult to convert those cases into responding cases, and increasing more difficult to impute missing units (US Census Bureau 2017b; National Research Council 2002; 2004).

86. This problem has been documented to be worse in Latino and immigrant communities where the Census admits the undercount is problematic, and that their efforts at NRFU and imputation have errors (Ericksen and Defonso 1993; O’Hare et al. 2016). One primary reason is that issues related to trust of government officials significantly hampers the NRFU process, and in
2020 the citizenship question will greatly exacerbate issues of trust in immigrant communities (See section below “Perceptions of Trust and Confidentiality” at paragraph 96). In particular, young children in Latino households have been found to be regularly undercounted by previous census efforts and that imputation methods do not appropriately find or count this population. The best assurance for an accurate count is high response rates on the initial census request for participation, which requires a high degree of trust (O’Hare et al. 2016; Casey Foundation 2018). Previous self-reports by the Census Bureau are clear: immigrant communities are already at-risk of an undercount because of lower levels of trust of government officials, and have particular anxiety over citizenship information being shared. What’s more, these previous census reports have documented that low self-participation on round one of invitations ultimately leads to an undercount that no amount of NRFU, administrative-record matching, or imputation can correct. In 2020, the PM will only create more problems, more anxiety in immigrant communities, and less self-participation on round one. With nearly 17 million people, including 6 million citizen children, living in households with at least one person who is an undocumented immigrant (Casey Foundation 2018), there is enormous potential for a massive non-response with a newly created anxiety over citizenship status as a result of the July PM.

87. After reviewing defendants report(s), I plan to offer rebuttal opinions as requested by plaintiffs.

Executed on August 7, 2020 at Agoura Hills, CA.

I declare under penalty of perjury that the foregoing is true and correct.

Matthew A. Barreto
References


Torres-Ardila, Fabian, Daniela Bravo, and Franklin Ortiz (2020). “Increasing Latino Participation Rates in the 2020 Census in Chelsea, MA”.


Abowd, John, Depositions on August 15, 2018 (hereinafter Abowd Deposition) and August 29, 2018 (Abowd 30(b)(6)).


Center for Survey Measurement. 2017. “MEMORANDUM FOR Associate Directorate for Research and Methodology (ADRM).”


Appendix A
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Google Scholar citation indices: Cites: 3,768  h-index: 28  i10-index: 54  Years post-PhD: 15  Cites/year: 236

BOOK MANUSCRIPTS:

Barreto, Matt and Christopher Parker. nd. The Great White Hope: Donald Trump, Race, and the Crisis of American Politics. Under Contract, University of Chicago Press. expected Fall 2020


PEER-REVIEWED ARTICLES


Barreto-CV 2


*Edited Volume Book Chapters*


## RESEARCH AWARDS AND FELLOWSHIPS

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<th>Amount</th>
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<td>Provost Initiative for Voting Rights Research</td>
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<td>Muslim and American? The influence of religiosity in Muslim political incorporation</td>
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<tr>
<td>April 2008</td>
<td>National Association of Latino Elected Officials (NALEO) &amp; National Council of La Raza (NCLR), 2008 Latino voter messaging survey</td>
<td>$95,000 – 6 months</td>
<td></td>
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<tr>
<td>Dec. 2007</td>
<td>Research Royalty Fund, University of Washington 2008 Latino national post-election survey</td>
<td>$39,000 – 12 months</td>
<td></td>
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<tr>
<td>Oct. 2007</td>
<td>Brennan Center for Justice, New York University [with Stephen Núñez and Gabriel Sanchez] Indiana Voter Identification Study</td>
<td>$40,000 – 6 months</td>
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<td>June 2007</td>
<td>National Science Foundation, Political Science Division [with Gary Segura] American National Election Study – Spanish translation and Latino oversample</td>
<td>$750,000 – 24 months</td>
<td></td>
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<tr>
<td>Oct. 2006</td>
<td>University of Washington, Vice Provost for Undergraduate Education Absentee voter study during the November 2006 election in King County, WA</td>
<td>$12,000 – 6 months</td>
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<tr>
<td>Mar. 2006</td>
<td>Latino Policy Coalition Public Opinion Research Grant [with Gary Segura] Awarded to the Washington Institute for the Study of Ethnicity and Race</td>
<td>$40,000 – 18 months</td>
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<tr>
<td>2005 – 2006</td>
<td>University of Washington, Institute for Ethnic Studies, Research Grant</td>
<td>$8,000 – 12 months</td>
<td></td>
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<tr>
<td>Mar. 2005</td>
<td>Thomas and Dorothy Leavey Foundation Grant [with Fernando Guerra] Conduct Exit Poll during Los Angeles Mayoral Election, Mar. 8 &amp; May 17, 2005 Awarded to the Center for the Study of Los Angeles</td>
<td>$30,000 – 6 months</td>
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<tr>
<td>2004 – 2005</td>
<td>Ford Foundation Dissertation Fellowship for Minorities</td>
<td>$21,000 – 12 months</td>
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</tr>
<tr>
<td>2004 – 2005</td>
<td>University of California President’s Dissertation Fellowship</td>
<td>$14,700 – 9 months</td>
<td></td>
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</tr>
<tr>
<td>2004 – 2005</td>
<td>University of California Mexico-US (UC MEXUS) Dissertation Grant</td>
<td>$12,000 – 9 months</td>
<td></td>
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<tr>
<td>Apr – 2004</td>
<td>UC Regents pre-dissertation fellowship, University of California, Irvine,</td>
<td>$4,700 – 3 months</td>
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<tr>
<td>2003 – 2004</td>
<td>Thomas and Dorothy Leavey Foundation Grant [with Fernando Guerra] Awarded to the Center for the Study of Los Angeles</td>
<td>$20,000 – 12 months</td>
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<tr>
<td>2002 – 2003</td>
<td>Ford Foundation Grant on Institutional Inequality [with Harry Pachon] Conducted longitudinal study of Prop 209 on Latino and Black college admittance Awarded to Tomás Rivera Policy Institute</td>
<td>$150,000 – 12 months</td>
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<tr>
<td>2002 – 2003</td>
<td>Haynes Foundation Grant on Economic Development [with Louis Tornatzky] Knowledge Economy in the Inland Empire region of Southern California Awarded to Tomás Rivera Policy Institute</td>
<td>$150,000 – 18 months</td>
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<tr>
<td>2001 – 2002</td>
<td>William F Podlich Graduate Fellowship, Center for the Study of Democracy, University of California, Irvine</td>
<td>$24,000 – 9 months</td>
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</tbody>
</table>
RESEARCH UNDER REVIEW/WORKING PAPERS:


Barreto, Matt and Christopher Parker. “The Great White Hope: Existential Threat and Demographic Anxiety in the Age of Trump.” *Revise and Resubmit*

Barreto, Matt, Natalie Masuoka, Gabe Sanchez and Stephen El-Khatib. “Religiosity, Discrimination and Group Identity Among Muslim Americans” *Revise and Resubmit*

Barreto, Matt, Gabe Sanchez and Barbara Gomez. “Latinos, Blacks, and Black Latinos: Competition, Cooperation, or Indifference?” *Revise and Resubmit*

Walker, Hannah, Matt Barreto, Stephen Nuño, and Gabriel Sanchez. “A comprehensive review of access to valid photo ID and the right to vote in America” [Under review]


Barreto, Matt, David Redlawsk and Caroline Tolbert. “Framing Barack Obama: Muslim, Christian or Black?” [Working paper]
CONSULTING EXPERT:

- North Carolina, 2019, Expert for Plaintiffs in North Carolina voter ID lawsuit, NAACP v. Cooper
- East Ramapo CSD, 2018, Expert for Plaintiffs in Section 2 VRA lawsuit, assessed polarized voting
- Dallas County, TX, 2017, Expert for Defense in Section 2 VRA lawsuit, Harding v. Dallas County
- Galveston County, TX Redistricting, 2013, Expert report for Dunn & Brazil, LLC, Demographic analysis, vote dilution analysis, and racially polarized voting analysis for Section 2 lawsuit Galveston County JP/Constable districting
- Pasadena, TX Redistricting, 2013, Expert report for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, and racially polarized voting analysis for Section 2 lawsuit within Pasadena School District
- Harris County, TX Redistricting, 2011, Testifying Expert for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, and racially polarized voting analysis for Section 2 lawsuit within Harris County
- Orange County, FL, 2012, Consulting Expert for Latino Justice/PRLDEF, Racially polarized voting analysis in Orange County, Florida
- Anaheim, CA, 2012, Consulting Expert for Goldstein, Demchak & Baller Legal, Racially polarized voting analysis for CVRA redistricting case Anaheim, CA
- Los Angeles County, CA, 2011, Consulting Expert for Goldstein, Demchak & Baller Legal, Racially polarized voting analysis for three redistricting cases in L.A.: Cerritos Community College Board; ABC Unified Schools; City of West Covina
- Harris County, TX Redistricting, 2011, Consulting Expert for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, for Section 5 objection within Harris County
- Monterey County, CA Redistricting, 2011, Consulting Expert for City of Salinas, Demographic analysis, creation of alternative maps, and racially polarized Voting analysis within Monterey County
- Asian Pacific American Legal Center, 2011, Racially Polarized Voting analysis of Asian American candidates in Los Angeles for APALC redistricting brief
- Lawyers' Committee for Civil Rights and Arnold & Porter, LLP, 2010-12, Racially Polarized Voting analysis of Latino and Asian candidates in San Mateo County, concerning San Mateo County Board of Supervisors
- ACLU of Washington, 2010-11, preliminary analysis of Latino population patterns in Yakima, Washington, to assess ability to draw majority Latino council districts
- State of Washington, 2010-11, provided expert analysis and research for *State of Washington v. MacLean* in case regarding election misconduct and voting patterns

- Los Angeles County Chicano Employees Association, 2008-10, Racially Polarized Voting analysis of Latino candidates in L.A. County for VRA case, concerning L.A. County Board of Supervisors redistricting (6 reports issued 08-10)

- Brennan Center for Justice and Fried, Frank, Harris, Shriver & Jacobson LLP, 2009-10 Amicus Brief submitted to Indiana Supreme Court, *League of Women Voters v. Rokita*, regarding access to voter identification among minority and lower resource citizens

- State of New Mexico, consulting expert for state in *AAPD v. New Mexico*, 2008,

- District of Columbia Public Schools (DCPS), statistical consultant for survey methodology of opinion survey of parents in DCPS district (for pending suit), 2008,

- Brennan Center for Justice, 2007-08, Amicus Brief submitted to U.S. Supreme Court, and cited in Supreme Court decision, *Crawford v. Marion County*, regarding access to voter identification among minority and lower-resource citizens

- Los Angeles County Chicano Employees Association, 2002-07, Racially Polarized Voting analysis of Latino candidates in L.A. County for VRA case, concerning L.A. County Board of Supervisors redistricting (12 + reports issued during 5 years)

- Monterey County School Board, 2007, demographic and population analysis for VRA case

- Sweetwater Union School District, 2007-08, Racially Polarized Voting analysis, and demographic and population analysis for VRA case

- Mexican American Legal Defense Fund, 2007-08, Racially Polarized Voting analysis for Latino candidates, for City of Whittier city council races, for VRA case


- Nielsen Media Research, 2005-08, with Willie C. Velasquez Institute, assessed the methodology of Latino household recruitment in Nielsen sample
M.A. Barreto / UCLA / Curriculum Vitae / Mar 2020

Teaching Experience:
- Minority Political Behavior (Grad Seminar)
- Politics of Immigration in the U.S. (Grad Seminar)
- Introduction to Empirical/Regression Analysis (Grad Seminar)
- Advanced Empirical/Regression Analysis (Grad Seminar)
- Qualitative Research Methods (Grad Seminar)
- Political Participation & Elections (Grad Seminar)
- The Voting Rights Act (Law School seminar)
- Research methodology II (Law School Ph.D. program seminar)
- U.S. Latino Politics
- Racial and Ethnic Politics in the U.S.
- Politics of Immigration in the U.S.
- Introduction to American Government
- Public Opinion Research
- Campaigns and Elections in the U.S.
- Presidential Primary Elections

Teaching Assistant
University of California, Irvine
- Intro to American Politics (K. Tate)
- Intro to Minority Politics (L. DeSipio)
  Recognized as Outstanding Teaching Assistant, Winter 2002
- Statistics and Research Methods (B. Grofman)
  Recognized as Outstanding Teaching Assistant, Winter 2003

Board & Research Appointments:
- Founding Partner
  Latino Decisions
  2007 – Present

  Senior Research Fellow
  Center for the Study of Los Angeles, Loyola Marymount University
  2002 – Present

  Board of Advisors
  American National Election Study, University of Michigan
  2010 – Present

  Advisory Board
  States of Change: Demographics & Democracy Project
  CAP, AEI, Brookings Collaborative Project
  2014 – Present

  Research Advisor
  American Values Institute / Perception Institute
  2009 – 2014

  Expert Consultant
  State of California, Citizens Redistricting Committee
  2011 – 2012

  Senior Scholar & Advisory Council
  Latino Policy Coalition, San Francisco, CA
  2006 – 2008

  Board of Directors
  CASA Latina, Seattle, WA
  2006 – 2009

  Faculty Research Scholar
  Tomás Rivera Policy Institute, University of Southern California
  1999 – 2009
PHD STUDENTS

UCLA & UW

Committee Chair or Co-Chair
- Francisco I. Pedraza – University of California, Riverside (UW Ph.D. 2009)
- Loren Collingwood – University of California, Riverside (UW Ph.D. 2012)
- Betsy Cooper – Public Religion Research Institute, Washington DC (UW Ph.D. 2014)
- Sergio I. Garcia-Rios – Cornell University (UW Ph.D. 2015)
- Hannah Walker – Rutgers University (UW Ph.D. 2016)
- Kassra Oskooii – University of Delaware (UW Ph.D. 2016)
- Angela Ocampo – Arizona State University (UCLA Ph.D. 2018)
- Ayobami Laniyonu – University of Toronto (UCLA Ph.D. 2018)
- Adria Tinin – in progress (UCLA ABD)
- Bang Quan Zheng – in progress (UCLA ABD)
- Bryan Wilcox-Arculeta – in progress (UCLA ABD)
- Tyler Reny – in progress (UCLA ABD)
- Angie Gutierrez – in progress (UCLA)
- Shakari Byerly-Nelson – in progress (UCLA)
- Vivien Leung – in progress (UCLA)

Committee Member
- Jessica Stewart – Emory University (UCLA Ph.D. 2018)
- Jonathan Collins – Brown University (UCLA Ph.D., 2017)
- Lisa Sanchez – University of Arizona (UNM Ph.D., 2016)
- Nazita Lajevardi – Michigan State University (UC San Diego Ph.D., 2016)
- Kiku Huckle – Pace University (UW Ph.D. 2016)
- Patrick Rock (Social Psychology) – (UCLA Ph.D. 2016)
- Raynee Gutting – Loyola Marymount University (Stony Brook Ph.D. 2015)
- Christopher Towler – Sacramento State University (UW Ph.D. 2014)
- Benjamin F. Gonzalez – San Diego State University (UW Ph.D. 2014)
- Marcela Garcia-Castañon – San Francisco State University (UW Ph.D. 2013)
- Justin Reedy (Communications) – University of Oklahoma (UW Ph.D. 2012)
- Dino Bozonestos – Cal State San Marcos (UC Riverside Ph.D. 2012)
- Brandon Bosch – University of Nebraska (UW Ph.D. 2012)
- Karam Dana (Middle East Studies) – UW Bothell (UW Ph.D. 2010)
- Joy Wilke – in progress (UCLA ABD)
- Erik Hanson – in progress (UCLA)
- Christine Slaughter – in progress (UCLA)
- Lauren Goldstein (Social Psychology) – in progress (UCLA)
- Barbara Gomez-Aguinaga – University of Nebraska (UNM Ph.D., in progress)
Exhibit 57
Expert Declaration of Mr. John Thompson

1. Introduction

1. On July 21, 2020 President Trump issued a Memorandum for the Secretary of Commerce on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census (in the remainder of this document I will use the term “Memorandum” to refer to this document). I am extremely concerned that this action will adversely affect the quality and accuracy of the 2020 Census.

2. The 2020 Census results will be of great importance to our nation. The Constitution requires that the census be used for reapportioning the Congress of the United States and the Electoral College. The 2020 Census will also be used for numerous other functions to support good
policymaking and economic growth including: redrawing congressional and state legislative voting districts; allocating over $1.5 trillion of federal funds annually; informing sound policy development; providing critical information for state, local and tribal government planning; and supplying critical information to large and small businesses to generate growth and job creation. Inaccuracies or errors in the 2020 Census will have grave consequences on these uses for the subsequent 10-year period.

3. I have carefully reviewed the Memorandum instructing the Secretary of Commerce to provide information to exclude undocumented persons from the Apportionment counts. I have also reviewed the 2020 Census Operational Plans as well as the documentation that the Census Bureau has issued describing the actions it is taking in response to the COVID-19 pandemic. I have two serious concerns regarding the Memorandum: (1) it will significantly increase the risk of larger total and differential undercounts, relative to previous censuses, for the hard-to-count populations, including immigrant communities; and (2) it lacks transparency as required by law and the Census Bureau Statistical Quality Standards that would allow for the assessment of the methodology that might be used in response to the direction to exclude undocumented persons from the 2020 Census Apportionment counts.

II. Qualifications

4. Below I briefly describe specific aspects of my qualifications and work experience that establishes my credentials as an accomplished statistician and an expert on the Census Bureau and Decennial Census. I have also attached a copy of my CV to this declaration.

5. I have served as both the Director of the U.S. Census Bureau and as the career senior executive in charge of management of all aspects of the 2000 Decennial Census. I am also a distinguished professional in the area of statistics and survey design. I have a deep understanding of the processes that are necessary to achieve a complete and highly accurate Decennial Census.

6. I served as the Director of the U.S. Census Bureau from August 2013 to June 2017. Prior to becoming Director, I worked at the Census Bureau for 27 years (from 1975 to 2002). I started my career as a mathematical statistician in 1975. I spent the majority of my employment at the Census Bureau focused on the Decennial Census and ultimately served as the Associate Director for the 2000 Decennial Census, with management responsibility for all phases of the 2000 Decennial Census.

7. The Census Bureau is the largest Statistical Agency and produces a wide range of demographic and economic statistics including: the Decennial Census; the American Community Survey; the Current Population Survey; the National Crime Victimization Survey, the National Health Interview Survey; the Economic Census; the release of 13 principle key economic indicators on a monthly or quarterly basis; and conducts about 100 additional surveys. The Director of the Census Bureau is appointed by the President and
confirmed by the Senate.

8. My responsibilities as Director of the Census Bureau included overseeing the research and testing that produced the design for the 2020 Census. During my tenure, the original operational plan for conducting the 2020 Census was released, as was an updated version 2.0 of this plan. In addition, major field tests were conducted in 2013, 2014, 2015 and 2016. The results of these tests informed the final 2020 Census Design that was tested in the 2018 end-to-end test. During my service, the Census Bureau reviewed the residence criteria used to determine where to count the residents of the United States. A preliminary proposal for the 2020 residence criteria was issued for public comment on June 30, 2016.\(^1\) In particular, the Census Bureau was following the same principles that had guided each previous Decennial Census – the Constitution requires that everyone living in the United States should be included in the enumeration, regardless of immigration status, for all uses of the census, including Apportionment. The final 2020 Census residence criteria were issued on February 5, 2018, and again followed these same principles to count everyone living in the United States at their usual place of residence regardless of immigration status for Apportionment and all other uses.\(^2\)

9. Prior to being appointed Director of the Census Bureau I was at National Opinion Research Center (NORC) at the University of Chicago, serving as Executive Vice President from 2002 to 2008 and President from 2008 to 2013. NORC is an objective, non-partisan independent research institution that delivers reliable data and rigorous analysis to guide critical programmatic, business, and policy decisions. Clients include government, corporate, and nonprofit organizations around the world who partner with NORC to transform increasingly complex information into useful knowledge. NORC conducts research in five main areas: Economics, Markets, and the Workforce; Education, Training, and Learning; Global Development; Health and Well-Being; and Society, Media, and Public Affairs. NORC services include designing and conducting surveys (telephone, Internet, and in-person) as well as analytical studies.

10. From July 2017 to August 2018, I served as the Executive Director of the Council of Professional Associations on Federal Statistics (COPAFS). COPAFS is an organization with a membership consisting of professional associations and research organizations that depend on and support high quality federal statistics. The Executive Director of COPAFS must have a deep understanding of the Federal Statistical System and the wide range of data products that are produced. Serving as the Executive Director of COPAFS reinforced my appreciation of the importance of high-quality Decennial Census data to the entire Federal Statistical System.

\(^1\) Federal Register, 81 FR 42577, Proposed 2020 Census Residence Rule and Residence Situations, June 30, 2016.
11. In addition to the work experience described above, I am an elected Fellow of the American Statistical Association and was selected to serve on the National Academies of Science, Engineering, and Medicine Committee on National Statistics.

III. Concerns

A. Background on the Decennial Census

12. The uses of the data generated by the Decennial Census are extremely important for all components of our democracy and economy, including: the constitutionally required reapportionment of the Congress; redrawing congressional and state legislative voting districts; allocating over $1.5 trillion in federal funds annually; supporting evidence based policy making by state, local and tribal governments; and allowing informed decisions by large and small business to generate economic growth and job creation. Inaccuracies or undercounts in Decennial Census data will result in under-representation of the affected population groups not just in the immediate term, but for ten subsequent years until the next Decennial Census results are available.

B. The 2020 Census was already facing unprecedented challenges prior to the release of the Memorandum.

13. The COVID-19 pandemic forced the delay of key operations out of concerns for the safety of both census workers and the general public. The in-person components of the local partnership program to increase response rates of the traditionally hard-to-count populations were delayed, as was the operation to collect responses from those households that do not self-respond. This operation is referred to as nonresponse follow-up or NRFU. In my opinion, NRFU is the most critical operation to achieving a fair and accurate enumeration. Currently the national self-response rate is 63 percent, which means that over 37 percent or over 50 million housing units and their occupants must still be enumerated. A successful NRFU is therefore essential to achieving a complete enumeration for the 2020 Census.

14. The NRFU operation had been scheduled to start on May 15, 2020 and run through July 31, 2020. However, as a result of the COVID-19 pandemic, the Census rescheduled it to start in most of the United States on August 11, 2020 and initially planned to complete it by October 30, 2020.

15. In order to accommodate this delay, the Census Bureau had requested, through the Department of Commerce, a four-month extension of the legal deadlines to deliver Apportionment and redistricting data. For Apportionment this would extend the current deadline of December 31, 2020 to April 30, 2021. For redistricting data, the requested

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4 Title 13, US Code, Section 141, (b) and (c).
extension was from March 31, 2021 to July 31, 2021.

16. However, the Census Bureau has announced that the deadlines will not be extended, and that the NRFU will now be completed by September 30, 2020.\textsuperscript{5} The Census Bureau will have to take steps to complete the NRFU more rapidly than they planned.

17. In this situation the risk that the hard-to-count populations will be underrepresented increases greatly. Cooperation on the part of the households in NRFU is going to be essential. However, as I discuss below, the issuance of the Memorandum will most likely decrease cooperation and willingness to participate further reducing the effectiveness of NRFU in achieving a fair and accurate enumeration.

\textit{C. The confidence of respondents that the 2020 Census will be confidential will be significantly eroded leading to increased undercounts}

18. The Census Bureau has made good progress since the 1990 Decennial Census, and had great success during both the 2000 and 2010 Decennial Censuses in reducing undercounts. A key component of this success has been the deployment of a combined national and local advertising and local partnership program to deliver a message to hard-to-count populations that the census is important to their community, and that the data collected through the census is completely confidential. No individual’s information is shared with any other organization or law enforcement entities.

19. This messaging program was responsible for dramatic gains in the accuracy and coverage of the 2000 and 2010 Decennial Census relative to the 1990 Census, which did not include such a program. For example, the undercount of Black or African Americans dropped from 4.6 percent in 1990 to 2.1 percent in 2010.\textsuperscript{6} For the Hispanic population the undercount dropped from 5.0 percent to 1.5 percent.\textsuperscript{7}

20. Census Bureau research conducted in planning for the 2020 Census has identified serious concerns that potential respondents have with respect to the confidentiality of their information prior to the release of the Memorandum. For example:

\begin{itemize}
  \item a. Census Bureau researchers conducted qualitative research that was presented at the 2018 American Association of Public Opinion Research annual conference that
\end{itemize}


\textsuperscript{7} P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.
indicated that fear of government was higher than had been experienced in prior years.\textsuperscript{8}

b. The 2020 Census Barriers Attitudes and Motivators Study was conducted to understand the concerns of potential respondents to help shape the 2020 Census advertising and communication program themes and messages. The study found that the two most significant barriers to participation in the 2020 Census were: (1) concerns that the Census Bureau would share information with other government agencies; and (2) that the information that respondents provided would be used against them\textsuperscript{9}. Non-White and Hispanic groups were much more concerned than the White non-Hispanic group. In addition, respondents that were not proficient in English were much more concerned than those who were (39 percent compared to 23 percent).

c. The Census Bureau also conducted research on the potential effects of adding a citizenship question to the 2020 Census questionnaire.\textsuperscript{10} This research indicated that the question would reduce self-response of the non-citizen population. Furthermore, the research found that it was likely that households that refuse to respond to the census questionnaire because of the citizenship question are also likely to not respond to NRFU enumerators. It is my opinion, based on my experience in implementing the 2000 Census and my work in leading the design and planning for the 2020 Census, that the Memorandum is likely to have similar effects on NRFU response.

21. In order to address these concerns, a cornerstone of the 2020 Census advertising and partnership program, is a message that respondent information is confidential. The Census Bureau will not share it with any outside entities, including law and immigration enforcement. It is my opinion that the Memorandum will reduce the effectiveness of the 2020 Census advertising and partnership program in gaining the confidence of respondents in traditionally hard-to-count communities.

22. For example, a critical factor in underlying response and participation in the 2020 Census is the macro environment under which the NRFU is being conducted. While the 2020 Census advertising and partnership program is designed to positively influence this environment, other factors such as the issuance of the Memorandum can have the opposite effect. As Census Bureau Chief Scientist, Dr. John Abowd, acknowledged during recent trial testimony\textsuperscript{11} in the matter considering the potential effects of adding a citizenship question to the 2020 Census questionnaire, the macro environment was likely to be affected by actions to

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{8} AAPOR Panel on \textit{Changes in Respondent Privacy, Confidentiality, and Data Sharing Concerns}, Meyers, Goerman, Harris-Kojetin, Terry, and Fobia, Denver, Colorado, May 18, 2018
\item \textsuperscript{9} CBAMS report
\item \textsuperscript{10} J. David Brown, Misty L. Heggeness, Suzanne M. Dorinski, Lawrence Warren, and Moises Yi \textit{Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census}, August 6, 2018.
\end{itemize}
\end{footnotesize}
add a citizenship question. Furthermore, Dr. Abowd acknowledged that the political environment around immigration could amplify the effects of a citizenship question on decreased response.

23. It is my opinion that the effects of the Memorandum on the current macro environment are likely to be as great if not greater than the addition of a citizenship question. Therefore, immigrants and the families of immigrants will be reluctant to participate in the NRFU and many will not be enumerated. It is also likely, in my opinion, that this reluctance to participate will extend to other hard-to-count populations as well. The issuance of the Memorandum has significantly increased the risk of larger total and differential undercounts, relative to previous censuses.

D. Lack of transparency

24. At this point, little is known about the ultimate quality and accuracy of the 2020 Census. The location and magnitude of errors caused by potential undercounts and overcounts has not been determined. In addition, the level of inclusion of undocumented persons in the 2020 Census is also unknown.

25. It will be very challenging for the Census Bureau to determine the number of undocumented persons that are included in the 2020 Census at the time when Apportionment data is required to be reported. It is critical for the Census Bureau and the Department of Commerce to describe the methodology that they intend to utilize to estimate the numbers of undocumented persons enumerated in the 2020 Census and what are appropriate measures of accuracy that would support the usage of such methodologies. The Memorandum does not provide any specific directions and the Census Bureau has not described how it will comply with the Memorandum.

26. There are legal and statistical standards that the Census Bureau has followed and should continue to follow with respect to transparency:

   a. The Census Bureau is a Federal Statistical Agency and as Director Dillingham noted in sworn testimony July 29, 2020, the Census Bureau intends to follow the principles and practices identified by the Committee on National Statistics for Federal Statistical Agencies.12 Principle 2, Credibility among Data Users, states: “Also essential to building credibility are for an agency to be open and transparent about its data sources and their limitations, demonstrate understanding of users’ needs and priorities, fully document the processes used to produce and disseminate statistical products, and take proactive steps to preserve data for future use.”

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b. The Office of Management and Budget issued a Memorandum on April 24, 2019 
*Improving Implementation of the Information Quality Act* to the Heads of all 
Executive Departments and Agencies strengthening previous guidance in this area.\(^{13}\) 
This document states: “The IQA requires agencies conduct pre-dissemination review 
of their information products. During this review, each agency should consider the 
appropriate level of quality for each of the products that it disseminates based on the 
likely use of that information.”

27. In 2013 the Census Bureau issued Statistical Quality Standards that are currently guiding the 
conduct of all their programs including the 2020 Census.\(^{14}\)

a. In particular: Statistical Quality Standard F1, *Releasing Information Products 
Requirement F1-6* states: “Information products must comply with the Census 
Bureau’s statistical quality standards and must be free of serious data quality issues in 
order to be released outside the Census Bureau without restrictions.” Statistical 
Quality Standard F2, *Providing Documentation to Support Transparency in 
Information Products* Requirement F2-2 states: “Documentation must be readily 
accessible in sufficient detail to allow qualified users to understand and analyze the 
information and to reproduce (within the constraints of confidentiality requirements) 
and evaluate the results.”

28. The most important information produced and released by the Census Bureau is the 
constitutionally mandated Apportionment data. Because this information is so vital to our 
democracy, it is critically important that the Department of Commerce and the Census 
Bureau are transparent in their adherence to their legal and statistical standards. At a 
minimum, the Census Bureau has an obligation to assure the public and stakeholders that any 
methods it develops for determining the number of undocumented individuals is statistically 
sound.

VI. Conclusion

In conclusion, it is my opinion that the issuance of the Memorandum will significantly increase 
the risk of much larger undercounts for the 2020 Census than measured in previous censuses, 
including undercounts of immigrant communities. In addition, there is no transparency or 
documentation of how the quality and fitness for use of the Apportionment counts will be 
determined, nor is there any documentation of how the number of undocumented persons 
potentially included in the 2020 Census will be determined.

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\(^{13}\) Russel T. Vought, Acting Director OMB, Memorandum for the Heads of Executive Departments and Agencies, 

\(^{14}\) U.S. Census Bureau Statistical Quality Standards (Jul. 2013).
Executed on August 6, 2020 at Bend, Oregon.

I declare under penalty of perjury that the foregoing is true and correct.

[Signature]

__________________________

John Thompson
Appendix A
JOHN H. THOMPSON

BRIEF CAREER HISTORY
Extensive Senior Executive leadership in the non-profit and federal sectors, with experience in social science research and statistics, congressional advocacy, building coalitions, operational management, business development, stakeholder relations, innovation, and strategic vision.

Independent Consultant, August 2018 to present
Consulting service focusing on survey methodology, executive leadership, the Federal Statistical System, and decennial census. Activities have included:
  • Expert witness for the plaintiffs in two court cases opposing the addition of a citizenship question to the 2020 Census
    o New York Immigration Coalition, et al v. United States Department of Commerce and Wilbur Ross, U.S. District Court for the Southern District of New York, and
    o Robyn Kravitz et al., v. United States department of Commerce, et al
  • Training news media journalists on the 2020 Census with Georgetown University, the Poynter Center, and the Harvard Shorenstein Center.
  • Providing consultation services to NORC at the University of Chicago

Executive Director, Council of Professional Associations on Federal Statistics – July 2017 to August 2018
The Council of Professional Associations on Federal Statistics (COPAFS) was founded in 1981 to coordinate activities of a number of Associations, Organizations, and Businesses that rely on federal statistics to support good governance and economic growth. COPAFS now represents a growing body of stakeholders that support the production and use of high quality statistics. The Executive Director represents these stakeholders in realizing their mission to Advance Excellence in Federal Statistics. Activities include:
  • Advocated on behalf of federal agencies. For example, COPAFS is a co-chair of the Friends of the Bureau of Labor Statistics, and the Friends of the National Center for Health Statistics;
  • Worked with stakeholder coalitions to support proper funding for the 2020 Census and the American Community Survey;
  • Ensured members of Congress, COPAFS members, and other stakeholders were informed of critical issues facing agencies that produce federal statistics;
  • Alerted members and stakeholders of breaking issues that needed immediate support and attention;
  • Organized and supported ongoing educational efforts for members of Congress and their staff on the value and importance of federal statistics both nationally and in their own states and districts;
  • Created and joined in powerful coalitions of organizations and businesses to advocate on behalf of federal agencies that produce statistics, building broad support across a wide spectrum of data users;
• Built partnerships with foundations that help fund critical research in the statistical agencies and academia to ensure the on-going modernization of how statistical data are created and made available to the public and researchers, and to fund educational efforts;
• Worked closely with the Chief Statistician of the United States and the statistical agencies to help inform and promote modernization efforts underway and assist agencies in keeping abreast of new stakeholder data needs; and
• Hosted events to demonstrate the importance of federal statistics such as the 2018 Federal Committee on Statistical Methodology Research and Policy Conference.

Director, United States Census Bureau – August 2013 to June 2017

Appointed by the President as Director of the largest federal statistical agency, with a staff of over 5,000 headquarters employees and approximately 10,000 to 15,000 staff spread across the United States in six regional offices and a major production facility in Indiana, with an annual budget exceeding $1 billion. Key accomplishments include:

• Worked successfully with the executive and legislative branches of the federal government, including the White House, the Office of Management and Budget, Cabinet officials, and members of Congress and congressional staff, to accomplish a major transformation of the Census Bureau into a forward-looking 21st century statistical agency. Testified at 6 congressional hearings on the Census Bureau;
• Provided a conceptual vision and lead a redesign of the 2020 decennial census that is estimated to save $5 billion through effective use of operations research-driven reengineering of field operations, innovative use of technology, and partnership with key stakeholders;
• Lead outreach to key stakeholders including representatives of state local and tribal governments; advocacy organizations; professional associations, business groups, various media; and academic researchers;
• Put in place a robust research program to support mission critical activities, such as linking administrative records, disclosure avoidance methods, economic studies, statistical research, survey methodology, big data, and data dissemination;
• Lead efforts to maintain congressional support and funding for the American Community Survey, a critical data asset of the federal government, including mobilizing a diverse group of key stakeholders to effectively advocate in support of the survey, personally visiting almost all of the House of Representatives and Senate members of the Census Bureau appropriations and oversight committees, and establishing a program of research directly related to the concerns that had been raised;
• Improved economic statistics through research on using alternatives to direct survey data collection to produce statistics that are timelier and have increased granularity, and carrying out three initiatives to advance the release of principal economic indicators on trade, retail sales and services, which allowed the Bureau of Economic Analysis to significantly reduce revisions to Gross Domestic Product (GDP) estimates;
• Recruited outstanding research staff including new senior leadership for Research and Methodology, the Director of a newly established big data center, and seven former Presidential Innovation Fellows; and
• Improved data dissemination to the public, including development of a platform to deliver data in ways that will meet the rapidly evolving demands of a growing body of users. In addition,
in order to meet immediate targeted demands two new tools were released: City SDK (Software Development Kit) to allow easy developer access; and Census Business Builder a tool that combines small area demographic and economic data in a way that is easily accessible for entrepreneurs and small business owners.

President and Executive Vice President, NORC at the University of Chicago – July 2002 to August 2013

NORC is a national non-profit organization that conducts high quality social science research in the public interest. As President, I had responsibility for all NORC corporate activities and for the quality of all NORC research efforts. I provided vision for NORC to establish the organization as a leader in the social science research industry. My accomplishments included:

- Strengthened the organization’s high-quality, diverse staff;
- Broadened the scope of the collaborations between NORC and the University of Chicago;
- Realized nearly 50 percent growth in revenue and greatly expanding NORC’s portfolio of business and research programs; and
- Provided leadership in the social science research community - selected to be a Fellow of the American Statistical Association (ASA), elected to serve a term as Chair of the Social Statistics Section of the ASA, and chaired the 2009 ASA Committee on Fellows. Also elected as a member of the Committee on National Statistics, serving on two National Academy of Sciences panels addressing 2010 and 2020 Census concerns.

As Executive Vice President of Survey Operations (2002 – 2008), I provided oversight and direction to the Economics, Labor Force, and Demography Research Department, the Statistics and Methodology Department, and Survey Operations for field and telephone data collection. My major accomplishments included:

- Provided leadership and guidance for a major corporate initiative, the National Immunization Survey, which is conducted on behalf of the Centers for Disease Control and Prevention, and is the largest telephone survey in the United States conducted via random digit dialing for scientific purposes.
- Significantly increased the productivity and cost effectiveness of NORC’s overall data collection activities;
- Successfully utilized skills in directing large project start-ups, and in managing large complex operations, directing the project through the completion of the first contract phase, which included the first year of data collection and the delivery of the first data set; and
- All survey operations were completed on schedule, and within budget including the delivery of an extremely complex data set, and a public use file.
Principal Associate Director and Associate Director for Decennial Census Programs, United States Census Bureau – 1997 to July 2002

Served as the senior career executive responsible for all aspects of the 2000 Decennial Census. This was the largest peacetime mobilization undertaken by the U.S. government, with a budget of $6.5 billion, establishment of over 500 field offices, a temporary workforce that peaked at over 500,000, and establishment of telephone capacity to receive over 5 million calls over a period of one month. I was also chairman and director of the Executive Steering Committee for Accuracy & Coverage Evaluation Policy for the 2000 Census. This Committee was charged with making a recommendation as to whether or not to adjust the 2000 Census redistricting data for coverage errors, an issue fraught with political disagreement and controversy. This work was widely recognized as superb – with the Committee’s recommendation supported by numerous reviews, including the National Academy of Sciences Panel on evaluating Census 2000.

EDUCATION

M.S. Virginia Polytechnic Institute and State University, 1975 Mathematics Graduate course work in statistics - George Washington University 1977-1981
B.S. Virginia Polytechnic Institute and State University, 1973 Mathematics

PROFESSIONAL SERVICE AND ASSOCIATIONS

American Statistical Association, 1975 to Present
   Chair, Social Statistics Section – 2011
   Chair, ASA Committee on Fellows - 2009
National Academy of Sciences,
   Member of the Committee on National Statistics – 2011 - 2013
   Member of the Panel on the Design of the 2010 Census Program of Evaluations and Experiments
   Member of the Panel to Review the 2010 Census

HONORS AND AWARDS

Virginia Tech College of Science Hall of Distinction inaugural class, 2013
Presidential Rank Award of Meritorious Executive, 2001
Department of Commerce, Gold Medal, U.S. Bureau of the Census, 2000
Elected Fellow of the American Statistical Association, 2000
Department of Commerce, Bronze Medal, U.S. Bureau of the Census, 1988
### Papers and Publications

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<th>Year</th>
<th>Title</th>
<th>Event</th>
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<tr>
<td>2018</td>
<td>Thompson, John H and Yablon, Robert. “Preparing for the 2020 Census Considerations for State Attorneys General.” American Constitution Society, October 10, 2018</td>
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1988 Navarro, Alfredo, John H. Thompson, and Linda Flores-Baez, "Results of Data Switching Simulation." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, April, 1988.


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<th>Year</th>
<th>Authors</th>
<th>Title</th>
<th>Event/Location</th>
</tr>
</thead>
</table>
Exhibit 58
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ST- TE OF NEW YORK, et al.,

Plaintiffs,

v.

DON- LD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

20-CV-5770 (JMF)

NEW YORK IMMIGRATION POLICY INITIATIVE, et al.,

Plaintiffs,

v.

DON- LD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

20-CV-5781 (JMF)

EXPERT DECLARATION OF DR. CHRISTOPHER WARSHAW
I. Introduction

1. My name is Christopher Warshaw. I have been an Assistant Professor of Political Science at George Washington University since August 2017. I was recently awarded tenure, and will become a tenured Associate Professor on September 1, 2020. Prior to working at George Washington University, I was an Associate Professor at the Massachusetts Institute of Technology from July 2016 - July 2017, and an Assistant Professor at MIT from July 2012 - July 2016.

2. I have been asked by counsel representing the plaintiffs in *New York Immigration Coalition v. Trump* and *State of New York v. Trump* to analyze relevant data and provide my expert opinions.

3. More specifically, I have been asked:

   - To forecast the populations of every state in the United States in 2020.
   - To estimate the proportion of the population in every state in the United States likely to be excluded if undocumented immigrants are not included in the Census enumeration used for apportionment.
   - To analyze the likely effects of the exclusion of undocumented immigrants on the apportionment of representatives across states for the U.S House of Representatives.

4. My opinions are based on the knowledge I have amassed over my education, training and experience, including a detailed review of the relevant academic literature. They also follow from a statistical analysis that I describe in detail below.
A. Qualifications and Publications

5. My Ph.D. is in Political Science, from Stanford University, where my graduate training included courses in political science and statistics. I also have a J.D. from Stanford Law School. My academic research and teaching focuses on public opinion based on surveys and Census data, as well as the study of representation, elections, and polarization in American Politics. I have also taught courses on statistical analysis.

6. My curriculum vitae is attached to this Declaration at Appendix C. All publications that I have authored and published appear in my curriculum vitae. I have published 30 academic articles and book chapters. My work is published or forthcoming in peer-reviewed journals such as: the American Political Science Review, the American Journal of Political Science, the Journal of Politics, Political Analysis, Political Science Research and Methods, the British Journal of Political Science, Political Behavior, the Annual Review of Political Science, the Election Law Journal, Nature Energy, Public Choice, and edited volumes from Cambridge University Press and Oxford University Press. My non-academic writing has been published in the New York Times and the Washington Post.

7. Most relevantly, I provided an expert report and declaration in New York Immigration Coalition et al v. United States Department of Commerce, No. 18-CV-2921-JMF (S.D. NY). In that report, I assessed the consequences of an undercount caused by a potential citizenship question on the U.S. Census. Specifically, I examined the effects of a net differential undercount of people who live in immigrant households on congressional apportionment. I found that the inclusion of a citizenship question on the Census would likely have led to substantial effects on the population counts of each state, and the apportionment of
representatives across states for the U.S House of Representatives. In that case, the court found my analysis and findings “credible and persuasive.”


9. The opinions in this declaration are my own, and do not represent the views of George Washington University.

**B. Research Design**

10. President Trump recently issued a presidential memorandum charging the Secretary of Commerce to “exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”\(^1\) In order to assess the consequences of excluding undocumented immigrants from the count of people in the United States used for apportionment, I conduct the following steps:

A. I estimate the baseline population of each state in 2020 based on the Census Bureau’s annual estimates of the population of each state from the past three decades.\(^2\) The populations used for apportionment also include overseas federal employees and their dependents. Then, based on data from the U.S. Military and the Census Bureau, I

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\(^1\) See https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/.

estimate the number of overseas federal employees and dependents that would be added to the population of each state for apportionment.

B. I use data from the Pew Research Center to estimate the number of undocumented immigrants in each state in 2020. These are the most widely used data in the academic literature on the undocumented immigrant population. However, I reach very similar conclusions using a variety of alternative sources of data on the number of undocumented immigrants in each state.

C. Based on all of these data, I estimate the proportion of each state’s population that would be excluded from the enumeration used for apportionment due to the presidential memorandum. I then use the official apportionment table published by the U.S. Census Bureau to estimate the number of congressional seats that states would gain or lose. Finally, I report the uncertainty in all of my analyses.

D. I evaluate the robustness of my findings to a variety of alternative data sources and modeling strategies. I also compare my findings to four other independent reports from different research groups. My findings are robust to alternative modeling assumptions and are similar to these other groups’ findings.

C. Summary of Findings

11. Based on my analysis, I have reached the following conclusions:

• The exclusion of undocumented immigrants from the apportionment base (i.e., the population enumeration used for apportionment) is likely to have substantial effects on the population counts of each state, and the apportionment of representatives across states for the U.S House of Representatives.
• It will almost certainly lead Texas to lose a seat in Congress. It is likely to lead California and New Jersey to lose a congressional seat. It also could lead other states, such as Arizona, Florida, New York, or Illinois, to lose seats. These conclusions are similar across multiple data sources on the prevalence of undocumented immigrants. They are also similar to the conclusions reached by a variety of independent analysts and organizations.

• The exclusion of undocumented immigrants from the apportionment base would affect political representation in Congress. For instance, it is likely to affect the distribution of federal funds to each state, and the general power that each state holds in Congress.

II. Projecting the State Populations in 2020

12. The first stage of my analysis is to develop baseline projections of the population of each state in the country in 2020. These projections are critical to determining the likely effects of excluding undocumented immigrants from the apportionment base. In order to develop these estimates, I use the Census Bureau’s official estimates of the population of each state from 1990-2019. The Census Bureau does not provide public estimates of each geographic unit’s populations in future years.

13. In this section, I first discuss several possible approaches for estimating future populations. I show that my preferred approach performs as well or better at a similar modeling problem than alternative approaches. I then discuss how I incorporate uncertainty into my population projections. Finally, I present estimates of the 2020 populations in each state in the country.

A. Data

14. The Census Bureau’s Population Estimates Program (PEP) produces estimates of the population for the United States, states, counties, cities, towns, and other geographic areas.
These aggregate estimates are based on the demographic components of population change (births, deaths, and migration) at each level of geography.\textsuperscript{3} My population projections are based on these official population estimates for each state for the period from 1990-2019.\textsuperscript{4}

\textbf{B. Statistical Model for Population Projections}

15. There are a number of potential options for forecasting the likely population of each state in 2020. One possible forecasting option would be to allow the forecasts to increase or decrease over time, where the amount of change over time (called the drift) is set to be the average change in the historical data (see Hyndman and Athanasopoulos 2018, 48-49). Some related methods in this family of forecasting approaches are:

- \textbf{Model 1: Linear trend between 2010-2019:} One approach would be to project forward based on the linear trend in the population estimates since the last Census (e.g., Election Data Services 2017). This approach assumes that each geographic unit’s population follows the same linear rate of change in the future that it has followed over the past decade. This approach has the benefit of using many years of data, but it could yield biased estimates if the population trends have changed over this period. I estimate linear trends using a simple linear regression model in the software program R.

- \textbf{Model 2: Linear trend between 2016-2019:} Another possibility is to project forward based on the linear trend in the population estimates over the past 4 years. This approach

\textsuperscript{3} I do not directly use the more detailed cohort-component method used by the Census for my population projections because this information is unavailable for some geographic levels, particularly for the 2000-2010 period. It is also unclear whether the additional complexities associated with this approach would yield substantial gains in predictive accuracy.

assumes that each geographic unit’s population follows the same linear trend in the future that it has followed over this shorter time period. This approach has the benefit of being sensitive to more recent trends, but it could be noisier than estimates based on the longer time series. That is, it could be overly sensitive to short-term trends. I estimate linear trends using a simple linear regression model in R.

- **Model 3: Change between two most recent years (i.e., 2018 to 2019):** A third possibility is to focus on the change between each geographic unit’s populations in the two most recent years and assume that future years will follow this recent trend. This approach has the benefit of being based on the most recent changes in populations, but it could also be overly sensitive to short-term idiosyncratic trends. I estimate these short-term trends using the software program R.

16. As Hyndman and Athanasopoulos (2018, 50) discusses: “Sometimes one of these simple methods will be the best forecasting method available; but in many cases, these methods will serve as benchmarks rather than the method of choice. That is, any forecasting methods [] will be compared to these simple methods to ensure that the new method is better than these simple alternatives. If not, the new method is not worth considering.” I consider one more complex approach against these benchmarks:

- **Model 4: A state space model with exponential smoothing:** This approach uses an exponential smoothing model that weights levels and trends to an extent determined by the data (Hyndman et al. 2008; Hyndman and Athanasopoulos 2018). This model uses all of the available data, but it gives more weight to the most recent years. I estimate the exponential smoothing model using the ets function in the forecast package in R.
C. Validation of Population Projections

17. The accuracy of forecasting models can only be determined by considering how well a given model performs on new data that were not used when fitting the original model (Hyndman and Athanasopoulos 2018, 62). In order to choose the best model for this analysis, I evaluated each model using a benchmark that is similar to the challenge of forecasting the 2020 populations. Specifically, I forecasted the 2019 population estimates in each state based on 1990-2018 population data. For each analysis I used the following evaluation metrics (see Hyndman and Athanasopoulos 2018, 64-65).

- **The mean error across states (ME):** This helps assess whether a given metric has a systematic bias in one direction or another.

- **The root mean-squared error across states (RMSE):** This helps assess the accuracy of the forecasts. It penalizes larger errors more than smaller errors.

- **The mean absolute error across states (MAE):** This helps assess the accuracy of the forecasts. It penalizes all errors equally.

- **The mean percentage error across states (MPE):** This helps assess whether a given metric has a systematic bias in one direction or another. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

- **The mean absolute percentage error across states (MAPE):** This metric also helps assess the accuracy of the forecasts. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).
Table 1: Validation of State Population Projections at Predicting 2019 State Populations

<table>
<thead>
<tr>
<th>Model</th>
<th>ME</th>
<th>RMSE</th>
<th>MAE</th>
<th>MPE</th>
<th>MAPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1): Linear model (decade)</td>
<td>-20,821</td>
<td>71,748</td>
<td>32,448</td>
<td>-0.29%</td>
<td>0.57%</td>
</tr>
<tr>
<td>(2): Linear model (4 years)</td>
<td>-12,219</td>
<td>33,933</td>
<td>14,513</td>
<td>-0.11%</td>
<td>0.21%</td>
</tr>
<tr>
<td>(3): Delta in last two years</td>
<td>-2,940</td>
<td>12,129</td>
<td>6,073</td>
<td>-0.02%</td>
<td>0.09%</td>
</tr>
<tr>
<td>(4): State space model</td>
<td>-4,034</td>
<td>12,623</td>
<td>6,766</td>
<td>-0.04%</td>
<td>0.13%</td>
</tr>
</tbody>
</table>

18. Table 1 shows the results. Overall, the state space model (4) and delta model (3) perform the best in this validation exercise. These models have much less error than the other models across all the metrics. Other studies have shown that state space models generally outperform other modeling approaches due to its flexibility (Hyndman et al. 2008; Hyndman and Athanasopoulos 2018). It also provides measures of uncertainty. As a result, I use this approach in my main analysis. I also show below, however, that I reach very similar findings using the delta model (3) (see Additional Scenario #6).

D. Baseline estimates of 2020 populations

19. The next stage is to use the official Census population estimates to project each geographic unit’s population in 2020. Table 2 shows the results. Note that all of the analysis of apportionment that follow fully incorporate the uncertainties in these projections.

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5 The projections shown here do not include the overseas military population, federal employees, and dependents. However, the apportionment projections in Table 6 do include these groups.
Table 2: State population projections

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>4,779,736</td>
<td>4,903,185</td>
<td>4,918,700</td>
</tr>
<tr>
<td>Alaska</td>
<td>710,231</td>
<td>731,545</td>
<td>728,000</td>
</tr>
<tr>
<td>Arizona</td>
<td>6,392,017</td>
<td>7,278,717</td>
<td>7,399,400</td>
</tr>
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<td>Arkansas</td>
<td>2,915,918</td>
<td>3,017,804</td>
<td>3,025,900</td>
</tr>
<tr>
<td>California</td>
<td>37,253,956</td>
<td>39,512,223</td>
<td>39,724,500</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,029,196</td>
<td>5,758,736</td>
<td>5,833,000</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,574,097</td>
<td>3,565,287</td>
<td>3,565,300</td>
</tr>
<tr>
<td>Delaware</td>
<td>897,934</td>
<td>973,764</td>
<td>982,000</td>
</tr>
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<td>District of Columbia</td>
<td>601,723</td>
<td>701,749</td>
<td>710,000</td>
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<tr>
<td>Florida</td>
<td>18,801,310</td>
<td>21,477,737</td>
<td>21,706,500</td>
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<td>Georgia</td>
<td>9,687,653</td>
<td>10,617,423</td>
<td>10,723,200</td>
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<tr>
<td>Hawaii</td>
<td>1,360,301</td>
<td>1,415,872</td>
<td>1,411,500</td>
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<td>Idaho</td>
<td>1,507,602</td>
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<td>Illinois</td>
<td>12,880,632</td>
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<td>Indiana</td>
<td>6,483,802</td>
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<td>Iowa</td>
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<td>Kansas</td>
<td>2,853,118</td>
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<td>2,915,500</td>
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<td>Kentucky</td>
<td>4,339,367</td>
<td>4,467,673</td>
<td>4,474,200</td>
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<td>Louisiana</td>
<td>4,533,372</td>
<td>4,648,794</td>
<td>4,650,500</td>
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<td>Maine</td>
<td>1,326,361</td>
<td>1,344,212</td>
<td>1,340,400</td>
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<td>Maryland</td>
<td>5,773,552</td>
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<td>6,071,200</td>
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<td>5,639,632</td>
<td>5,676,100</td>
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<td>Mississippi</td>
<td>2,967,297</td>
<td>2,976,149</td>
<td>2,972,300</td>
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<td>Missouri</td>
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<td>6,137,428</td>
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<td>980,415</td>
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<td>2,700,551</td>
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<td>3,132,200</td>
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<td>New Hampshire</td>
<td>1,316,470</td>
<td>1,359,711</td>
<td>1,363,300</td>
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<td>New Jersey</td>
<td>8,791,894</td>
<td>8,882,190</td>
<td>8,894,300</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2,059,179</td>
<td>2,096,829</td>
<td>2,100,400</td>
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<tr>
<td>New York</td>
<td>19,378,102</td>
<td>19,453,561</td>
<td>19,377,200</td>
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<td>North Carolina</td>
<td>9,535,483</td>
<td>10,888,084</td>
<td>10,594,600</td>
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<td>North Dakota</td>
<td>672,591</td>
<td>762,062</td>
<td>766,100</td>
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<td>Ohio</td>
<td>11,536,504</td>
<td>11,889,100</td>
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<td>Oklahoma</td>
<td>3,751,351</td>
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<td>3,971,200</td>
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<td>Oregon</td>
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<td>4,217,737</td>
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<td>South Carolina</td>
<td>4,629,364</td>
<td>5,148,714</td>
<td>5,213,000</td>
</tr>
<tr>
<td>South Dakota</td>
<td>814,180</td>
<td>881,659</td>
<td>891,700</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,346,105</td>
<td>6,829,174</td>
<td>6,886,700</td>
</tr>
<tr>
<td>Texas</td>
<td>25,145,561</td>
<td>28,995,881</td>
<td>29,432,600</td>
</tr>
<tr>
<td>Utah</td>
<td>2,763,885</td>
<td>3,205,958</td>
<td>3,259,800</td>
</tr>
<tr>
<td>Vermont</td>
<td>625,741</td>
<td>623,989</td>
<td>624,100</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,001,024</td>
<td>8,535,519</td>
<td>8,570,600</td>
</tr>
<tr>
<td>Washington</td>
<td>6,724,540</td>
<td>7,614,893</td>
<td>7,707,400</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,852,994</td>
<td>1,792,147</td>
<td>1,780,000</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,866,986</td>
<td>5,822,434</td>
<td>5,836,800</td>
</tr>
<tr>
<td>Wyoming</td>
<td>563,626</td>
<td>578,759</td>
<td>578,700</td>
</tr>
</tbody>
</table>

III. Estimating the Overseas Federal Population Allocated to each State

20. The population estimates above include all people living in the United States. However, the populations used for apportionment also include overseas federal employees and their
dependents. Thus, it is necessary to estimate how overseas federal employees and dependents would be allocated for purposes of apportionment.

21. In the 2010 Census, the overseas military population were generally allocated to their “home of record” (the address provided when the service member entered the military) for purposes of apportionment. For the 2020 Census, however, all overseas federal personnel will be counted at their usual residential address in the United States. In other words, military personnel will typically be counted as residing in or near the domestic base where they are stationed. Unfortunately, there is no currently available public estimate of how these overseas personnel will be allocated to individual states. The Census Bureau has stated that it plans to count federal personnel living outside the United States, and their dependents living with them outside the United States, using administrative data provided by the Department of Defense and the Department of Homeland Security.

22. I used the following process to estimate the number of overseas federal population that will be allocated to each state for apportionment:

- First, I estimated the number of military personnel overseas in each branch using data from the Department of Defense from March, 2020.

- Second, I allocated these personnel to each state in proportion to the number of service members in each branch based in each state. This approach implicitly assumes that each

---

6 “Overseas” is defined as anywhere outside the 50 U.S. States and the District of Columbia.
8 See https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/.
10 I used the spreadsheet DMDC_Website_Location_Report_2003.xlsx that is available from https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp.
member of the military has an equal probability of being assigned abroad. While this is clearly a simplification, I believe it is the most reasonable analytical approach with currently available data.

• Third, I assumed that military personnel have the same number of dependents (1.44) as they did in the 2010 Census.¹²

• Finally, I assumed that the overseas federal civilian population is the same as in 2010 (39,674). Since the majority of overseas federal civilian employees are with the State Department,¹³ I assume these are all headquarters staff that work in Washington DC. I use ACS Commuting Flows from the Census to allocate them between the District of Columbia, Virginia, and Maryland.¹⁴ I also assumed that these civilian employees each have 1.44 dependents.

• Of course, this estimation method has considerable uncertainty. So I assumed that there is a standard error associated with my estimates of the overseas federal population for each state that is equal to 10% of the size of the estimates.

23. Based on this methodology, I estimate that there are about 230,000 overseas federal personnel. Including dependents, I estimate there are about 561,000 federal employees and dependents overseas population will be included for purposes of apportionment for the 2020 Census. Table 3 shows the state-by-state results. A copy of Table 3 is provided in Appendix

¹¹ I used the spreadsheet DMDC_Website_Location_Report_2003.xlsx that is available from https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp.
A to this Declaration. My estimates indicate that California, North Carolina, Texas, and Virginia have the largest overseas federal populations.\textsuperscript{15} It is important to note that the federal overseas population is down by nearly 50% since the 2010 Census.\textsuperscript{16} This likely reflects the reduction in the nation’s military deployments in conflict areas over the past decade.\textsuperscript{17}

**IV. Estimating the Number of Undocumented Immigrants in Each State**

24. The President’s Memorandum charges the Secretary of Commerce to “exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”\textsuperscript{18} In order to assess the impact of this memorandum, we next need to estimate the number of undocumented immigrants in each state.

25. There is no official estimate from the Census Bureau or any other federal government agency of the number of undocumented immigrants in each state that would be affected by the President’s memorandum. The most commonly used estimates of the number of undocumented people have been developed by the Pew Research Center.\textsuperscript{19} There are hundreds of citations in Google Scholar for Pew’s estimates of the number of undocumented immigrants in the United States. As a result, I use these estimates in my main analysis. However later, I also examine the estimates of the number of undocumented immigrants from a number of other organizations that use a variety of slightly different methodologies.

\textsuperscript{15} These estimates seem to be in-line with discussions in news coverage of apportionment. See https://www.rollcall.com/2020/02/26/census-troop-counting-rules-could-tip-congressional-balance/.

\textsuperscript{16} I use information on these populations from the 2010 apportionment available at https://www.census.gov/data/tables/2010/dec/2010-apportionment-data.html.

\textsuperscript{17} See Pew’s report on the number of overseas military personnel at https://www.pewresearch.org/fact-tank/2017/08/22/us-active-duty-military-presence-overseas-is-at-its-smallest-in-decades/.

\textsuperscript{18} See https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/.

Each of these analyses yields substantively similar conclusion as my main analysis using Pew’s data.

26. Pew estimates the U.S. unauthorized immigrant population from 1995-2017 in each state based on a residual estimation methodology that compares a demographic estimate of the number of immigrants residing legally in the country with the total number of immigrants as measured by either the American Community Survey (ACS) or the March Supplement to the Current Population Survey (CPS).\(^{20}\) The difference is assumed to be the number of unauthorized immigrants in the survey, a number that later is adjusted for omissions from the survey (see below). The basic estimate is:

\[
\text{Unauthorized Immigrants (U) = Survey, Total Foreign Born (F) – Estimated Lawful Immigrant Population (L)}
\]

27. The lawful resident immigrant population was estimated by applying demographic methods to counts of lawful admissions covering the period since 1980 obtained from the Department of Homeland Security’s Office of Immigration Statistics\(^{21}\) and its predecessor at the Immigration and Naturalization Service, with projections to current years, when necessary. Initial estimates were calculated separately for age-gender groups in six states (California, Florida, Illinois, New Jersey, New York and Texas) and the balance of the country. This residual method has been used in a wide variety of government reports and peer reviewed articles (e.g., Baker 2018; Warren and Warren 2013; Passel 2016).

28. The overall estimates for unauthorized immigrants built on these residuals by adjusting for survey omissions in these six states and the balance of the country, subdivided for Mexican immigrants and other groups of immigrants (balance of Latin America, South and East Asia,

\(^{20}\) The next few paragraphs of this section are adapted from Pew’s discussion of their methodology at https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigration-estimate-methodology/.

\(^{21}\) See https://www.dhs.gov/immigration-statistics/yearbook/2016/.
rest of world) depending on sample size and state. Once the residual estimates were produced, Pew assigned individual foreign-born respondents in the survey a specific status (one option being unauthorized immigrant) based on the individual’s demographic, social, economic, geographic and family characteristics in numbers that agree with the initial residual estimates for the estimated lawful immigrant and unauthorized immigrant populations in the survey. A last step in the weighting-estimation process involves developing state-level estimates that take into account trends over time in the estimates.

29. Overall, Pew estimates there were about 10,481,000 undocumented immigrants in the United States in 2017. They estimate that the states with the most undocumented immigrants are California, Texas, Florida, New York, and New Jersey. The states with the fewest undocumented immigrants are Maine, Montana, Vermont, and West Virginia.

30. Of course, Pew’s estimation process has substantial uncertainties inherent in it. First, there is no way to know that individual respondents to the ACS and CPS are undocumented immigrants. Pew estimates undocumented status based on a variety of pieces of information. Second, the ACS and CPS are themselves surveys, subject to sampling error. There could also be misreporting of country of birth on the ACS and/or unit non response by undocumented immigrants (Brown et al. 2018). In order to characterize these uncertainties, Pew provides a 90% confidence interval for their estimates of the number of undocumented people in each state.

---

22 These estimates seem plausible since the Department of Homeland Security estimated there were 12 million undocumented immigrants in the country in January 2015 (Baker 2018). They are also similar to estimates of the number of undocumented immigrants developed by other think tanks (see below).

31. Lastly, Pew’s data of the number of undocumented immigrants in each state between 1995-2017 need to be projected 3 years forward to 2020. To determine how to forecast the number of undocumented immigrants in each state, I compared the same four modeling strategies that I discussed earlier for the state population projections. For each method, I used data through 2014 to evaluate its performance at predicting the number of undocumented immigrants three years forward in 2017.

32. All of the models generate significant levels of error compared to the population forecasting validation shown above in Table 4. However, the state space model (4) and a linear time trend (2) using the previous four years of data perform somewhat better than the other models. In my main analysis, I use the state space model to project the number of undocumented immigrants in 2020. Moreover, I ensured that the state space model estimates fully incorporate the uncertainty in Pew’s estimates in the number of undocumented immigrants (see Treier and Jackman 2008; Caughey and Warshaw 2018). I checked the robustness of my analysis by showing that I reach similar substantive conclusions using the linear time trend model (see Additional Scenario #7).

Table 4: Validation of Forecasting Pew’s Estimates of the Number of Undocumented Immigrants in 2017

<table>
<thead>
<tr>
<th>Model</th>
<th>ME</th>
<th>RMSE</th>
<th>MAE</th>
<th>MPE</th>
<th>MAPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1): Linear model (decade)</td>
<td>-21,998.25</td>
<td>90,634.40</td>
<td>31,630.51</td>
<td>-3.34</td>
<td>14.56</td>
</tr>
<tr>
<td>(2): Linear model (4 years)</td>
<td>-10,944.23</td>
<td>50,403.96</td>
<td>25,971.15</td>
<td>-3.95</td>
<td>17.59</td>
</tr>
<tr>
<td>(3): Delta in last two years</td>
<td>-12,884.62</td>
<td>58,005.64</td>
<td>28,961.54</td>
<td>-0.40</td>
<td>19.24</td>
</tr>
<tr>
<td>(4): State space model</td>
<td>-13,688.05</td>
<td>55,204.49</td>
<td>22,794.32</td>
<td>-3.46</td>
<td>15.48</td>
</tr>
</tbody>
</table>

24 Pew’s data are available at https://www.pewresearch.org/hispanic/interactives/unauthorized-trends/.
25 Specifically, I used the following approach. First, I constructed 100 simulations of the number of undocumented immigrants in each state from 2005-2017 using Pew’s estimates and the associated confidence intervals. For each simulation, I used the state space model to forecast each state’s number of undocumented immigrants in 2020. I then constructed a bootstrap sample of the forecast of undocumented immigrants in each state based on the mean and confidence intervals in the state space model’s population forecast. Finally, I estimated the number of undocumented immigrants in each state in 2020, and its associated standard error to represent uncertainty, based on these simulations.
33. Table 5 shows the estimates of the number of undocumented immigrants in each state (standard errors that represent uncertainty are in parentheses). A copy of Table 5 is provided in Appendix A to this Declaration. Its shows that California, Florida, Illinois, New Jersey, New York, and Texas each have at least 400,000 undocumented immigrants.²⁶

34. These final estimates take into account the uncertainty in Pew’s initial estimates of the number of undocumented immigrants from 2005-2017. They also take into account the uncertainty in projecting the trends in each state from 2017-2020. In general, the additional uncertainty associated with forecasting to 2020 approximately triples the size of Pew’s confidence intervals for their estimates of undocumented immigrants in each state in 2017.

A. Incorporating Uncertainty

35. All modeled estimates have uncertainty. My analyses uses bootstrap simulations to incorporate three sources of uncertainty in all my models:

- The uncertainty in the population forecasts in every state for 2020.
- The uncertainty in the estimates of the overseas federal employees and dependents, and how they are allocated to states.
- The uncertainty in the estimate of the number of undocumented immigrants in each state in 2020.

V. State-level Effects of Excluding Undocumented Immigrants from Apportionment Base

36. Now that we have calculated population projections and estimates of the number of undocumented immigrants in each state, we are in a position to estimate state-level impacts.

²⁶ These state-by-state figures are similar to those in a 2015 Department of Homeland Security report, which provided estimates of the number of undocumented immigrants in several states (Baker 2018).
A. Effect on State Population Enumerations

37. To begin, I analyzed the effects on the enumerated population of each state in 2020. The results are shown in Table 6. Column (1) of Table 6 shows the baseline apportionment population projections for each state (including the overseas military population, federal employees, and dependents). Column (2) shows my estimate of the number of undocumented immigrants in each state in 2020. Column (3) shows my estimate of the percentage of the apportionment population in each state that consists of undocumented immigrants.
Table 6: Estimates of Effect on State Population Enumerations in 2020

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline 2020 Apportionment Population (1)</th>
<th>Undocumented Immigrants (Pew) (2)</th>
<th>Undocumented Percentage (3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>4,926,400</td>
<td>71,900</td>
<td>1.5%</td>
</tr>
<tr>
<td>Alaska</td>
<td>735,700</td>
<td>8,400</td>
<td>1.1%</td>
</tr>
<tr>
<td>Arizona</td>
<td>7,410,500</td>
<td>274,400</td>
<td>3.7%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>3,028,800</td>
<td>65,300</td>
<td>2.2%</td>
</tr>
<tr>
<td>California</td>
<td>39,799,200</td>
<td>2,066,000</td>
<td>5.2%</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,846,100</td>
<td>190,100</td>
<td>3.3%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,568,100</td>
<td>148,300</td>
<td>4.2%</td>
</tr>
<tr>
<td>Delaware</td>
<td>984,300</td>
<td>29,700</td>
<td>3%</td>
</tr>
<tr>
<td>Florida</td>
<td>21,736,600</td>
<td>796,000</td>
<td>3.7%</td>
</tr>
<tr>
<td>Georgia</td>
<td>10,749,300</td>
<td>375,700</td>
<td>3.5%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,428,900</td>
<td>43,800</td>
<td>3.1%</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,825,700</td>
<td>38,300</td>
<td>2.1%</td>
</tr>
<tr>
<td>Illinois</td>
<td>12,633,400</td>
<td>409,300</td>
<td>3.2%</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,773,300</td>
<td>103,200</td>
<td>1.5%</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,169,100</td>
<td>51,000</td>
<td>1.6%</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,924,300</td>
<td>81,300</td>
<td>2.8%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,485,300</td>
<td>44,700</td>
<td>1%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>4,657,900</td>
<td>100,100</td>
<td>2.1%</td>
</tr>
<tr>
<td>Maine</td>
<td>1,350,400</td>
<td>4,000</td>
<td>0.3%</td>
</tr>
<tr>
<td>Maryland</td>
<td>6,105,000</td>
<td>261,600</td>
<td>4.3%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,907,400</td>
<td>231,900</td>
<td>3.4%</td>
</tr>
<tr>
<td>Michigan</td>
<td>9,989,700</td>
<td>103,800</td>
<td>1%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>5,677,700</td>
<td>86,800</td>
<td>1.5%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,979,500</td>
<td>23,000</td>
<td>0.8%</td>
</tr>
<tr>
<td>Missouri</td>
<td>6,160,800</td>
<td>63,100</td>
<td>1%</td>
</tr>
<tr>
<td>Montana</td>
<td>1,079,300</td>
<td>4,400</td>
<td>0.4%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,950,200</td>
<td>55,800</td>
<td>2.9%</td>
</tr>
<tr>
<td>Nevada</td>
<td>3,137,300</td>
<td>211,200</td>
<td>6.7%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,363,700</td>
<td>10,400</td>
<td>0.8%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>8,899,400</td>
<td>493,200</td>
<td>5.5%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2,107,400</td>
<td>59,200</td>
<td>2.8%</td>
</tr>
<tr>
<td>New York</td>
<td>19,386,100</td>
<td>679,800</td>
<td>3.5%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>10,639,700</td>
<td>330,800</td>
<td>3.1%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>770,300</td>
<td>5,900</td>
<td>0.8%</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,715,100</td>
<td>94,400</td>
<td>0.8%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,981,800</td>
<td>90,100</td>
<td>2.3%</td>
</tr>
<tr>
<td>Oregon</td>
<td>4,261,500</td>
<td>109,100</td>
<td>2.6%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>12,809,600</td>
<td>217,800</td>
<td>1.7%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,061,000</td>
<td>32,900</td>
<td>3.1%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>5,229,800</td>
<td>101,500</td>
<td>1.9%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>893,800</td>
<td>5,700</td>
<td>0.6%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,888,900</td>
<td>139,200</td>
<td>2%</td>
</tr>
<tr>
<td>Texas</td>
<td>29,479,700</td>
<td>1,649,100</td>
<td>5.6%</td>
</tr>
<tr>
<td>Utah</td>
<td>3,263,900</td>
<td>106,100</td>
<td>3.3%</td>
</tr>
<tr>
<td>Vermont</td>
<td>624,400</td>
<td>3,500</td>
<td>0.6%</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,639,600</td>
<td>297,600</td>
<td>3.4%</td>
</tr>
<tr>
<td>Washington</td>
<td>7,730,300</td>
<td>274,400</td>
<td>3.5%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,780,600</td>
<td>4,300</td>
<td>0.2%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,838,300</td>
<td>72,900</td>
<td>1.2%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>580,300</td>
<td>4,800</td>
<td>0.8%</td>
</tr>
</tbody>
</table>

38. Overall, Table 6 indicates that each state would be affected by an exclusion of undocumented immigrants. Figure 1 shows a map of the percentage of people in each state that would be dropped from the Census apportionment base if undocumented immigrants are excluded.
Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Maryland, Massachusetts, Nevada, New Jersey, New York, North Carolina, Rhode Island, Texas, Utah, Virginia, and Washington would all lose at least 3% of their population from their apportionment base. Thus, they could be at risk of losing a congressional seat during apportionment.

![Figure 1: Effects on State Populations](image)

**B. Effect on Apportionment**

39. Next, I used the population projections and estimates of undocumented immigrants in each state to examine the likely effect of excluding undocumented immigrants from the Census count on the apportionment of seats in the House of Representatives. Article 1, Section 2, of the United States Constitution states: “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.”

40. Since the first census in 1790, five methods of apportionment have been used. The government currently uses a method called the Method of Equal Proportions, which was
adopted by Congress in 1941 following the census of 1940. This method first assigns each state one seat. Then, additional seats in the House of Representatives are assigned to a “priority” value. The priority value for each seat is determined by multiplying the population of a state by a “multiplier.” The multiplier is \( \frac{1}{\sqrt{n(n-1)}} \). So the formula for calculating the multiplier for the second seat is \( \frac{1}{\sqrt{2(2-1)}} \) or 0.70710678, the formula for calculating the multiplier for the third seat is \( \frac{1}{\sqrt{3(3-1)}} \) or 0.40824829, and so on. The Census provides an official table of these multipliers, which I used for my calculations.\(^{27}\)

41. The next step is to multiply the multipliers by the population total for each of the 50 states (the District of Columbia is not included in these calculations). The resulting numbers are the priority values. Multipliers and priority values must be calculated for the largest number of seats that could be assigned to a state. In my analysis, I calculated the priority values for each state for seats 2 through 60. The next step is to rank and number the resulting priority values starting with seat 51 until all 435 seats have been assigned. The final step is to tally the number of seats for each state to arrive at the total number of seats in the House of Representatives apportioned to each state.

42. I conducted these steps for 1,000 simulations of the population projections and undocumented populations in each state. Table 7 shows the results.\(^{28}\) Column (1) shows the rounded, baseline projections for the number of seats that each state is likely to receive in 2020 if there is a full population enumeration. Column (2) shows the rounded projections for the number of seats that each state is likely to receive in 2020 if undocumented immigrants are excluded from the apportionment base. Column (3) shows the rounded, average change in

\(^{27}\) See https://www.census.gov/population/apportionment/about/computing.html.

\(^{28}\) Table 12 in the Appendix A shows unrounded numbers for this table.
the number of congressional seats each state would gain or lose due to the exclusion of undocumented immigrants. Finally, column (4) shows the probability that each state would lose at least one seat.

Table 7: Estimates of Effect of Excluding Undocumented Immigrants on Congressional Apportionment

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Seats</th>
<th>Seats after Exclusion</th>
<th>Seat Delta</th>
<th>Prob. Seat Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>6</td>
<td>7</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Alaska</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Arizona</td>
<td>10</td>
<td>10</td>
<td>-0</td>
<td>0%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>California</td>
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<td>-1</td>
<td>72.1%</td>
</tr>
<tr>
<td>Colorado</td>
<td>8</td>
<td>8</td>
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</tr>
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<td>5</td>
<td>-0</td>
<td>3.4%</td>
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</tr>
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<td>0%</td>
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<td>Hawaii</td>
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</tr>
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<td>Idaho</td>
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<td>0%</td>
</tr>
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<td>Illinois</td>
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<td>Iowa</td>
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<td>Kentucky</td>
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</tr>
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<td>Louisiana</td>
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<tr>
<td>Maine</td>
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<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Maryland</td>
<td>8</td>
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<td>0</td>
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<td>Michigan</td>
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<tr>
<td>Mississippi</td>
<td>4</td>
<td>4</td>
<td>0</td>
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<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Montana</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Nebraska</td>
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<td>3</td>
<td>0</td>
<td>0%</td>
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<tr>
<td>Nevada</td>
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<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>New Hampshire</td>
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<td>11</td>
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<td>69.8%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>New York</td>
<td>26</td>
<td>25</td>
<td>-1</td>
<td>18.9%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>14</td>
<td>14</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
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<td>Ohio</td>
<td>15</td>
<td>16</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Oklahoma</td>
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<td>5</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Oregon</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>17</td>
<td>17</td>
<td>0</td>
<td>0%</td>
</tr>
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<td>Rhode Island</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>9</td>
<td>9</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Texas</td>
<td>39</td>
<td>38</td>
<td>-1</td>
<td>98.3%</td>
</tr>
<tr>
<td>Utah</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Vermont</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Virginia</td>
<td>11</td>
<td>11</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Washington</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>8</td>
<td>8</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
</tbody>
</table>

43. My analysis indicates that there is a 98% chance that Texas would lose a Congressional seat if undocumented immigrants are excluded from the apportionment base. It loses a seat in
nearly every single one of my simulations. In addition, my analysis indicates that there is a 72% chance that California would lose a Congressional seat. On average, it loses .83 seats across my simulations (i.e., in most simulations it loses 1 seat, in some it loses 2 seats, and in some it loses zero seats). My analysis also indicates that there is a 70% chance that New Jersey would lose a Congressional seat if undocumented immigrants are excluded from the apportionment base. There are smaller chances that several other states could lose seats, including Connecticut, Florida, Illinois, and New York.\footnote{Note the rounded numbers in Table 7 imply that Florida and New York would lose seats. The unrounded numbers in the Appendix (Table 12), however, show that there is a less 50% chance that they would lose a seat.}

44. The states that lose seats in Congress would likely see decreases in their share of federal outlays due to their reduction in voting power in Congress. A number of economics and political science studies have found that distributive spending is allocated in part based on the number of seats that a geographic area has in Congress (e.g., Ansolabehere, Gerber, and Snyder 2002; Cascio and Washington 2014; Elis, Malhotra, and Meredith 2009). For instance, Elis, Malhotra, and Meredith (2009) find that a 10% increase in a state’s share of the U.S. House of Representatives equates to a 0.7% increase in a state’s share of the federal budget. This implies that an extra congressional seat can gain a state as much as $100 per capita in additional federal funding (360).

VI. Robustness Checks

45. It is always helpful to evaluate the robustness of any analysis to alternative modeling assumptions. In this section, I undertake four different robustness checks. First, I evaluate the impact of using alternative sources of information on the number of undocumented immigrants in each state on my analysis. Second, I evaluate the impact of alternative population forecasting methodologies. Third, I evaluate whether my conclusions would differ
if former Census Director John H. Thompson is correct that the exclusion of undocumented immigrants from the apportionment base would cause an undercount of immigrant populations. I used the foreign-born population in the United States to evaluate the impact of an undercount of immigrants. Fourth, I compare my results to the conclusions of various organizations’ reports on the impact of excluding undocumented immigrants on apportionment.

46. Overall, the analysis in this section shows that my conclusions are robust to a wide variety of alternative data sources and modeling strategies. They are also consistent with the findings of other organizations and analysts. All of these alternative data sources, methodologies, and third-party reports indicate that Texas would lose a congressional seat if undocumented immigrants are excluded from the apportionment base. They nearly all indicate that California would lose a seat. They also indicate that some mix of Florida, New Jersey, and New York could lose seats.

A. Robustness to Alternative Estimates of the Number of Undocumented Immigrants

47. Due to the substantial uncertainties in Pew’s estimates of the number of undocumented people in each state, I conducted a canvass of alternative sources of estimates for the undocumented population. I identified several alternative sources of data:

- **Additional Scenario 1:** The Migration Policy Institution (MPI) has developed estimates of the number of undocumented people in each state based on the U.S. Census Bureau’s 2012-16 American Community Survey data. They estimate there are about 11,300,000 undocumented immigrants in the United States. Their national estimate is very similar to

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Pew’s estimate.\textsuperscript{31} However, their estimates differ more in some states. For instance, MPI estimates that there are about 50% more undocumented immigrants in California than Pew estimates. They do not provide measures of uncertainty for their estimates so I assume that each state has a standard error that is 10% of the state’s point estimate.

- **Additional Scenario 2:** The Center for Migration Studies (CMS) has developed estimates of the number of undocumented people in each state in 2018.\textsuperscript{32} Their methodology is described in two articles that were published in the *Journal of Migration and Security* (Warren 2014, 2019). They estimate there are about 10,543,500 undocumented immigrants in the United States, which is nearly identical to Pew’s national estimate.\textsuperscript{33} They do not provide measures of uncertainty for their estimates so I assume that each state has a standard error that is 10% of the state’s point estimate.

- **Additional Scenario 3:** Third, I examine a scenario where the national estimates of the number of undocumented immigrants are somewhat too high. To do this, I simply decrease all of my main estimates using Pew’s data of the number of undocumented immigrants in each state by 20% to examine the effects on apportionment if the Pew, MPI, and CMS estimates of the total number of undocumented immigrants in the United States are all too high.

- **Additional Scenario 4:** Fourth, I examine a scenario where the national estimates of the number of undocumented immigrants are much too high. To do this, I decrease all of my main estimates using Pew’s data on the number of undocumented immigrants in each state by 40%.

\begin{itemize}
\item \textsuperscript{31} MPI’s national estimate is about 8% higher than Pew’s estimate.
\item \textsuperscript{32} Their estimates are available at \url{http://data.cmsny.org/state.html}.
\item \textsuperscript{33} CMS’s national estimate is about 0.5% higher than Pew’s estimate.
\end{itemize}
• **Additional Scenario 5:** Finally, I examine a scenario where the national estimates of the number of undocumented immigrants are much too low. To do this, I increase all of my main estimates using Pew’s data on the number of undocumented immigrants in each state by 50%.

Table 8: Comparison of My Findings with Analyses Based on Alternative Estimates of the Number of Undocumented Immigrants. The table shows the probability that various states would lose seats in each scenario.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Scenario #1 MPI</th>
<th>Scenario #2 CMS</th>
<th>Scenario #3 Pew (80%)</th>
<th>Scenario #4 Pew (60%)</th>
<th>Scenario #5 Pew (150%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>72%</td>
<td>100%</td>
<td>93%</td>
<td>49%</td>
<td>36%</td>
<td>92%</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>0%</td>
<td>26%</td>
<td>39%</td>
<td>48%</td>
<td>60%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td>80%</td>
<td>23%</td>
<td>57%</td>
<td>36%</td>
<td>91%</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td>52%</td>
<td>19%</td>
<td>17%</td>
<td>28%</td>
<td>24%</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>96%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>99.5%</td>
</tr>
</tbody>
</table>

48. Table 8 compares my main findings (the “Main Analysis” column) to analyses based on alternative estimates of the number of undocumented immigrants. It shows each of the states that at least one scenario (including my main analysis) finds has a 33% chance or more of losing a seat if undocumented immigrants are excluded from the apportionment base. For each of these states, it shows the probability that my analysis indicates the state would lose a seat and the probability it would lose a seat under the various alternative scenarios.

49. Overall, all of these analyses yield substantively similar results as my main analysis. In each scenario, Texas has more than 95% chance of losing a congressional seat if undocumented immigrants are excluded from the apportionment base. Moreover, in all of the additional scenarios but one, California has about a 50% chance or more of losing a congressional seat. There is also a significant chance that Florida, New Jersey, and New York could lose a seat in most of the scenarios.
B. Robustness to Alternative Modeling Approaches

50. As I discussed above, there are a number of alternative approaches we could use to project the 2020 populations and estimates of undocumented immigrants in each state. In this section, I discuss alternative forecasting methodologies for each of these:

- **Additional Scenario 6:** For the population forecasts of each state in 2020, I use a forecasting methodology based on the deltas in the two most recent years. In Table 1, I found that this approach was roughly equivalent to the state space model. The state space model is preferable because it is more flexible and provides a measure of uncertainty.

- **Additional Scenario 7:** For the forecasts of the number of undocumented immigrants in each state in 2020 based on Pew’s data, I use a methodology based on a linear time trends over the four most recent years. In Table 4, I found that this approach performed nearly as well as the state space model. The state space model is preferable because it is more flexible and requires fewer assumptions about future time trends.

51. Both of these alternative-modeling strategies produce similar results as my main results (Table 9). In each scenario, Texas is nearly certain to lose a seat. California and New Jersey are likely to lose seats in each scenario. Florida and New York also have significant chances of losing a seat in each scenario.

Table 9: Comparison of My Findings with Alternative Modeling Strategies. The table shows the probability that various states would lose seats in each scenario.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Scenario #6</th>
<th>Scenario #7</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>72%</td>
<td>84%</td>
<td>75%</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>45%</td>
<td>96%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td>73%</td>
<td>51%</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td>58%</td>
<td>30%</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>99.5%</td>
<td>100%</td>
</tr>
</tbody>
</table>
C. Robustness to a Possible Census Undercount

52. The testimony of the former U.S. Census Bureau Director, John H. Thompson, to Congress on July 29, 2020 raises the possibility that the president’s memorandum could lead to nonresponse to the Census by hard-to-count populations, including noncitizens and immigrants.\(^{34}\) This, in turn, could lead the Census to undercount foreign-born people. It is possible that planned reductions in door-to-door canvassing due to COVID-19 could lead to a further undercount of foreign-born people.\(^{35}\)

53. In this section, I examine whether an undercount of foreign-born people would affect my findings about the effects of excluding undocumented immigrants from the apportionment base. I use my estimates from *New York Immigration Coalition et al v. United States Department of Commerce*, No. 18-CV-2921-JMF (S.D. NY) of the number of foreign-born people in each state. I then assess the consequences of a scenario with a 10% undercount of foreign-born people using the same methodology that I use in my main analyses. I am adopting my declaration provided in that matter by reference and include a copy in Appendix B.

Table 10: Comparison of My Findings with Analyses that Assume 10% Undercount of Foreign-born People. The table shows the probability that various states would lose seats in each scenario.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Scenario #8 Undercount</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>72%</td>
<td>67%</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>0%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td>93%</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td>0%</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>76%</td>
</tr>
</tbody>
</table>


54. Table 10 compares my main findings to the results of this undercount scenario. It shows each state that my analysis indicates has a significant chance of losing a seat if undocumented immigrants are excluded from the apportionment base. Once again, in this scenario Texas is likely to lose a congressional seat if undocumented immigrants are excluded from the apportionment base. California and New Jersey are also likely to lose congressional seats.

**D. Comparison with Other Organizations’ Analyses**

55. There have been a number of studies and reports by various organizations estimating how excluding undocumented immigrants would affect apportionment. These include:

- The Pew Research Center
- The Center for Immigration Studies (CIS)
- The Center for Politics at the University of Virginia (CfP)
- A peer reviewed academic study published in 2019 (Baumle and Poston Jr 2019).

Table 11: Comparison of My Findings with Other Studies. The table shows whether each study finds various states would lose a seat.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Pew (2)</th>
<th>CIS (3)</th>
<th>CfP (4)</th>
<th>Academic Study (5)</th>
</tr>
</thead>
<tbody>
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<td>Arizona</td>
<td>0.3%</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>California</td>
<td>72%</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>New York</td>
<td>10%</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

56. Table 11 compares my main findings to the results of these studies. It shows each state that at least one study finds would lose a seat if undocumented immigrants are excluded from the apportionment base. For each of these states, it shows the probability that my analysis

---


indicates the state would lose a seat and an X for each of the other studies that shows it would lose a seat.

57. Overall, each of these four other studies reaches substantively similar conclusions as the ones in this Declaration. They all conclude that California and Texas would lose congressional seats if undocumented immigrants are excluded from the apportionment base. They also find a mix of other states that might lose seats, including Arizona, Florida, New Jersey, and New York.

VII. Conclusion

58. Based on the analyses in this Declaration, I conclude that failing to count undocumented immigrants for apportionment is likely to have effects on the population counts of each state, and the apportionment of representatives across states for the U.S. House. Texas is nearly certain to lose a congressional seat. California and New Jersey are very likely to each lose a congressional seat. Other states, such as Florida and New York could lose seats as well. This would affect political representation in Congress. For instance, it is likely to affect the distribution of federal funds to each state, and the general power that each state holds in Congress.
I reserve the right to amend or supplement my opinions if additional information or materials become available. I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct to the best of my knowledge.

Executed on August 7, 2020 in Bethesda, Maryland.

Christopher Warshaw
References


### Appendix A

1. **Estimates of Overseas Federal Personnel**


<table>
<thead>
<tr>
<th>State</th>
<th>Overseas Personnel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>7,700</td>
</tr>
<tr>
<td>Alaska</td>
<td>7,500</td>
</tr>
<tr>
<td>Arizona</td>
<td>11,000</td>
</tr>
<tr>
<td>Arkansas</td>
<td>2,900</td>
</tr>
<tr>
<td>California</td>
<td>74,900</td>
</tr>
<tr>
<td>Colorado</td>
<td>14,200</td>
</tr>
<tr>
<td>Connecticut</td>
<td>2,600</td>
</tr>
<tr>
<td>Delaware</td>
<td>2,100</td>
</tr>
<tr>
<td>Florida</td>
<td>29,500</td>
</tr>
<tr>
<td>Georgia</td>
<td>26,800</td>
</tr>
<tr>
<td>Hawaii</td>
<td>17,500</td>
</tr>
<tr>
<td>Idaho</td>
<td>2,200</td>
</tr>
<tr>
<td>Illinois</td>
<td>10,300</td>
</tr>
<tr>
<td>Indiana</td>
<td>3,300</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,900</td>
</tr>
<tr>
<td>Kansas</td>
<td>8,900</td>
</tr>
<tr>
<td>Kentucky</td>
<td>11,200</td>
</tr>
<tr>
<td>Louisiana</td>
<td>7,300</td>
</tr>
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<td>1,100</td>
</tr>
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<td>33,600</td>
</tr>
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<td>2,700</td>
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<td>Michigan</td>
<td>2,900</td>
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<td>1,600</td>
</tr>
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<td>Mississippi</td>
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<td>Missouri</td>
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<td>Montana</td>
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<td>Nebraska</td>
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<tr>
<td>New Hampshire</td>
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<td>5,300</td>
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<td>7,000</td>
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<td>9,300</td>
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<td>North Carolina</td>
<td>44,500</td>
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<td>North Dakota</td>
<td>4,900</td>
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<tr>
<td>Oklahoma</td>
<td>10,700</td>
</tr>
<tr>
<td>Oregon</td>
<td>1,200</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>6,900</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,700</td>
</tr>
<tr>
<td>South Carolina</td>
<td>16,400</td>
</tr>
<tr>
<td>South Dakota</td>
<td>2,000</td>
</tr>
<tr>
<td>Tennessee</td>
<td>2,600</td>
</tr>
<tr>
<td>Texas</td>
<td>51,500</td>
</tr>
<tr>
<td>Utah</td>
<td>4,200</td>
</tr>
<tr>
<td>Vermont</td>
<td>300</td>
</tr>
<tr>
<td>Virginia</td>
<td>68,800</td>
</tr>
<tr>
<td>Washington</td>
<td>23,000</td>
</tr>
<tr>
<td>West Virginia</td>
<td>700</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>1,600</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1,800</td>
</tr>
</tbody>
</table>
### 2. Estimates of Undocumented Immigrants

Table 5: Estimates of Undocumented Immigrants in each State in 2020. Standard errors, which represent the uncertainty in each estimate, are shown in parentheses.

<table>
<thead>
<tr>
<th>State</th>
<th>Undocumented Immigrants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>71,900 (28,800)</td>
</tr>
<tr>
<td>Alaska</td>
<td>8,480 (3,500)</td>
</tr>
<tr>
<td>Arizona</td>
<td>274,400 (56,400)</td>
</tr>
<tr>
<td>Arkansas</td>
<td>65,300 (20,400)</td>
</tr>
<tr>
<td>California</td>
<td>2,066,000 (275,700)</td>
</tr>
<tr>
<td>Colorado</td>
<td>190,100 (50,200)</td>
</tr>
<tr>
<td>Connecticut</td>
<td>148,300 (67,700)</td>
</tr>
<tr>
<td>Delaware</td>
<td>29,700 (12,100)</td>
</tr>
<tr>
<td>Florida</td>
<td>796,000 (105,300)</td>
</tr>
<tr>
<td>Georgia</td>
<td>375,700 (140,000)</td>
</tr>
<tr>
<td>Hawaii</td>
<td>43,800 (19,000)</td>
</tr>
<tr>
<td>Idaho</td>
<td>38,300 (9,400)</td>
</tr>
<tr>
<td>Illinois</td>
<td>409,300 (70,100)</td>
</tr>
<tr>
<td>Indiana</td>
<td>103,200 (48,200)</td>
</tr>
<tr>
<td>Iowa</td>
<td>51,000 (20,400)</td>
</tr>
<tr>
<td>Kansas</td>
<td>81,300 (27,900)</td>
</tr>
<tr>
<td>Kentucky</td>
<td>44,700 (20,400)</td>
</tr>
<tr>
<td>Louisiana</td>
<td>100,100 (61,500)</td>
</tr>
<tr>
<td>Maine</td>
<td>4,000 (1,900)</td>
</tr>
<tr>
<td>Maryland</td>
<td>261,800 (76,300)</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>231,900 (69,300)</td>
</tr>
<tr>
<td>Michigan</td>
<td>103,800 (37,500)</td>
</tr>
<tr>
<td>Minnesota</td>
<td>86,800 (34,200)</td>
</tr>
<tr>
<td>Mississippi</td>
<td>23,000 (11,600)</td>
</tr>
<tr>
<td>Missouri</td>
<td>63,100 (31,300)</td>
</tr>
<tr>
<td>Montana</td>
<td>4,400 (1,700)</td>
</tr>
<tr>
<td>Nebraska</td>
<td>55,800 (17,900)</td>
</tr>
<tr>
<td>Nevada</td>
<td>211,200 (31,600)</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>10,400 (4,400)</td>
</tr>
<tr>
<td>New Jersey</td>
<td>409,200 (90,000)</td>
</tr>
<tr>
<td>New Mexico</td>
<td>59,200 (16,600)</td>
</tr>
<tr>
<td>New York</td>
<td>679,800 (102,800)</td>
</tr>
<tr>
<td>North Carolina</td>
<td>330,800 (73,400)</td>
</tr>
<tr>
<td>North Dakota</td>
<td>5,900 (3,200)</td>
</tr>
<tr>
<td>Ohio</td>
<td>94,400 (43,400)</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>90,100 (30,200)</td>
</tr>
<tr>
<td>Oregon</td>
<td>109,100 (32,200)</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>217,800 (85,500)</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>32,900 (12,000)</td>
</tr>
<tr>
<td>South Carolina</td>
<td>101,500 (47,500)</td>
</tr>
<tr>
<td>South Dakota</td>
<td>5,700 (2,300)</td>
</tr>
<tr>
<td>Tennessee</td>
<td>139,200 (56,000)</td>
</tr>
<tr>
<td>Texas</td>
<td>1,649,100 (182,200)</td>
</tr>
<tr>
<td>Utah</td>
<td>106,100 (19,100)</td>
</tr>
<tr>
<td>Vermont</td>
<td>3,500 (1,600)</td>
</tr>
<tr>
<td>Virginia</td>
<td>297,600 (104,600)</td>
</tr>
<tr>
<td>Washington</td>
<td>374,800 (82,600)</td>
</tr>
<tr>
<td>West Virginia</td>
<td>4,300 (2,000)</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>72,900 (31,000)</td>
</tr>
<tr>
<td>Wyoming</td>
<td>4,800 (1,900)</td>
</tr>
</tbody>
</table>
3. Unrounded Main Results for Congressional Apportionment

Table 12: Unrounded Estimates of Excluding Undocumented Immigrants on Congressional Apportionment

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Seats</th>
<th>Seats after Exclusion</th>
<th>Seat Delta</th>
<th>Prob. Seat Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>6.46</td>
<td>7.00</td>
<td>0.54</td>
<td>0%</td>
</tr>
<tr>
<td>Alaska</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Arizona</td>
<td>10.00</td>
<td>10.00</td>
<td>0.00</td>
<td>0.3%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>California</td>
<td>52.15</td>
<td>51.32</td>
<td>-0.83</td>
<td>72.1%</td>
</tr>
<tr>
<td>Colorado</td>
<td>8.00</td>
<td>8.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>5.00</td>
<td>4.97</td>
<td>-0.03</td>
<td>3.4%</td>
</tr>
<tr>
<td>Delaware</td>
<td>2.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Florida</td>
<td>28.86</td>
<td>28.47</td>
<td>-0.38</td>
<td>38.4%</td>
</tr>
<tr>
<td>Georgia</td>
<td>14.00</td>
<td>14.02</td>
<td>0.02</td>
<td>0%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>2.00</td>
<td>2.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Idaho</td>
<td>2.00</td>
<td>2.12</td>
<td>0.12</td>
<td>0%</td>
</tr>
<tr>
<td>Illinois</td>
<td>17.00</td>
<td>16.90</td>
<td>-0.10</td>
<td>10.1%</td>
</tr>
<tr>
<td>Indiana</td>
<td>9.00</td>
<td>9.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Iowa</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Kansas</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>6.00</td>
<td>6.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>6.00</td>
<td>6.02</td>
<td>0.02</td>
<td>0%</td>
</tr>
<tr>
<td>Maine</td>
<td>2.00</td>
<td>2.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Maryland</td>
<td>8.00</td>
<td>8.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>9.00</td>
<td>9.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Michigan</td>
<td>13.00</td>
<td>13.28</td>
<td>0.28</td>
<td>0%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>7.07</td>
<td>8.00</td>
<td>0.92</td>
<td>0%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Missouri</td>
<td>8.00</td>
<td>8.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Montana</td>
<td>1.92</td>
<td>2.00</td>
<td>0.08</td>
<td>0%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>3.00</td>
<td>3.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Nevada</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>2.00</td>
<td>2.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>12.00</td>
<td>11.30</td>
<td>-0.70</td>
<td>69.8%</td>
</tr>
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<td>New Mexico</td>
<td>3.00</td>
<td>3.00</td>
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<td>0%</td>
</tr>
<tr>
<td>New York</td>
<td>25.54</td>
<td>25.35</td>
<td>-0.19</td>
<td>18.9%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>14.00</td>
<td>14.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Ohio</td>
<td>15.00</td>
<td>16.00</td>
<td>1.00</td>
<td>0%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>5.00</td>
<td>5.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Oregon</td>
<td>6.00</td>
<td>6.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>17.00</td>
<td>17.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1.00</td>
<td>1.17</td>
<td>0.17</td>
<td>0%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>7.00</td>
<td>7.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>9.00</td>
<td>9.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Texas</td>
<td>38.99</td>
<td>37.93</td>
<td>-1.06</td>
<td>98.3%</td>
</tr>
<tr>
<td>Utah</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Vermont</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Virginia</td>
<td>11.00</td>
<td>11.16</td>
<td>0.16</td>
<td>0%</td>
</tr>
<tr>
<td>Washington</td>
<td>10.00</td>
<td>10.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>2.00</td>
<td>2.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>8.00</td>
<td>8.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
</tbody>
</table>
Appendix B
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NEW YORK IMMIGRATION
COALITION, et. al,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et. al,

Defendant.

Civil Action No. 18-CV-2921-JMF
Hon. Jesse M. Furman

DECLARATION OF DR. CHRISTOPHER WARSHAW

I. Qualifications

1. I have been asked by counsel representing the plaintiffs in New York Immigration Coalition v. U.S. Dept of Commerce and State of New York v. U.S. Dept of Commerce to analyze relevant data and provide my expert opinions. More specifically, I have been asked: to forecast the populations of every state, county, and city in the United States in 2020; given the assumption that various demographic groups are likely to be undercounted due to the inclusion of a citizenship question on the Census, to estimate the proportion of the population that belongs to those groups; to estimate the proportion of the population in every state, county, and city in the United States that belongs to those demographic groups assumed to be likely to be undercounted in 2020 due to the inclusion of a citizenship question on the Census; to analyze the likely effects of an undercount caused by the citizenship question affecting those same demographic groups on the apportionment of representatives across states for the U.S. House of Representatives; and to examine the likely consequences of an undercount caused by the citizenship question affecting those demographic groups on the
distribution of people in urban and rural counties. My expert report is PX-32 and the errata to that report is PX-323.

2. I have been an Assistant Professor of Political Science at George Washington University since August 2017. Prior to that, I was an Associate Professor at the Massachusetts Institute of Technology from July 2016 - July 2017, and an Assistant Professor at MIT from July 2012 - July 2016.

3. My Ph.D. is in Political Science, from Stanford University, where my graduate training included courses in political science and statistics. I also have a J.D. from Stanford Law School.

4. My academic research focuses on public opinion based on surveys and census data, as well as the study of representation, elections, and polarization in American Politics. I have also taught courses on statistical analysis. My curriculum vitae is PX-323. All publications that I have authored and published appear in my curriculum vitae. My work is published or forthcoming in peer-reviewed journals such as: American Political Science Review, the American Journal of Political Sciences, the Journal of Politics, Political Analysis, Political Science Research and Methods, the British Journal of Political Science, Political Behavior, the Election Law Journal, Nature Energy, Public Choice and edited volumes from Cambridge University Press and Oxford University.

6. The opinions in this declaration are my own, and do not represent the views of George Washington University.

7. I offer these opinions with a strong degree of professional certainty based on the knowledge I have amassed over my education, training and experience, and through a detailed review of the relevant academic literature.

II. Projecting Future Populations

8. The first stage of my analysis is to develop baseline projections of the population of each state, county, and city in the country in 2020. These projections are critical to determining the likely effects of an undercount in the Census due to the inclusion of a citizenship question. In order to develop these estimates, I use the Census’s official estimates of the population of each state, county, and city from 2000-2017. The Census does not provide public estimates of each geographic unit’s populations in future years.

   A. Data

9. The Census Bureau’s Population Estimates Program (PEP) produces estimates of the population for the United States, states, counties, cities, towns, and other geographic areas. These aggregate estimates are based on the demographic components of population change (births, deaths, and migration) at each level of geography.¹

10. My population projections are based on these official population estimates for each state, county, and city for the period from 2000-2017.

11. For the state populations from 2010-2017, I used the file ‘nst-est2017-01.xlsx’ which I obtained from https://www.census.gov/data/tables/2017/demo/popest/state-total.html. For the

¹I do not directly use the more detailed cohort-component method used by the Census for my population projections because this information is unavailable for some geographic levels, particularly for the 2000-2010 period. It is also unclear whether the additional complexities associated with this approach would yield substantial gains in predictive accuracy.
populations from 2000-2009, I used the file ‘st-est00int-01.xls’ from https://www.census.gov/data/tables/ time-series/demo/popest/intercensal-2000-2010-state.html.

12. For the county populations from 2010-2017, I used the file ‘co-est2017-alldata.csv’ from https://www.census.gov/data/tables/2017/demo/popest/counties-total.html. For the populations from 2000-2009, I used the file ‘co-est00int-tot.csv’ from https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-counties.html.


**B. Statistical Model for Population Projections**

15. There are a number of potential options for forecasting the likely population of a geographic unit (e.g., states) in 2020. One possible forecasting option would be to allow the forecasts to increase or decrease over time, where the amount of change over time (called the drift) is set to be the average change in the historical data. See Hyndman and Athanasopoulos 2018, at 48-49. Some related methods in this family of forecasting approaches are:
a. **Linear trend between 2010-2017:** One possibility is to project forward based on the linear trend in the population estimates since the last Census (e.g., Election Data Services 2017). This approach assumes that each geographic unit’s population follows the same linear rate of change in the future that it has followed over the past decade. This approach has the benefit of using many years of data, but it could yield biased estimates if the population trends have changed over this period. I estimate linear trends using a simple linear regression model in the software program R.

b. **Linear trend between 2014-2017:** Another possibility is to project forward based on the linear trend in the population estimates over the past 4 years. This approach assumes that each geographic unit’s population follows the same linear trend in the future that it has followed over this shorter time period. This approach has the benefit of being sensitive to more recent trends, but it could be noisier than estimates based on the longer time series. That is, it could be overly sensitive to short-term trends. I estimate linear trends using a simple linear regression model in R.

c. **Change between two most recent years (i.e., 2016 to 2017):** A third possibility is to focus on the change between each geographic unit’s populations in the two most recent years, and assume that future years will follow this recent trend. This approach has the benefit of being based on the most recent changes in populations, but it could also be overly sensitive to short-term idiosyncratic trends. I estimate these short-term trends using the software program R.
16. As Hyndman and Athanasopoulos discuss, “Sometimes one of these simple methods will be the best forecasting method available; but in many cases, these methods will serve as benchmarks rather than the method of choice. That is, any forecasting methods . . . will be compared to these simple methods to ensure that the new method is better than these simple alternatives. If not, the new method is not worth considering.” *Id.* at 50.

17. I consider one more complex approach against these benchmarks, a state space model with exponential smoothing: This approach uses an exponential smoothing model that weights levels and trends to an extent determined by the data. *See* Hyndman and Athanasopoulos. This model uses all of the available data, but it gives more weight to the most recent years. I estimate the exponential smoothing model using the ets function in the forecast package in R.²

**C. Validation of Population Projections**

18. The accuracy of forecasting models can only be determined by considering how well a given model performs on new data that were not used when fitting the original model. *Id.* at 62. In order to choose the best model for this analysis, I evaluated each model using two benchmarks that are similar to the challenge of forecasting the 2020 populations. First, I forecasted the Census 2010 population in each state based on 2000-2007 population estimates data. Second, I forecasted the 2017 population estimates in each state based on 2007-2014 population data. For each analysis, I used the following evaluation metrics. *Id.* at 64-65.

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² For my state-level population projections, I used the default parameters for the ets function in R, which allowed the function to choose the exponential smoothing state space model that best fit the data in each state. The best model was usually an ‘MAN’ or ‘AAN’ model. For the population projections for cities and counties, I estimated an ‘MAN’ state space model using the ets function. The details of the state space model specification, however, do not affect any of my substantive conclusions. All of the state space models yield very similar results.
a. **The mean error across states**: This helps assess whether a given metric has a systematic bias in one direction or another.

b. **The mean absolute error across states**: This helps assess the accuracy of the forecasts.

c. **The mean absolute proportional error across states**: This metric also helps assess the accuracy of the forecasts. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

19. Table 1 shows the results. For the forecast of the 2010 population, the state space model performs the best, with the lowest error, the second lowest mean absolute error, and the lowest absolute proportional errors. The two linear trend models perform the worst on this forecasting exercise. For the forecast of the 2017 population, the state space model and the linear trend model using data from 2010-2017 perform the best. The state space model has slightly lower mean errors, and the two models have similar mean absolute errors and absolute proportional errors.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Linear model (full period)</td>
<td>22,800</td>
<td>62,860</td>
<td>0.013</td>
<td>7,827</td>
<td>32,003</td>
<td>0.007</td>
</tr>
<tr>
<td>Linear model (4 years)</td>
<td>27,399</td>
<td>82,006</td>
<td>0.014</td>
<td>33,420</td>
<td>59,396</td>
<td>0.014</td>
</tr>
<tr>
<td>Delta in last two years</td>
<td>20,383</td>
<td>50,663</td>
<td>0.010</td>
<td>140,472</td>
<td>142,506</td>
<td>0.020</td>
</tr>
<tr>
<td>State space model</td>
<td>5,826</td>
<td>51,033</td>
<td>0.009</td>
<td>-2509</td>
<td>33,378</td>
<td>0.008</td>
</tr>
</tbody>
</table>

20. Overall, the state space model performs the best across the two validation exercises. It has an average absolute proportional error of only .8% and an average absolute error of only about 40,000 people in each state. As a result, I use the state space model as my main forecasting model to generate population projections. However, the results of all the analyses that follow would be substantively similar using any of these population forecasting approaches.
D. Incorporating Uncertainty

21. All modeled estimates have uncertainty. My analyses use bootstrap simulations to incorporate two sources of uncertainty in all my models:

- The uncertainty in the population forecasts in every geographic unit
- Where available, uncertainty in the undercount estimates for each group

E. Baseline estimates of 2020 populations with no undercount

22. I used the official Census population estimates to project each geographic unit’s population in 2020. Table 2 shows the population projections for a selection of cities and counties involved in lawsuits regarding the citizenship question. Table 3 shows the population projections for each state. All of the analysis of apportionment that follows fully incorporates the uncertainties in the projections discussed above. But for simplicity, the tables themselves do not show the uncertainties.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, AZ</td>
<td>1,446,909</td>
<td>1,626,078</td>
<td>1,698,187</td>
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<tr>
<td>Los Angeles County, CA</td>
<td>9,818,605</td>
<td>10,163,507</td>
<td>10,256,275</td>
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<tr>
<td>Monterey County, CA</td>
<td>415,652</td>
<td>437,907</td>
<td>444,016</td>
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<tr>
<td>San Francisco, CA</td>
<td>805,193</td>
<td>884,363</td>
<td>909,143</td>
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<tr>
<td>Miami, FL</td>
<td>399,457</td>
<td>463,347</td>
<td>491,295</td>
</tr>
<tr>
<td>Chicago, IL</td>
<td>2,695,620</td>
<td>2,716,450</td>
<td>2,704,974</td>
</tr>
<tr>
<td>Price Georges County, MD</td>
<td>863,420</td>
<td>912,756</td>
<td>931,412</td>
</tr>
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<td>New York, NY</td>
<td>8,174,959</td>
<td>8,622,698</td>
<td>8,645,147</td>
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<td>Columbus, OH</td>
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<td>879,170</td>
<td>925,408</td>
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<td>1,526,006</td>
<td>1,580,863</td>
<td>1,598,072</td>
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<td>Pittsburgh, PA</td>
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<td>297,243</td>
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<td>19,359</td>
<td>19,250</td>
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<tr>
<td>Providence, RI</td>
<td>177,997</td>
<td>180,393</td>
<td>181,532</td>
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<tr>
<td>Cameron County, TX</td>
<td>406,219</td>
<td>423,725</td>
<td>429,603</td>
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<td>El Paso County, TX</td>
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<td>840,410</td>
<td>851,600</td>
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<tr>
<td>Hidalgo County, TX</td>
<td>774,770</td>
<td>860,661</td>
<td>892,083</td>
</tr>
<tr>
<td>Seattle, WA</td>
<td>608,664</td>
<td>724,745</td>
<td>780,550</td>
</tr>
</tbody>
</table>

3 The projections shown here do not include the overseas military population, federal employees, and dependents. However, the apportionment projections in Table 5 do include these groups.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
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<td>Alabama</td>
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<td>4,874,474</td>
<td>4,917,351</td>
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<td>Alaska</td>
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<td>7,016,270</td>
<td>7,399,157</td>
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<td>Arkansas</td>
<td>2,915,918</td>
<td>3,064,279</td>
<td>3,051,838</td>
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<td>California</td>
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<td>40,505,540</td>
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<td>Colorado</td>
<td>5,029,196</td>
<td>5,607,154</td>
<td>5,823,386</td>
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<td>Connecticut</td>
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<td>3,588,184</td>
<td>3,589,649</td>
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<td>Delaware</td>
<td>897,934</td>
<td>961,939</td>
<td>989,662</td>
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<td>District of Columbia</td>
<td>601,723</td>
<td>693,972</td>
<td>722,881</td>
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<td>Florida</td>
<td>18,801,310</td>
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<td>21,967,862</td>
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<td>Georgia</td>
<td>9,687,653</td>
<td>10,429,379</td>
<td>10,776,655</td>
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<tr>
<td>Hawaii</td>
<td>1,360,301</td>
<td>1,427,538</td>
<td>1,429,641</td>
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<tr>
<td>Idaho</td>
<td>1,567,582</td>
<td>1,716,943</td>
<td>1,827,695</td>
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<tr>
<td>Illinois</td>
<td>12,830,632</td>
<td>12,802,023</td>
<td>12,701,647</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,483,802</td>
<td>6,666,818</td>
<td>6,761,903</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,046,355</td>
<td>3,145,711</td>
<td>3,182,994</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,853,118</td>
<td>2,913,123</td>
<td>2,925,781</td>
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<tr>
<td>Kentucky</td>
<td>4,339,367</td>
<td>4,454,189</td>
<td>4,508,391</td>
</tr>
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<td>Maine</td>
<td>1,328,361</td>
<td>1,335,907</td>
<td>1,349,155</td>
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<td>Maryland</td>
<td>5,773,552</td>
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<td>6,187,649</td>
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<td>Massachusetts</td>
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<td>9,883,640</td>
<td>9,962,311</td>
<td>9,962,308</td>
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<td>Minnesota</td>
<td>5,303,925</td>
<td>5,576,606</td>
<td>5,690,791</td>
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<td>Mississippi</td>
<td>2,967,297</td>
<td>2,984,100</td>
<td>2,984,630</td>
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<td>Missouri</td>
<td>5,988,927</td>
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<td>Montana</td>
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<td>Nebraska</td>
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<td>1,920,076</td>
<td>1,957,570</td>
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<tr>
<td>Nevada</td>
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<td>2,998,039</td>
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<td>New Hampshire</td>
<td>1,316,470</td>
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<td>New Jersey</td>
<td>8,791,894</td>
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<td>9,106,936</td>
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<td>New Mexico</td>
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<td>2,095,989</td>
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<td>New York</td>
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<td>10,633,813</td>
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<td>North Dakota</td>
<td>672,591</td>
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<td>752,711</td>
</tr>
<tr>
<td>Ohio</td>
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<td>11,713,096</td>
</tr>
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<td>Oklahoma</td>
<td>3,751,351</td>
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<td>3,974,666</td>
</tr>
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<td>Oregon</td>
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<td>4,269,590</td>
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<td>Pennsylvania</td>
<td>12,702,379</td>
<td>12,805,537</td>
<td>12,838,048</td>
</tr>
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<td>Rhode Island</td>
<td>1,052,567</td>
<td>1,059,639</td>
<td>1,059,639</td>
</tr>
<tr>
<td>South Carolina</td>
<td>4,625,364</td>
<td>5,024,369</td>
<td>5,213,894</td>
</tr>
<tr>
<td>South Dakota</td>
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<td>869,666</td>
<td>891,229</td>
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<td>6,346,105</td>
<td>6,715,984</td>
<td>6,915,723</td>
</tr>
<tr>
<td>Texas</td>
<td>25,145,561</td>
<td>28,304,596</td>
<td>29,593,219</td>
</tr>
<tr>
<td>Utah</td>
<td>2,763,885</td>
<td>3,101,833</td>
<td>3,274,374</td>
</tr>
<tr>
<td>Vermont</td>
<td>625,741</td>
<td>623,657</td>
<td>622,506</td>
</tr>
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<td>Virginia</td>
<td>8,001,024</td>
<td>8,470,020</td>
<td>8,632,998</td>
</tr>
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<td>Washington</td>
<td>6,724,540</td>
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<td>5,795,483</td>
<td>5,858,478</td>
</tr>
<tr>
<td>Wyoming</td>
<td>563,626</td>
<td>579,315</td>
<td>565,592</td>
</tr>
</tbody>
</table>
III. Estimating Proportion of People Likely to be Undercounted Due to Citizenship Question

23. I was not asked to and I did not attempt to calculate the specific undercount that the addition of the citizenship question might cause. However, I evaluated a range of potential undercounts of individuals who live in households with at least one non-citizen, Hispanics or foreign-born member to demonstrate the potential effects that the addition of the citizenship question might have. Theory indicates that the addition of a citizenship question could lead to unit non-response, which occurs when a household does not respond to the Census, thereby depressing response rates among non-citizens and immigrant communities. Indeed, the Census acknowledges that it is “a reasonable inference that a question on citizenship would lead to some decline in overall self-response because it would make the 2020 Census modestly more burdensome in the direct sense, and potentially much more burdensome in the indirect sense that it would lead to a larger decline in self-response for noncitizen households.” (Abowd 2018, Section B2, p. AR 001281)

24. In my analysis, I use this information to look at three potential undercount scenarios:

   a. First, I used a 5.8% undercount estimate based on the results of the Census Bureau’s internal study of the effect of a citizenship question on self-response rates. For these analyses, I assumed that respondents that do not self-respond would not be enumerated.

   b. Second, I was asked by legal counsel to examine a potential 10% undercount for the analysis of state-level apportionment as an outer bound for the potential effects of the citizenship question on population enumerations and apportionment. This higher number reflects the Census’s finding that the differences between citizen and noncitizen
response rates and data quality are likely to be “amplified” compared to historical levels (Abowd 2018, Section B4, p. AR 001282). The Chief Scientist at the Census has acknowledged that the 5.8% estimate of the effect of the citizenship question on self-response rates is “a conservative estimate of the differential impact of the citizenship question on the self-response rates of noncitizens compared to citizens” (Abowd, J. Dep., Aug. 15, 2018, p. 202).

c. Third, I was asked by legal counsel to examine a potential 2% undercount as a lower bound for the potential effects of the citizenship question on population enumerations. My report shows the results for cities and counties, and the calculations for a 2% undercount in states are PX-324. I was not asked to and I did not do any analysis of the impact of the Census Bureau’s Non-Response Follow-Up (“NRFU”) on non-response rates, but note that the 2% scenario could be viewed as taking into account some NRFU success after an initial larger nonresponse rate.

25. The recent Census Bureau studies discussed above focus largely on the effects of a citizenship question on self-response rates in non-citizen households. As a result, the first set of analyses I conducted for each of these undercount scenarios focuses on people in households with a non-citizen in them. Beyond the effects on non-citizen households, there are also strong theoretical reasons to believe that citizen Hispanics would also be less likely to respond to the Census if a citizenship question is included. Citizen Hispanics in immigrant communities could fear deportation due to their Census responses.\(^4\) Moreover, a large

\(^4\)Title 13, U.S.C. prohibits the use of Census data for enforcement purposes, but respondents may still have this concern (Brown et al. 2018).
fraction of citizen Hispanics are likely to know non-citizens or even people that have been deported. The Census’s internal analysis has shown that citizenship-related questions are likely to be more sensitive for Hispanics (Brown et al. 2018, p. 10). Indeed, the Census has found clear evidence there are likely to be differential impacts on self-response rates among Hispanics from the addition of a citizenship question. Hispanics have a greater breakoff rate (i.e., item non-response) on the citizenship question on the American Community Survey (ACS) than other demographic groups.\(^5\) There is also evidence of growing unit nonresponse rates among Hispanics on the ACS (Brown et al. 2018, p. 12). For these reasons, I analyzed the effect of all three undercount scenarios (2%, 5.8% and 10%) on both people in non-citizen households and citizen Hispanics.

A. **Undercount Estimate Based on Original Survey Experiment**

26. An empirical approach to determine the potential undercount caused by a citizenship question is through a randomized control trial (RCT). The Census Bureau suggests that an appropriate RCT could compare self-response rates between households “randomly chosen to have [] a citizenship question (the treated group), and a randomly chosen set of control households [that] receive a [] Census questionnaire without citizenship” (Brown et al. 2018, p. 39)

27. We were unable to conduct a real-world RCT. A similar approach, however, is to conduct an experiment that mimics an RCT on a nationally representative survey of Americans. As part of this case, the State of New York and other plaintiffs funded a nationally representative survey that included an experiment along these lines to examine whether the inclusion of a

\(^5\) See Abowd (2018, Section b3) and Brown et al. (2018, 7).
citizenship question would reduce the likelihood that people would complete the Census.\textsuperscript{6} This survey was designed by Dr. Matt Barreto and conducted by Pacific Market Research.\textsuperscript{7}

1. Design of Survey

28. This survey included a probability sample of 6,309 people, including over-samples of Hispanics, Californians, and people in several cities and counties (San Jose, CA, Cameron County, TX, and Hidalgo County, TX).\textsuperscript{8} It was conducted via phone by Pacific Research Group to both landlines and cell phones using live interviews and random digit dialing. The survey asked a number of questions about the Census and assessed reactions to the inclusion of a citizenship question. The survey did not include a question about the citizenship of respondents. But it did include a question about whether respondents were born in the United States or a foreign country.

29. In my analysis, I focus on an experiment embedded in the survey that mimics the RCT approach suggested by Brown et al. (2018). This enables us to estimate the causal effect of the citizenship question on the likelihood that various demographic subgroups will complete the Census.

30. In the experiment on our survey, the control group received a vignette stating that the government had decided not to include a citizenship question on the census, while the treatment group received a vignette stating that the government had decided to include a citizenship question on the census. Then the survey asked whether respondents would ‘participate and fill out the 2020 Census form, or not?’

\textsuperscript{6} As part of my work as an expert in this matter, I reviewed Professor Barreto’s expert report that describes the survey methodology and his analysis of the results. However, I ran all of the analyses of the survey used in this report myself. I did not directly use any of Professor Barreto’s findings for my report.

\textsuperscript{7} Data and statistical code to replicate my analysis of this survey is available in my replication materials.

\textsuperscript{8} The survey includes sampling weights that incorporate these over-samples and make the results representative at the national-level.
**Control Group:** Now that you’ve heard a little bit about the 2020 Census let me ask you one final question about how likely you are to participate. If the government decides in 2020 to NOT include a question about citizenship status, and instead only asks you to report the race, ethnic background, gender of people living in your household, and the government provides assurances that your information will be kept confidential and ONLY used for purposes of counting the total population and nothing more, would you participate and fill out the 2020 Census form, or not?

**Treatment Group:** Now that you’ve heard a little bit about the 2020 Census let me ask you one final question about how likely you are to participate. If the government decides in 2020 to include a question about citizenship status, and asks you to report the race, ethnic background, gender and citizenship status of people living in your household, and the government provides assurances that your information will be kept confidential and ONLY used for purposes of counting the total population and nothing more, would you participate and fill out the 2020 Census form, or not?

31. This experimental design is a strong one for assessing the causal effect of the citizenship question on the likelihood that people will complete the Census. However, it does have limitations. First, the experiment on the survey imperfectly captures the actual experience of completing the Census. Second, many respondents are probably already aware of the potential inclusion of the citizenship question on the Census, which could lead to Stable Unit Treatment Value Assumption (SUTVA) violations. These SUTVA violations could attenuate the effects we detect in the experiment by artificially reducing the differences between the treatment and control groups. Overall, I think these limitations mean the survey-based
analysis is conservative in its estimates of the citizenship question on self-response rates on the Census.

2. **Results of Survey**

32. My primary analyses focus on two immigrant communities that theory indicates are particularly likely to be impacted by the citizenship question. First, I analyze the impact on Latinos.\(^9\) This analysis is helpful because there is little publicly available Census analysis of the potential effects of the citizenship question on this group. Second, I analyze the impact on non-Latino people that are not born in the United States.\(^{10}\)

33. I ran three sets of analyses that are shown in Table 4. My primary analysis of the effect of the citizenship question on each group is a weighted regression that evaluates the treatment effect of the citizenship question. In other words, it evaluates whether people in the treatment group, that were told the Census would include a citizenship question, are less likely to indicate they would respond to the Census than people in the control group that were told it would not include a citizenship question.

34. As robustness checks, I also ran two additional models. The middle column of Table 4 for each group is a weighted regression model that includes control variables for other factors that might affect respondents’ willingness to complete the Census, including their age, race, and state of residence. The third column of Table 4 for each group is an unweighted regression model that includes this same set of control variables for other factors that might affect respondents’ willingness to complete the Census. All of my main analyses in the results below are based on linear probability models. However, logistic regression models yield similar results.

---

\(^9\) Note that I use the terms Hispanic and Latino interchangeably throughout this declaration.

\(^{10}\) I include in this group both people that explicitly stated they were born in a foreign country and the small number of people that refused to answer the nativity question on the survey.
35. Overall, Table 4 shows that the citizenship question makes both Latinos and Foreign-born non-Latinos less likely to respond to the Census. The weighted regression model in column (1) indicates that Latinos are about 5.9% less likely to complete the Census if it includes a citizenship question. The results are similar in the other two models shown in columns (2) and (3). For foreign-born, non-Latinos, the weighted regression in column (4) indicates that they are about 11.3% less likely to complete the Census if it includes a citizenship question. The results are substantively similar, though more statistically significant, in the other two models shown in columns (5) and (6).

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<th>Foreign-born (not Latino) (4)</th>
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<td></td>
<td>-0.059**</td>
<td>-0.113</td>
</tr>
<tr>
<td></td>
<td>(0.029)</td>
<td>(0.072)</td>
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</table>

<table>
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<td>0.021</td>
<td>0.117</td>
<td>0.022</td>
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<tr>
<td>Adjusted R²</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Log Likelihood</td>
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<td>-2,763,581</td>
<td>-782,779</td>
<td>-714,807</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: *p<0.1; **p<0.05; ***p<0.01

IV. Baseline Estimates of Proportion of Population in Immigrant Communities Vulnerable to Undercount

36. In order to analyze the effects of an undercount of individuals that live in households with at least one non-citizen and Hispanic on total population enumerations, I used the American Community Survey (ACS) to generate baseline estimates of the proportion of the 2020 population in each state, county, and large city in the following groups that are vulnerable to an undercount:
• Non-citizen households (based on whether any member of a household in the ACS self-reports that they are a noncitizen)\textsuperscript{11}

• All Hispanics and citizen Hispanics

• Foreign-born, non-Hispanics

37. To forecast the population margins of each group within each state (e.g., percent Hispanic), I used the individual-level data in the American Community Survey (ACS) from 2007-2016 to forecast the 2020 population distributions using the same approach that I used to forecast state populations. Individual-level data in the ACS is not readily available below the state-level (e.g., for counties and cities). As a result, I used population tables published by the Census based on the five-year ACS samples (2012-2016) to estimate the demographic distributions within counties and cities.\textsuperscript{12} I did not attempt to estimate how these substate population distributions are likely to change between 2016 and 2020. Thus, my estimates of the percentage of county and city population that are members of immigrant communities are probably low due to the general growth of these populations.

A. State-level Effects of Undercount - Effect of Undercount on State Population Enumerations

38. I analyzed the effects of each undercount scenario on the enumerated population of each state in 2020. The results are shown in Table 5. Column (1) shows the baseline apportionment population projections for each state. Column (2) shows the average change in the enumerated population if 5.8% of people in non-citizen households are not counted due to

\textsuperscript{11} It is important to note that the Census has found that the ACS might be drastically undercounting the number of households with noncitizens. The ACS implies that about 10% of people live in households with a noncitizen in them. However, Census Bureau found that many people may be misreporting their citizenship status on the ACS. Based on administrative records, they estimate that 28.6 percent of all households could potentially contain at least one noncitizen. So my estimate of the percentage of people that reside in households with a noncitizen based on the ACS is likely conservative.

\textsuperscript{12} For the selection of cities and counties in Tables 2, 7, and 8, I converted the number of non-citizens to the number of people in households with a non-citizen using the ratio of these groups in the individual-level 5-year ACS sample (2012-16) for people in the PUMAs that overlapped each city and county. This analysis is necessarily approximate since PUMAs in the ACS micro-data contain multiple cities and counties.
the citizenship question. Column (3) shows the average change in the enumerated population if 5.8% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (4) shows the average change in the enumerated population if 10% of people in non-citizen households are not counted due to the citizenship question. Column (5) shows the average change in the enumerated population if 10% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (6) shows the average change in the enumerated population in each state based on the results of the survey experiment. Specifically, this scenario assumes that 5.9% of Hispanics and 11.3% of foreign-born, non-Latinos are not counted in the enumerated population.

39. For the analysis of apportionment, I also incorporated estimates of the overseas military population and federal employees, and their dependents living with them. Specifically, I used the 2010 population figures for the overseas military population and federal employees, and their dependents living with them, for each state, and divided this number by half to approximately reflect the reduction in the nation’s military deployments over the past decade. See https://www.census.gov/data/tables/2010/dec/2010-apportionment-data.html, for 2010 population figures. See also Pew Foundation study, http://www.pewresearch.org/fact-tank/2017/08/22/ u-s-active-duty-military_presence-overseas-is-at-its-smallest-in-decades/, for more information on the reduction in the number of overseas military personnel over the past decade.
<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Apportionment Pop. Projection</th>
<th>5.8% Undercount Noncitizens</th>
<th>5.8% Undercount Noncitizens + Hispanic</th>
<th>10% Undercount Noncitizens</th>
<th>10% Undercount Noncitizens + Hispanic</th>
<th>Survey Experiment Foreign-born + Hispanics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>4,928,974</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Alaska</td>
<td>745,119</td>
<td>-0.5%</td>
<td>-0.8%</td>
<td>-0.8%</td>
<td>-1.4%</td>
<td>-1.4%</td>
</tr>
<tr>
<td>Arizona</td>
<td>7,349,498</td>
<td>-0.0%</td>
<td>-2.1%</td>
<td>-1.5%</td>
<td>-3.6%</td>
<td>-2.0%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>3,059,993</td>
<td>-0.4%</td>
<td>-0.6%</td>
<td>-0.7%</td>
<td>-1.5%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>California</td>
<td>40,540,557</td>
<td>-1.7%</td>
<td>-2.9%</td>
<td>-3.9%</td>
<td>-5%</td>
<td>-1.7%</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,281,253</td>
<td>-0.7%</td>
<td>-1.5%</td>
<td>-1.2%</td>
<td>-2.7%</td>
<td>-2%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,503,415</td>
<td>-0.8%</td>
<td>-1.3%</td>
<td>-1.3%</td>
<td>-2.6%</td>
<td>-2.4%</td>
</tr>
<tr>
<td>Delaware</td>
<td>991,133</td>
<td>-0.6%</td>
<td>-1%</td>
<td>-1%</td>
<td>-1.7%</td>
<td>-1.5%</td>
</tr>
<tr>
<td>Florida</td>
<td>22,917,594</td>
<td>-1%</td>
<td>-2%</td>
<td>-1.7%</td>
<td>-3.4%</td>
<td>-2.7%</td>
</tr>
<tr>
<td>Georgia</td>
<td>10,796,611</td>
<td>-0.7%</td>
<td>-0.9%</td>
<td>-1.2%</td>
<td>-1.6%</td>
<td>-1.5%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,432,924</td>
<td>-1%</td>
<td>-1.6%</td>
<td>-1.7%</td>
<td>-2.8%</td>
<td>-1%</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,580,654</td>
<td>-0.4%</td>
<td>-0.9%</td>
<td>-0.8%</td>
<td>-1.6%</td>
<td>-1.2%</td>
</tr>
<tr>
<td>Illinois</td>
<td>12,718,521</td>
<td>-0.4%</td>
<td>-1.4%</td>
<td>-1.4%</td>
<td>-2.4%</td>
<td>-2.1%</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,770,793</td>
<td>-0.4%</td>
<td>-0.6%</td>
<td>-0.7%</td>
<td>-1.1%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,180,710</td>
<td>-0.4%</td>
<td>-0.6%</td>
<td>-0.7%</td>
<td>-1%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,931,128</td>
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<td>-1%</td>
<td>-1%</td>
<td>-1.7%</td>
<td>-1.5%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,514,011</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.5%</td>
<td>-0.7%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>4,694,742</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.5%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Maine</td>
<td>1,954,142</td>
<td>-0.4%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.5%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Maryland</td>
<td>6,185,838</td>
<td>-0.9%</td>
<td>-1.2%</td>
<td>-1.6%</td>
<td>-2%</td>
<td>-2.1%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,972,708</td>
<td>-0.9%</td>
<td>-1.4%</td>
<td>-1.5%</td>
<td>-2.4%</td>
<td>-2.4%</td>
</tr>
<tr>
<td>Michigan</td>
<td>9,576,301</td>
<td>-0.4%</td>
<td>-0.6%</td>
<td>-0.6%</td>
<td>-1%</td>
<td>-1.3%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>5,996,268</td>
<td>-0.5%</td>
<td>-0.6%</td>
<td>-0.8%</td>
<td>-1.1%</td>
<td>-1.6%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,900,101</td>
<td>-0.2%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.5%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>Missouri</td>
<td>6,104,875</td>
<td>-0.2%</td>
<td>-0.4%</td>
<td>-0.4%</td>
<td>-0.7%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Montana</td>
<td>1,993,854</td>
<td>-0.1%</td>
<td>-0.4%</td>
<td>-0.1%</td>
<td>-0.4%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,960,312</td>
<td>-0.5%</td>
<td>-0.9%</td>
<td>-0.9%</td>
<td>-1.5%</td>
<td>-1.2%</td>
</tr>
<tr>
<td>Nevada</td>
<td>3,178,994</td>
<td>-1.3%</td>
<td>-2.1%</td>
<td>-2.2%</td>
<td>-3.6%</td>
<td>-3%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,968,556</td>
<td>-0.4%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>9,114,740</td>
<td>-1.2%</td>
<td>-1.9%</td>
<td>-2%</td>
<td>-3.3%</td>
<td>-3%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2,100,030</td>
<td>-0.8%</td>
<td>-3.1%</td>
<td>-1.3%</td>
<td>-5.3%</td>
<td>-3.2%</td>
</tr>
<tr>
<td>New York</td>
<td>19,087,138</td>
<td>-1.2%</td>
<td>-1.9%</td>
<td>-2.1%</td>
<td>-3.5%</td>
<td>-3.1%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>10,638,762</td>
<td>-0.6%</td>
<td>-0.8%</td>
<td>-1%</td>
<td>-1.4%</td>
<td>-1.2%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>75,560</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.3%</td>
<td>-0.7%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,729,693</td>
<td>-0.2%</td>
<td>-0.4%</td>
<td>-0.4%</td>
<td>-0.7%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,583,432</td>
<td>-0.5%</td>
<td>-0.8%</td>
<td>-0.8%</td>
<td>-1.4%</td>
<td>-1.3%</td>
</tr>
<tr>
<td>Oregon</td>
<td>4,378,356</td>
<td>-0.7%</td>
<td>-1.1%</td>
<td>-1.1%</td>
<td>-1.9%</td>
<td>-1.6%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>12,851,327</td>
<td>-0.4%</td>
<td>-0.7%</td>
<td>-0.6%</td>
<td>-1.5%</td>
<td>-1.2%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,960,979</td>
<td>-0.2%</td>
<td>-1.3%</td>
<td>-1.2%</td>
<td>-2.3%</td>
<td>-2%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>5,224,190</td>
<td>-0.3%</td>
<td>-0.5%</td>
<td>-0.6%</td>
<td>-0.9%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>894,019</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.5%</td>
<td>-0.8%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,930,366</td>
<td>-0.4%</td>
<td>-0.5%</td>
<td>-0.6%</td>
<td>-0.9%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Texas</td>
<td>29,854,648</td>
<td>-1.3%</td>
<td>-2.7%</td>
<td>-2.2%</td>
<td>-4.6%</td>
<td>-3.2%</td>
</tr>
<tr>
<td>Utah</td>
<td>3,277,841</td>
<td>-0.6%</td>
<td>-1.1%</td>
<td>-1.1%</td>
<td>-1.9%</td>
<td>-1.4%</td>
</tr>
<tr>
<td>Vermont</td>
<td>624,804</td>
<td>-0.2%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,951,354</td>
<td>-0.7%</td>
<td>-1%</td>
<td>-1.2%</td>
<td>-1.7%</td>
<td>-1.8%</td>
</tr>
<tr>
<td>Washington</td>
<td>7,799,983</td>
<td>-0.9%</td>
<td>-1.3%</td>
<td>-1.5%</td>
<td>-2.3%</td>
<td>-2.1%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,781,304</td>
<td>-0.1%</td>
<td>-0.2%</td>
<td>-0.2%</td>
<td>-0.3%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,864,100</td>
<td>-0.3%</td>
<td>-0.6%</td>
<td>-0.6%</td>
<td>-1.1%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>567,929</td>
<td>-0.3%</td>
<td>-0.8%</td>
<td>-0.5%</td>
<td>-1.3%</td>
<td>-1%</td>
</tr>
</tbody>
</table>

40. Overall, Table 5 indicates that each state would be affected by an undercount on the Census.

The largest impacts would be in states with large numbers of Hispanics, non-Citizens, and foreign-born residents. For example, California would be undercounted by 1.7-5.0% in these scenarios; Florida would be undercounted by 1-3.4%; New Jersey would be undercounted by
1.2-3.3%, New York would be undercounted by 1.2-3.2%; and Texas would be undercounted by 1.3-4.6%.

41. Figure 1 shows a map of the results from the survey experiment (column 6 in Table 5). This map graphically shows that heavily Latino states on the southern border have the largest impacts from an undercount. States in the northeast, such as New York, New Jersey, and Massachusetts, with significant foreign-born populations also have significant impacts.

![Figure 1: Effects on State Populations](image)

42. I used the population projections and estimated effects of the various undercount scenarios on the enumerated population of each state to examine the likely effect of the citizenship question on the apportionment of seats in the House of Representatives. Article 1, Section 2, of the United States Constitution states: “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.”

43. Since the first census in 1790, five methods of apportionment have been used. The government currently uses a method called the Method of Equal Proportions, which was
adopted by Congress in 1941 following the census of 1940. This method first assigns each state one seat. Then, additional seats in the House of Representatives are signed to a “priority” value. The priority value for each seat is determined by multiplying the population of a state by a “multiplier.” The multiplier is \( 1/\sqrt{n(n-1)} \). So the formula for calculating the multiplier for the second seat is \( 1/\sqrt{2(2-1)} \) or 0.70710678, the formula for calculating the multiplier for the third seat is \( 1/\sqrt{3(3-1)} \) or 0.40824829, and so on. The Census provides an official table of these multipliers, which I used for my calculations.\(^{13}\)

44. The next step is to multiply the multipliers by the population total for each of the 50 states (the District of Columbia is not included in these calculations). The resulting numbers are the priority values. Multipliers and priority values must be calculated for the largest number of seats that could be assigned to a state. In my analysis, I calculated the priority values for each state for seats 2 through 60. The next step is to rank and number the resulting priority values starting with seat 51 until all 435 seats have been assigned. The final step is to tally the number of seats for each state to arrive at the total number of seats in the House of Representatives apportioned to each state.

45. I conducted these steps for 500 simulations of the population projections and undercount scenarios in each state. Table 6 shows the results. Column (1) shows the baseline projections for the number of seats that each state is likely to receive in 2020 if there is a full population enumeration. Column (2) shows the average change in the number of congressional seats if 5.8% of people in non-citizen households are not counted due to the citizenship question. Column (3) shows the average change in seats if 5.8% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (4) shows the average

\(^{13}\) See https://www.census.gov/population/apportionment/about/computing.html
change in seats if 10% of people in non-citizen households are not counted due to the citizenship question. Column (5) shows the average change if 10% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (6) shows the average change in seats in each state based on the results of the survey experiment. Specifically, this scenario assumes that 5.9% of Hispanics and 11.3% of foreign-born, non-Latinos are not counted in the enumerated populations. Also, each column includes 95% confidence intervals for the seat projections in parentheses. This means that there is a 95% chance that the true number of seats gained or lost in each scenario will be in this range.

46. First, we can examine Columns (2) and (3) of Table 6, which show the effects of a 5.8% undercount of people in non-citizens households and Hispanics. In these scenarios, California is extremely likely to lose a seat. Additionally, if there is an undercount of 5.8% of both people in non-citizen households and Hispanics, there is more than a 51% chance that Texas will lose a seat. There is also a risk that Arizona, Florida, Illinois, and New York could lose seats in some simulations.

47. Columns (4) and (5) of Table 6 show the effects of a 10% undercount of non-citizen households and Hispanics. If only people in non-citizen households are undercounted, California and Texas would be more likely than not to lose a seat. Arizona, Florida, Illinois, and New York would also be at risk of losing seats. If both non-citizens and Hispanics are undercounted, Arizona, California, Florida, and Texas would be likely to lose seats. Illinois and New York would also be at risk of losing a seat.
Table 6: Effect of Undercount on Congressional Apportionment

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Seats</th>
<th>5.8% Undercount Noncitizens</th>
<th>5.8% Undercount Noncitizens + Hispanic</th>
<th>10% Undercount Noncitizens</th>
<th>10% Undercount Noncitizens + Hispanic</th>
<th>Survey Experiment Foreign-born + Hispanics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>6</td>
<td>0 (0,1)</td>
<td>0 (0,1)</td>
<td>1 (0,1)</td>
<td>1 (0,1)</td>
<td>1 (0,1)</td>
</tr>
<tr>
<td>Alaska</td>
<td>1</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Arizona</td>
<td>10</td>
<td>0 (-1,0)</td>
<td>-1 (-1,0)</td>
<td>0 (-1,0)</td>
<td>-1 (-1,0)</td>
<td>0 (-1,0)</td>
</tr>
<tr>
<td>Arkansas</td>
<td>4</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>California</td>
<td>53</td>
<td>-1 (-1,0)</td>
<td>-1 (-1,0)</td>
<td>-1 (-2,1)</td>
<td>-1 (-2,0)</td>
<td>-1 (-2,0)</td>
</tr>
<tr>
<td>Colorado</td>
<td>8</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Connecticut</td>
<td>5</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Delaware</td>
<td>1</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Florida</td>
<td>20</td>
<td>-1 (-1,0)</td>
<td>-1 (-1,0)</td>
<td>-1 (-1,0)</td>
<td>-1 (-1,0)</td>
<td>-1 (-1,0)</td>
</tr>
<tr>
<td>Georgia</td>
<td>14</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,1)</td>
<td>0 (0,1)</td>
</tr>
<tr>
<td>Hawaii</td>
<td>2</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,1)</td>
<td>0 (0,1)</td>
</tr>
<tr>
<td>Idaho</td>
<td>2</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,1)</td>
<td>0 (0,1)</td>
</tr>
<tr>
<td>Illinois</td>
<td>17</td>
<td>0 (-1,0)</td>
<td>0 (-1,0)</td>
<td>0 (-1,0)</td>
<td>0 (-1,0)</td>
<td>0 (-1,0)</td>
</tr>
<tr>
<td>Indiana</td>
<td>9</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Iowa</td>
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<tr>
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<tr>
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<tr>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
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<tr>
<td>Wyoming</td>
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</tbody>
</table>

48. Column (6) shows the effects of the undercount of Hispanics and foreign-born residents found in the survey experiment. In this scenario, California, Florida, and Texas would most likely all lose seats. Arizona, Illinois, and New York could lose a seat as well.
49. The states that lose seats in Congress would likely see decreases in their share of outlays of federal funding due to their reduction in voting power in Congress. See Elis, Malhotra, and Meredith 2009 (PX-325). The Elis article attached here is just an example. It is a well-established finding in political science and political economy that the loss of political power as a result of the loss of representation leads to the loss of funding. This finding is based on a body of research showing that counties in areas of states that were underrepresented in state legislatures or Congress due to malapportionment received substantially lower shares of distributive spending. In the wake of the Baker v. Carr family of Supreme Court cases that required one-person, one-vote, counties that were underrepresented due to malapportionment saw both their representation in legislatures and their share of spending increase substantially when the equal populace district requirement was implemented. See Ansolabehere, Gerber, and Snyder 2002 (PX-326). Additionally, it is also based on another body of research comparing states that barely gain or lose Representatives in Congress. See PX-325. The census thresholds sometimes are quite close where a state could gain or lose seats. So this research compares those states that are just above and below the population thresholds to gain or lose a seat, and it has found that the states that just barely gain a seat receive more money than the states that barely lose a seat.

B. City and County Effects of Undercount

50. I also examined the effects of the various undercount scenarios for cities and counties.

Irrespective of state-level impacts on apportionment, the enumeration of subnational areas is crucially important for a number of purposes. It affects the distribution of federal and state funds that are tied to population formulas. In addition, it affects the allocation of legislative seats within states since legislative districts are required to be equipopulous.
51. This allocation of voting power within states, in turn, affects distributive spending programs influenced by the legislature. See PX-326. Areas with greater population enumerations, and thus more voting power, are likely to receive more funding. This article is just another example of this well-established finding in political science. There is a large body of political science research concluding that vote dilution due to malapportionment leads to a reduction in voting power and less distributive spending.

52. It is reasonable to assume that undercounts like those addressed in my report will more likely than not impact intrastate redistricting because there is no reason to think that a state legislature would correct an undercount on the Census. I think it’s a reasonable assumption that state governments would not consciously try to remedy an undercount.

53. Table 7 shows the impact on the counties and cities that are involved in the lawsuits regarding the citizenship question. The left column shows the baseline 2020 population projection. It also shows the absolute change in population and percentage change in the geographic unit’s population due to three undercount scenarios. First, I examine a 2% undercount scenario. Second, I examine a 5.8% undercount scenario. For each of these scenarios, I examine undercounts among people in non-citizen households and among non-citizens households + Hispanics. Finally, I examine a scenario based on the results of the survey experiment.

54. Table 7 shows the effects on a selection of cities and counties involved in the lawsuits regarding the citizenship question. All of these local governments would most likely face smaller population enumerations due to an undercount from the addition of a citizenship question. Some of the largest effects would be in Miami, FL, New York, NY, Central Falls,
RI, and Providence RI. In the survey experiment scenario (right-hand column), each of these cities could see a reduction of around 4% or more in their enumerated populations.

<table>
<thead>
<tr>
<th>County</th>
<th>2020 Population</th>
<th>Negro Change</th>
<th>% Change</th>
<th>2021 Non-Hispanic Change</th>
<th>% Change</th>
<th>2020 Change</th>
<th>% Change</th>
<th>Survey Experiment Change</th>
<th>% Change</th>
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<td>Phoenix, AZ</td>
<td>1,206,250</td>
<td>7,292</td>
<td>-0.6%</td>
<td>16,899</td>
<td>-1.2%</td>
<td>23,054</td>
<td>-2.3%</td>
<td>30,328</td>
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<td>135,905</td>
<td>-1.2%</td>
<td>211,679</td>
<td>-2.3%</td>
<td>284,248</td>
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<td>3,614</td>
<td>-0.8%</td>
<td>5,322</td>
<td>-1.2%</td>
<td>11,656</td>
<td>-2.3%</td>
<td>19,622</td>
<td>-2.3%</td>
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<td>5,660</td>
<td>-0.6%</td>
<td>8,141</td>
<td>-0.7%</td>
<td>14,457</td>
<td>-1.8%</td>
<td>17,888</td>
<td>-2.3%</td>
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<td>1,045,853</td>
<td>6,943</td>
<td>-0.7%</td>
<td>10,743</td>
<td>-1.4%</td>
<td>19,845</td>
<td>-1.8%</td>
<td>31,153</td>
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<td>5,090</td>
<td>-0.4%</td>
<td>7,059</td>
<td>-1.1%</td>
<td>11,859</td>
<td>-1.0%</td>
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<td>-1.1%</td>
<td>7,734</td>
<td>-1.6%</td>
<td>14,148</td>
<td>-2.9%</td>
<td>22,428</td>
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<td>-0.5%</td>
<td>12,052</td>
<td>-0.7%</td>
<td>35,769</td>
<td>-1.2%</td>
<td>58,152</td>
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<td>591,412</td>
<td>4,888</td>
<td>-0.5%</td>
<td>6,084</td>
<td>-0.9%</td>
<td>12,724</td>
<td>-1.4%</td>
<td>14,658</td>
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<td>9,641,147</td>
<td>55,200</td>
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<td>84,778</td>
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<td>166,258</td>
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<td>245,851</td>
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<td>Columbus, OH</td>
<td>824,408</td>
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<td>2,768</td>
<td>-0.4%</td>
<td>6,866</td>
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<td>8,027</td>
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<td>-0.5%</td>
<td>16,655</td>
<td>-0.7%</td>
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<td>614</td>
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<td>1,202</td>
<td>-0.2%</td>
<td>1,789</td>
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<td>313</td>
<td>-1%</td>
<td>510</td>
<td>-2%</td>
<td>908</td>
<td>-1%</td>
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<td>3,894</td>
<td>-1.3%</td>
<td>9,022</td>
<td>-2%</td>
<td>12,604</td>
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<td>7,759</td>
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<td>16,235</td>
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<td>22,591</td>
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<td>11,227</td>
<td>-1.3%</td>
<td>16,947</td>
<td>-2%</td>
<td>21,350</td>
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<td>6,455</td>
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<td>16,540</td>
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<td>21,502</td>
<td>-2.7%</td>
<td>27,965</td>
<td>-3.1%</td>
</tr>
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<td>San Antonio, TX</td>
<td>780,850</td>
<td>3,883</td>
<td>-0.3%</td>
<td>5,087</td>
<td>-0.6%</td>
<td>7,800</td>
<td>-0.9%</td>
<td>8,681</td>
<td>-1.1%</td>
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</tbody>
</table>

55. The three Texas counties would also face particularly negative impacts. Each of these heavily Latino counties could have a reduction in their enumerated populations of over 5%.

56. Figure 2 shows the reduction in the enumerated population for every county in the country based on the survey experiment (last column of Table 7). It shows that the largest effects are in counties on the southern border, the California coast, and in the region around New York City. The counties and cities that are plaintiffs in this suit are labeled on the graph. All of these geographic units are in the most heavily impacted areas of the country.
57. Table 8 shows the change in each area’s share of its state population due to the undercount. This statistic is important for estimating the potential effects of the undercount on state-level formula grants, as well as on the relative voting power of each geographic area in congressional and state legislative elections. Geographic areas that see a reduction in their share of the state population are likely to get less representation in Congress and their state legislature. This reduction in voting power is likely to lead to less distributive spending. See PX-326. As stated before, this article is just an example. There is a large body of political science research that finds localities have their vote diluted because they are malapportioned. This implies that if the enumerated populations used for redistricting are smaller than their actual populations, then this reduction in voting power is very likely to lead to less distributive spending.
Table 8: Effect on Relative Representation in Select Counties and Cities

<table>
<thead>
<tr>
<th></th>
<th>2% Undercount</th>
<th>5.8% Undercount</th>
<th>Survey Experiment</th>
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<tr>
<td></td>
<td>Noncitizens</td>
<td>Noncitizens+</td>
<td>Noncitizens</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hispanics</td>
<td>Hispanics</td>
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<td>Phoenix, AZ</td>
<td>-0.4%</td>
<td>-0.4%</td>
<td>-0.9%</td>
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<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Monterey County, CA</td>
<td>-0.4%</td>
<td>-0.4%</td>
<td>-1%</td>
</tr>
<tr>
<td>San Francisco, CA</td>
<td>0%</td>
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<td>0.1%</td>
</tr>
<tr>
<td>San Jose, CA</td>
<td>-0.2%</td>
<td>-0.1%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Miami, FL</td>
<td>-0.9%</td>
<td>-1.1%</td>
<td>-2.1%</td>
</tr>
<tr>
<td>Chicago, IL</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Prince Georges County, MD</td>
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<td>-0.3%</td>
<td>-0.6%</td>
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<tr>
<td>El Paso County, TX</td>
<td>-0.5%</td>
<td>-1%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Hidalgo County, TX</td>
<td>-0.7%</td>
<td>-1.2%</td>
<td>-1.7%</td>
</tr>
<tr>
<td>Seattle, WA</td>
<td>-0.2%</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
</tbody>
</table>

58. Table 8 shows the relative change in each area’s population using three undercount scenarios. First, I examine a 2% undercount scenario. Second, I examine a 5.8% undercount assumption. For each of these scenarios, I examine undercounts among people in non-citizen households and among non-citizens households + Hispanics. Finally, I examine a scenario based on the results of the survey I discussed in depth above.

59. Under nearly every scenario, each of the cities and counties would face declines in their share of their respective state populations due to an undercount from the citizenship question. Once again, some of the largest effects would be in Miami, FL, New York, NY, Central Falls, RI, Providence RI, and the three Texas counties. Each of these areas would have a reduction in their ‘relative populations’ (i.e., share of the state population) of several percentage points based on the survey experiment.
V. Aggregate Effects on Share of Population in Different Types of Counties

60. I examined the macro effects of an undercount due to the addition of a citizenship question on the distribution of the enumerated population across urban and rural areas. For simplicity, I use the survey estimates on foreign-born people and Hispanics. But the results are broadly similar for other undercount scenarios.\textsuperscript{14} The best available definition of urban and rural areas is based on a classification system developed by the National Center for Health Statistics (NCHS).\textsuperscript{15} This classification system is often used to study the associations between the urbanization level of residence and health and to monitor the health of urban and rural residents. NCHS has developed a six-level urban-rural classification scheme for U.S. counties and county-equivalent entities. The most urban category consists of “central” counties of large metropolitan areas and the most rural category consists of nonmetropolitan “noncore” counties. Figure 3 shows a map of the NCHS classification scheme.

\textsuperscript{14} For confidentiality reasons, it is not possible to match the ACS micro-data to smaller cities and counties. So, for this analysis, I calculated the ratio of people in non-citizen households to individual non-citizens for each state in the 2016 ACS. I then multiplied these ratios by the estimates of the number of non-citizens in each city and county to estimate the number of people in households with a non-citizen.

\textsuperscript{15} See https://www.cdc.gov/nchs/data_access/urban_rural.htm
Figure 3: 2013 Urban-Rural Classification Scheme for Counties

61. Figure 3 shows that an undercount due to a citizenship question would have the most substantial impact in large metropolitan counties with major cities. Based on the survey experiment, these counties would have a reduction in their enumerated population of 2.9%.\textsuperscript{16} This group of counties would also have a reduction in their share of the national population of 1.1%. This reduction in urban areas’ relative population would likely lead to dilution in their voting power and a reduction in their representation in Congress and state legislatures. At the other end of the continuum, noncore rural counties would only have a reduction in their enumerated population of .5%. Moreover, they would actually see a sizable 1.4% increase in their share of the national population. This would lead to an increase in their representation in the legislature. Thus, the undercount caused by a citizenship question on the

\textsuperscript{16} The patterns are broadly similar in the other scenarios.
Census would lead to a redistribution of political power in America. It would reduce the representation of urban counties, and increase the voting power of rural counties.

Table 9: Effect on Distribution of Enumerated Population Across Urban and Rural Counties

<table>
<thead>
<tr>
<th>County</th>
<th>2020 Population Projection</th>
<th>Percentage Change Due to Undercount</th>
<th>Percentage Change in Relative Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large central metro</td>
<td>103,025,259</td>
<td>-2.9%</td>
<td>-1.1%</td>
</tr>
<tr>
<td>Large fringe metro</td>
<td>83,761,694</td>
<td>-1.8%</td>
<td>.1%</td>
</tr>
<tr>
<td>Median metro</td>
<td>69,737,033</td>
<td>-1.5%</td>
<td>.3%</td>
</tr>
<tr>
<td>Small metro</td>
<td>30,116,705</td>
<td>-1%</td>
<td>.9%</td>
</tr>
<tr>
<td>Micropolitan</td>
<td>27,375,961.605</td>
<td>-.8%</td>
<td>1.1%</td>
</tr>
<tr>
<td>Noncore</td>
<td>18,760,860</td>
<td>-.5%</td>
<td>1.4%</td>
</tr>
</tbody>
</table>

VI. Conclusion

62. I have reached the following conclusions:

a. The undercount caused by the inclusion of a citizenship question on the Census is likely to have effects on the population counts of each state, and the apportionment of representatives across states for the U.S House. There is a very high probability that California will lose a congressional seat, and it is more likely than not that Texas will lose a congressional seat. There is also a substantial risk that Arizona, Florida, Illinois, and New York could lose a seat.

b. The citizenship question is also likely to have effects on the population counts of large counties and cities within each state. This will affect the distribution of voting power within states, and lead to the dilution of the voting power of New York, NY, Miami, FL, Providence, RI, and other large cities with substantial immigrant populations.
c. Overall, the citizenship question will lead to a large-scale shift in the
distribution of political power in the United States. It would dilute the
voting power of urban counties, and increase the voting power of rural
counties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 26, 2018
Washington, DC

Christopher Warshaw
## Appendix

Table A1: Effect of 2% Undercount on State Population Enumerations in 2020

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Apportionment Pop. Projection</th>
<th>Noncitizens</th>
<th>Noncitizens+ Hispanic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>4,928,974</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Alaska</td>
<td>745,119</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Arizona</td>
<td>7,349,108</td>
<td>-0.3%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>3,056,993</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>California</td>
<td>40,549,557</td>
<td>-0.6%</td>
<td>-1%</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,831,253</td>
<td>-0.2%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,593,415</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Delaware</td>
<td>991,133</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Florida</td>
<td>22,017,594</td>
<td>-0.3%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Georgia</td>
<td>10,796,611</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,432,921</td>
<td>-0.3%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,830,654</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Illinois</td>
<td>12,718,521</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,770,793</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,186,710</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,931,128</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,514,011</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>4,694,542</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Maine</td>
<td>1,351,312</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Maryland</td>
<td>6,195,838</td>
<td>-0.3%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,972,788</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Michigan</td>
<td>9,976,301</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>5,696,268</td>
<td>-0.2%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,990,101</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Missouri</td>
<td>6,191,875</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Montana</td>
<td>1,081,584</td>
<td>0%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,960,312</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Nevada</td>
<td>3,178,894</td>
<td>-0.4%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,368,556</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>9,114,710</td>
<td>-0.4%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2,100,036</td>
<td>-0.3%</td>
<td>-1.1%</td>
</tr>
<tr>
<td>New York</td>
<td>19,907,138</td>
<td>-0.4%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>10,698,762</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>754,368</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,729,092</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,981,432</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Oregon</td>
<td>4,278,356</td>
<td>-0.2%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>12,854,327</td>
<td>-0.1%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,060,979</td>
<td>-0.2%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>5,224,199</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>894,019</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,930,386</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Texas</td>
<td>29,654,648</td>
<td>-0.4%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Utah</td>
<td>3,277,814</td>
<td>-0.2%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>Vermont</td>
<td>624,804</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,651,354</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Washington</td>
<td>7,799,983</td>
<td>-0.3%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,781,304</td>
<td>0%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,864,100</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>567,929</td>
<td>-0.1%</td>
<td>-0.3%</td>
</tr>
</tbody>
</table>
Christopher S. Warshaw

Department of Political Science
2115 G Street, N.W.
Monroe Hall 440
Washington, D.C. 20052

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Fax: 202-994-1974
Email: warshaw@gwu.edu
Homepage: www.chriswarshaw.com

Academic Employment

George Washington University, Washington, DC
Associate Professor (starting September 1, 2020)
Assistant Professor, 2017 - 2020

Massachusetts Institute of Technology, Cambridge, MA
Associate Professor of Political Science (without tenure), 2016 - 2017
Assistant Professor of Political Science, 2012 - 2016

Education

Stanford University, Ph.D., Political Science, 2012
Fields: American Politics, Comparative Politics, and Political Methodology (Statistics)

Stanford Law School, Juris Doctorate, 2011
Williams College, B.A., magna cum laude, 2002

Research Interests

American Politics, Representation, Elections, Public Opinion, State & Local Politics, Environmental Politics and Policy, Statistical Methodology

Research

Publications

Peer Reviewed Articles

22. "The Impact of Partisan Gerrymandering on Political Parties." Forthcoming. Legislative Studies Quarterly. (with Nicholas Stephanopoulos)


**Editor Reviewed Articles in Journals and Law Reviews**


**Book Chapters**


**Policy Reports**


**Unpublished Work**

**Book Project**


**Articles Under Review**

"The Effect of Local COVID-19 Fatalities on Americans’ Political Preferences." (with Lynn Vavreck and Ryan Baxter-King)

**Works in Progress**

"Electoral Accountability for Ideological Extremism in American Elections" (with Devin Caughey)
"Gerrymandering in Local Governments" (with Laura Royden)
"Moderates" (with Anthony Fowler, Seth Hill, Jeff Lewis, Chris Tausanovitch, Lynn Vavreck)
"Partisan Selection in California City Councils" (with Justin de Benedictis-Kessner and Dan Jones)
"The Effect of Television Advertising in United States Elections" (with John Sides and Lynn Vavreck)
"When Mass Opinion Goes to the Ballot Box: A National Assessment of State Level Issue Opinion and Ballot Initiative Results" (with Jonathan Robinson and John Sides)
"Inequalities in Participation, Voting, and Representation in Local Governments" (with Justin de Benedictis-Kessner and John Sides)
"Sexism and the Election of Female Candidates in American Elections" (with Alex Kurtz and Brian Schaffner)
"The Ideology of State Party Platforms" (with Justin Phillips and Gerald Gamm)

Non-Academic Writing


"The Supreme Court is deciding a gerrymandering case. Here’s the social science that the Justices need to know." Washington Post, Monkey Cage. June 1, 2019.

"New research shows just how badly a citizenship question would hurt the 2020 Census." Washington Post, Monkey Cage. April 22, 2019. (with Matt Barreto, Matthew A. Baum, Bryce J. Dietrich, Rebecca Goldstein, and Maya Sen)


Invited Talks

2019-2020: Princeton, UC Berkeley, University of Maryland
2018-2019: Stanford; Northeast Political Methodology Meeting at NYU; University of Maryland
2017-2018: USC PIPE Symposium on Studying Subnational Policy Making; BYU; University of Chicago Conference on Political Polarization
2016-2017: University of Virginia; UCLA
2015-2016: Washington University in St. Louis; Texas A&M; Arizona State University Conference on Campaigns, Elections and Representation
2014-2015: Yale; Columbia; Duke
2013-2014: Princeton; Boston University; Rochester University
2012-2013: MIT American Politics Conference; Columbia Representation Conference; Princeton Media & Politics Conference; Annual Meeting of the Society for Political Methodology
Grants

Russell Sage Foundation, 2019-2021 ($119,475)
GW UFF, 2019-2020 ($14,433)
MIT Elections Lab, 2019-2020 ($14,000)
Jeptha H. and Emily V. Wade Award, 2014-2016 ($59,686)
MIT Energy Institute (MITEI) Seed Grant, 2014-2016 ($137,147)
MIT SHASS Research Fund, 2012-2014 ($8,734)

Software


Awards and Honors

OVPR Early Career Scholar at George Washington University, 2019.
APSA award for best journal article on State Politics & Policy in 2016.
Award for best paper on State Politics & Policy at the 2014 American Political Science Conference.
Graduate Fellowship, Dept. of Political Science, Stanford University, 2006-2012
David A. Wells Prize in Political Economy for Best Undergraduate Economics Thesis, Williams College, 2002
Phi Beta Kappa, Williams College, 2002

Teaching Experience

Instructor:
Measurement Models (Graduate-level) (GW), 2020
Political Representation (Graduate-level) (GW), 2019
Elections (GW), 2018, 2019
Multi-level and Panel Models (Graduate-level) (GW), 2017, 2018, 2019
Public Opinion (GW), 2017
American Political Institutions (Graduate-level) (MIT), 2014, 2016
Public Opinion and Elections (MIT), 2016
Energy Policy (MIT), 2013
Democracy in America (MIT), 2013, 2014
Constitutional Law & Judicial Politics (MIT), 2013, 2015
Making Public Policy (MIT), 2012, 2014

**Teaching Assistant:**
Introduction to American Law (Stanford University), 2010
Judicial Politics and Constitutional Law (Stanford University), 2009
Political Economy of Energy Policy (Stanford University), 2008
Introduction to International Relations (Stanford University), 2008
Introduction to Public Policy (Stanford University), 2007
Introduction to Econometrics (Williams College), 2002

**Graduate Advising**

**George Washington University:**
- Alex Beck (Dissertation committee chair)
- Colin Emrich (Dissertation committee member)
- Jared Heern (Dissertation committee member)

**Massachusetts Institute of Technology:**
- Leah Stokes (Graduated in 2015, Dissertation committee member)
- Krista Loose (2016, Dissertation committee member)
- Tom O’Grady (2017, Dissertation committee member)
- Justin de Benedictis-Kessner (2017, Dissertation committee member)
- Alex Copulsky (2017, Masters thesis committee member)
- James Dunham (2018, Dissertation committee member)
- Parrish Bergquist (2018, Dissertation committee member)
- Meg Goldberg (2019, Dissertation committee member)

**University Service**

**George Washington University:**
- Coordinator, Graduate Political Science Admissions Committee, 2019-2020
- Coordinator, American Politics Workshop, 2018-2020
- Member, Methods Exam Committee, 2017-2020
- Member, Graduate Political Science Admissions Committee, 2018-2019
Massachusetts Institute of Technology:
  Member, Energy Education Task Force, 2012-2017
  Parking and Transit Committee, 2013-2017
  Member, Graduate Political Science Admissions Committee, 2013-2015
  Faculty Fellow, Burchard Scholars, 2013-2015

Stanford University (as graduate student):
  President, Stanford Environmental Law Society, 2009-2010
  Executive Board Member, Stanford Environmental Law Society 2008-2010
  Member, University Committee on Graduate Studies, 2007-2009
  Member, University Library Committee, 2007-2008
  President, Political Science Graduate Students Association, 2007-2008

Professional Service


Member, Program Committee, Midwest Political Science Association Conference, 2020
Lead Organizer, Local Political Economy APSA Pre-Conference at George Washington University, 2019
Member, Planning Committee, Cooperative Congressional Election Study (CCES), 2018
Member, Best Paper Committee, State Politics Section of the American Political Science Assoc., 2018
Editorial Board, Journal of Politics, 2017-18
Executive Committee, Urban Politics Section of the American Political Science Association, 2015-2017
Member, Best Paper Committee, Urban Politics Section of the American Political Science Assoc., 2015

Consulting

Consultant, Abell Foundation, Report on Potential Institutional Reforms for Baltimore’s City Elections


Community Service


Last updated: August 2, 2020
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).\(^1\)


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).


\(^1\) 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.


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.


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.*


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 
imigrants 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).

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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.

NEW YORK IMMIGRATION COALITION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION
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Remarks by President Trump at Signing of H.R. 3401 (July 1, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-3401/ .................................................................................6


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INTRODUCTION

This lawsuit challenges Defendants’ flagrantly unconstitutional and unlawful decision to exclude undocumented immigrants from the total-population base that is used to apportion congressional seats among the States. This decision violates the unambiguous mandate in Article I and the Fourteenth Amendment that all “persons in each State” be included “according to their respective [n]umbers” in the apportionment base. U.S. Const. amend. XIV, § 2; id. art. I, § 2, cl. 3. Both this Court and the Supreme Court have already determined that this language requires the federal government “to count every single person residing in the United States, whether citizen or noncitizen, whether living here with legal status or without.” New York v. U.S. Dep’t of Commerce, 351 F. Supp. 3d 502, 514 (S.D.N.Y. 2019), aff’d 139 S. Ct. 2551 (2019); accord Evenwel v. Abbott, 136 S. Ct. 1120, 1129 (2016). The inclusion of all immigrants was expressly discussed and endorsed in the debates over the Fourteenth Amendment. And every decennial census since the Fourteenth Amendment’s adoption has counted all residents without regard to their citizenship or immigration status.

The sheer clarity of this constitutional command entitles Plaintiffs to summary judgment on their constitutional claims against Defendants’ exclusionary policy. Defendants have no discretion or authority to disregard the Constitution’s plain text and extensive history, to flout prior rulings from this Court and the Supreme Court, or to break with more than two hundred years of settled practice.

Plaintiffs are also entitled to summary judgment because Defendants’ exclusion of undocumented immigrants from the apportionment base is an ultra vires violation of the statutory provisions that Congress enacted to implement the Constitution’s clear requirements. Congress has mandated that the decennial enumeration count all persons, regardless of immigration status, and that the President’s apportionment report to Congress must be based
solely on this enumeration of all persons. See 13 U.S.C. § 141(a), (b); 2 U.S.C. § 2a. Defendants’ exclusionary policy will necessarily conflict with these statutory requirements.

Finally, in the alternative, Plaintiffs are entitled to a preliminary injunction on their constitutional and statutory claims. Such relief is essential because Plaintiffs and their residents or constituents are suffering immediate and irreparable injury from Defendants’ sudden announcement of their exclusionary policy. Most immediately, Defendants’ actions are deterring immigrant households from responding to the ongoing enumeration for the 2020 census by sowing confusion, mistrust, and fear among immigrant households about the consequences of responding to the census. That deterrent effect is heightened by the plainly xenophobic and discriminatory purpose animating Defendants’ exclusionary policy—the latest in a long string of open attacks by this administration on immigrant communities and the cities and States where they reside. And Defendants have only exacerbated these immediate harms to the ongoing enumeration and underscored the need for immediate relief with their recent announcement that they are unilaterally curtailing census follow-up operations by a full month, from October 31 to September 30.

Under these unusual and pressing circumstances, Plaintiffs are entitled to expedited summary judgment on their constitutional and statutory claims, or a preliminary injunction to avert immediate harm.

**BACKGROUND**

**I. Constitutional and statutory framework.**

The Constitution requires that seats in the House of Representatives “shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2; see id. art. I, § 2, cl. 3. The number of Representatives apportioned to each State, along with the two Senators
given to each State, determines the allocation among the States of electors in the Electoral
College. *Id.* art. II, § 1, cl. 2; *see also* 3 U.S.C. § 3. To apportion Representatives among the
States, and in turn to allocate electors among the States, the Constitution requires a decennial
“actual Enumeration” of all persons living here—the resulting numbers from which must
constitute the apportionment base. U.S. Const. art. I, § 2, cl. 3.

The Constitution provides that the decennial enumeration shall be made “in such manner
as [Congress] shall direct by law.” *Id.* In the Census Act, Congress has assigned the
responsibility of conducting the enumeration to the Secretary of Commerce, who may delegate
authority for establishing census procedures to the Census Bureau. 13 U.S.C. §§ 2, 4, 141.

The Census Act sets specific deadlines for conducting the enumeration and
corresponding apportionment of Representatives. The Act requires that the decennial census be
taken on April 1, 2020, the “decennial census date.” *Id.* § 141(a). Within nine months of the
decennial census date, *i.e.*, by January 1, 2021, the Secretary of Commerce must report to the
President “[t]he tabulation of total population by States” that is “required for the apportionment
of Representatives in Congress among the several States.” *Id.* § 141(b). Between January 3 and
January 10, 2021, the President must transmit to Congress “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” using the method of equal proportions, with each State receiving at least one
Member. 2 U.S.C. § 2a(a). Within fifteen days of receiving the President’s statement, the Clerk
of the House of Representatives must transmit “to the executive of each State a certificate of the
number of Representatives to which such State is entitled.” *Id.* § 2a(b).
II. The Presidential Memorandum.

On July 21, 2020, President Trump issued a memorandum declaring that “[i]f or the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude” undocumented immigrants from the congressional apportionment base “to the maximum extent feasible and consistent with the discretion delegated to the executive branch.” *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).\(^1\) The Memorandum asserts 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,” and that “States adopting policies . . . that hobble Federal efforts to enforce the immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives.” *Id.*

The Memorandum makes clear that the President both understands and intends that excluding undocumented immigrants from the apportionment base will reallocate political power between the States, and specifically that it will weaken political influence for States with larger undocumented immigrant populations. *See id.* Referring to one State whose residents include more than two million undocumented immigrants,\(^2\) the Memorandum notes that “[i]ncluding 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.*

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\(^1\) All docket references are to 20-CV-5770 (JMF) unless otherwise specified.

\(^2\) This State is California, but Texas is similarly situated. *See Pls.’ Rule 56.1 Stmt. ¶¶ 3-4. The Governmental Plaintiffs include two local jurisdictions in California and three counties in Texas; and the NGO Plaintiffs have members residing in those States, see id. ¶¶ 23-51.*
The Memorandum accordingly directs the Secretary of Commerce, “[i]n preparing his report to the President under section 141(b) of title 13,” to “take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable,” to exclude undocumented immigrants from the final determination regarding the “whole number of persons in each State” that the President transmits to Congress pursuant to 2 U.S.C. § 2(a). Memorandum, 85 Fed. Reg. at 44,679-80.

III. Events precipitating the Presidential Memorandum.

The Presidential Memorandum was not issued in a vacuum, but against the backdrop of prior litigation about the census. In *New York v. Department of Commerce*, this Court held that Secretary of Commerce Wilbur Ross’s decision to add a citizenship question to the 2020 census violated the Administrative Procedure Act and enjoined the addition of the question, 351 F. Supp. 3d—a decision affirmed in part by the Supreme Court on the ground that the reason the Secretary provided for adding the citizenship question was pretextual. *Dep’t of Commerce v. New York*, 139 S. Ct. 2551 (2019). After trial, new evidence emerged about the reason for adding the question.

In August 2015, Republican redistricting strategist Thomas Hofeller authored a study advising that a citizenship question on the census was necessary to gather data to exclude noncitizens from the redistricting population base, a result “advantageous to Republicans and Non-Hispanic Whites.”\(^3\) He then helped ghostwrite a letter to the Commerce Department requesting a citizenship question that was funneled through several intermediaries before

\(^3\) Pls.’ Mot. for Order to Show Cause, 18-cv-2921 (JMF), ECF No. 595-1 at 63 (May 30, 2019) (citing exhibits).
becoming part of the Secretary’s effort to add a citizenship question.\(^4\) Less than a week after the Supreme Court’s decision, Defendant Trump confirmed that efforts to add the citizenship question was intended to curtail the growing political power of immigrant communities of color. He first stated that the citizenship question was “very important [] to find out if someone is a citizen as opposed to an illegal.”\(^5\) A few days later, Defendant Trump said: “Number one . . . you need it for Congress, for districting. You need it for appropriations. Where are the funds going? How many people are there?”\(^6\) The following week, he noted that “[s]ome states may want to draw state and local legislative districts based upon the voter-eligible population.”\(^7\)

In announcing the Presidential Memorandum, Defendant Trump expressly linked the Presidential Memorandum to the citizenship question effort, proclaiming he was fulfilling his promise that he would “not back down in [his] effort to determine the citizenship status of the United States population.”\(^8\) Defendant Trump has also linked the Memorandum to a broader campaign against so-called sanctuary cities and States—jurisdictions that elect in some circumstances to limit their cooperation with federal immigration enforcement.\(^9\) The Presidential


\(^7\) *Remarks by President Trump on Citizenship and the Census* (July 11, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/.

\(^8\) *Statement from the President Regarding Apportionment* (July 21, 2020), https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/

\(^9\) Defendant Trump has sought by executive order to bar “sanctuary jurisdictions” from receiving
Memorandum states that one of its objectives is to punish States for enacting policies that the federal government disfavors. Memorandum, 85 Fed. Reg. at 44,680.

The Presidential Memorandum is part of a broader pattern of Defendant Trump’s “expressed animus against non-white, non-European immigrants.” *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1098 (N.D. Cal. 2018); *see also id.* at 1100 (citing such statements). To take just one example, he asked during a meeting concerning “immigrants from Haiti, El Salvador, and African countries,” why the United States was “‘having all these people from shithole countries come here?’” and “suggested that the United States should instead bring more people from countries such as [mostly white] Norway.” *Id.* He also asked: “‘Why do we need more Haitians?’ and insisted they be removed from an immigration deal.” *Saget v. Trump*, 345 F. Supp. 3d 287, 303 (E.D.N.Y. 2018). In 2018, he referred to certain immigrants as “‘animals.’”

ARGUMENT

I. Standard of review.

Summary judgment is warranted when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

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To obtain a preliminary injunction, Plaintiffs must establish that they are likely to suffer irreparable harm absent preliminary relief; they are likely to succeed on the merits; the balance of the equities tips in their favor; and an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

II. **Plaintiffs include jurisdictions and residents of jurisdictions that would lose representation if undocumented immigrants were excluded from the population base used for congressional apportionment.**

Plaintiffs have standing to bring this challenge because—among other injuries—the exclusion of undocumented immigrants from the apportionment base will cause Plaintiffs or the jurisdictions in which Plaintiffs operate to lose seats in the House of Representatives. Such a loss “undoubtedly satisfies the injury-in-fact requirement of Article III standing.” *New York*, 351 F. Supp. 3d at 607 (quotation marks omitted); see also *Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 330 (1999) (holding that the plaintiffs demonstrated standing for purposes of summary judgment by submitting an expert affidavit showing that “it is a virtual certainty that Indiana will lose a seat . . . under the Department’s Plan”).

The Memorandum expressly states that the policy of excluding undocumented immigrants from the apportionment base is intended to, and is certain to cause, California to lose at least one seat in the House of Representatives. And it is certain to have the same effect on Texas. The Memorandum states that “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.” Memorandum, 85 Fed. Reg. at 44,680. According to the Department of Homeland Security, as of 2015, California had 2.9 million undocumented residents and Texas had 1.9 million undocumented residents in 2015. Pls.’ 56.1 Stmt. ¶ 4. According to the Census Bureau’s
most recent estimates, as of July 1, 2019, the total population of California was 39,512,223 and the total population of Texas was 28,995,881. Pls.’ 56.1 Stmt. ¶¶ 12, 14. These estimates from the Census Bureau and DHS indicate that undocumented immigrants constitute approximately 7.3% of the population of California and approximately 6.6% of the population of Texas. 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. Pls.’ 56.1 Stmt. ¶ 5. Based on these facts alone, there can be no dispute that the exclusion of undocumented immigrants will cause California and Texas to lose at least one seat in the House.

Additionally, Plaintiff’s expert, Dr. Christopher Warshaw, confirms that the Memorandum will “almost certainly” cause certain States to lose seats in Congress. Warshaw Decl. ¶ 11 (Ex. 58).\(^\text{11}\) Dr. Warshaw modeled the effects of excluding undocumented immigrants from the population count used to calculate congressional reapportionment after the 2020 census. Pls.’ 56.1 Stmt. ¶ 20; Warshaw Decl. ¶ 11 (Ex. 56). According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment base, there is a 98.3% probability that Texas will lose a seat in the House of Representatives, and a 72.1% probability for California. Pls.’ 56.1 Stmt. ¶¶ 21–22; Warshaw Decl. ¶ 47 tbl. 8 (Ex. 58).

The Governmental Plaintiff’s include jurisdictions in California (the City and County of San Francisco, and Monterey County) and Texas (Cameron, El Paso, and Hidalgo Counties). See Governmental Plaintiff’s Am. Compl. ¶¶ 42, 44–46, 48 (ECF No. 34). The NGO Plaintiff’s include organizations with members residing in both States. Pls.’ 56.1 Stmt. ¶¶ 33–34 (ADC); id. ¶¶ 40–41 (FIEL Houston, Inc.); id. ¶¶, 46–47 (Ahri). Residents of these Plaintiff counties

\(^{11}\) Citations in this Memorandum to “Ex. ___” are to the exhibits to the accompanying Declaration of Matthew Colangelo dated August 7, 2020.
and the Texas- and California-based members of Plaintiff organizations will suffer a loss of political power if Texas or California lose a congressional seat. Indeed, ADC has members in all 50 states—any change to apportionment is certain harm a member of ADC. Pls.’ 56.1 Stmt.

¶ 34.12

These injuries are traceable to Defendants’ recent actions and redressable by a favorable ruling from this Court. There is no question that the exclusion of undocumented immigrants from the apportionment base will directly affect the apportionment. Indeed, the Presidential Memorandum itself both acknowledges and intends this effect on apportionment, see Memorandum, 85 Fed. Reg. at 44,680. Moreover, this Court previously found—and the Supreme Court agreed—that the predictable effects of defendants’ actions on the accuracy of the ongoing enumeration are sufficient to establish traceability. New York, 351 F. Supp. 3d at 619–25. And all of these injuries will plainly be redressed by a favorable ruling that requires Defendants to do what the Constitution mandates: “counting the whole number of persons in each State.” U.S. Const. amend. XIV, § 2.

III. Defendants’ decision to exclude undocumented immigrants from the apportionment base violates Article I and the Fourteenth Amendment.

A. The Constitution explicitly requires the population base for apportionment to include the whole number of persons in each State.

Defendants’ blanket exclusion of undocumented immigrants from the apportionment base, without regard to their physical residence here, flagrantly violates the Constitution. The Constitution’s plain language requires that all “persons” physically living “in each State” be

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12 Plaintiffs’ representational harms alone suffice to establish injury-in-fact for standing purposes. To the extent Defendants oppose summary judgment on standing grounds, Plaintiffs intend to present additional evidence establishing the other injuries alleged in their complaints. See Governmental Plaintiffs’ Am. Compl. ¶¶ 117–36 (ECF No. 34); NGO Plaintiffs’ First Am. Compl. ¶¶ 19–83 (ECF No. 62).
included in the apportionment count—regardless of their citizenship or immigration status. U.S. Const. amend. XIV, § 2; id. art. I, § 2, cl. 3 (requiring apportionment “according to [the States’] respective Numbers”). The Framers of the Fourteenth Amendment specifically chose to refer to “persons” rather than “citizens” in the Fourteenth Amendment’s text to ensure that noncitizens residing in this country are included in apportioning House seats. The Supreme Court confirmed four years ago that the Constitution requires congressional apportionment based on each State’s total population, including undocumented immigrants. See Evenwel. 136 S. Ct. at 1123. And settled practice for more than two hundred years has adhered to this rule.

Defendants have turned this constitutional and historical consensus on its head. They have treated as dispositive a factor that has always been considered immaterial for apportionment (immigration status). And they have treated as immaterial a factor that has consistently determined the apportionment base since the first census in 1790 (physical residence). Defendants cannot fundamentally alter the constitutional order by decreeing that millions of undocumented immigrants who indisputably live in this country are not “persons.”

1. The Constitution’s text unambiguously mandates counting all persons, including undocumented immigrants, in the apportionment base.

The constitutional mandate to base apportionment on all persons living in the United States, without regard to their immigration status, is clear. Section 2 of the Fourteenth Amendment requires that U.S. House seats “shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2 (emphasis added). And Article I requires that the “respective Numbers” of each State be determined by an “actual Enumeration” of the total population. Id. art. I, § 2, cl. 3.
The Supreme Court has held that the term “person” in the Fourteenth Amendment includes undocumented immigrants. *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The Court explained that, “[w]hatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sentence of that term.” *Id.* Because undocumented immigrants “are clearly ‘persons,’” the plain text of the Fourteenth Amendment is “not ambiguous” in mandating that undocumented immigrants living in this country must be included for apportionment. *Fed’n for Am. Immigration Reform (FAIR) v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C. 1980) (three-judge court). This Court has recognized as much: “[b]y its terms, . . . the Constitution mandates that every ten years the federal government endeavor to count every single person residing in the United States, whether citizen or noncitizen, *whether living here with legal status or without,*” and “[t]he population count derived from that effort is used . . . to apportion Representatives among the states.” *New York*, 351 F. Supp. 3d at 514 (emphases added).

By contrast, the Constitution uses distinct language when referring to a subset of persons. For example, the Constitution repeatedly uses the term “citizens” rather than “persons” to describe the subset of persons living here who hold citizenship. See, e.g., U.S. Const. art. 1, § 2, cl. 2 (“No Person shall be a Representative who shall not have . . . been seven Years a Citizen of the United States”). The same distinction appears in Section 2 of the Fourteenth Amendment, which requires the apportionment base to include “the whole number of persons in each State,” but then provides that a State that denies the right to vote to “citizens of the United States” will have its basis of representation reduced. U.S. Const. amend. XIV, § 2 (emphasis added).

Similarly, the Constitution originally contained two express exclusions from the apportionment base, neither of which turned on immigration status. First, the original Apportionment Clause excluded all “Indians not taxed,” U.S. Const. art. I, § 2, cl. 3, an
exception that became irrelevant after the Indian Citizenship Act of 1924, Pub. L. No. 68 -175, 43 Stat. 253. Second, it infamously counted slaves as only three-fifths of a person for apportionment, U.S. Const. art. I, § 2, cl. 3, an exception overturned by the Fourteenth Amendment. “By making express provision for Indians and slaves, the Framers demonstrated their awareness that” the otherwise “all-inclusive” language delineating the population base for apportionment does not permit the exclusion of any other residents. FAIR, 486 F. Supp. at 576.

2. The Constitution’s broad terms reflected a conscious intent to include all persons, including all immigrants, in the apportionment base.

The choice to base apportionment on total population, regardless of citizenship or immigration status, was no accident. Both the original Framers and the Framers of the Fourteenth Amendment chose to “allocate[e] House seats to States” with “total population as the congressional apportionment base,” a mandate based on their fundamental “theory of the Constitution.” Evenwel, 136 S. Ct. at 1128–29.

“At the time of the founding, the Framers confronted the question” of how to allocate seats in the new government to the States. Id. at 1127. “The Framers’ solution, now known as the Great Compromise, was to provide each State the same number of seats in the Senate, and to allocate House seats based on States’ total population,” that is, “‘according to their respective Numbers.’” Id. (quoting U.S. Const. art. I, § 2, cl. 3) (emphasis in original). In selecting all residents as the basis for apportionment, the Framers specifically considered and rejected other proposals, such as allocating House “representation based on wealth or property.” 1 The Records of the Federal Convention of 1787 (“Farrand’s Records”), at 542 (Max Farrand ed., 1911) (Pierce Butler). As James Madison explained, “[i]t is a fundamental principle of the proposed Constitution that as the aggregate number of representatives allotted to the several
States, is to be … founded on the aggregate number of inhabitants.” The Federalist No. 54 (James Madison) (emphasis added).

The Framers made clear that basing apportionment on total population guaranteed every person representation in the House, regardless of their legal status, thus ensuring that the House will “be the most exact transcript of the whole Society,” 1 Farrand’s Records, supra, at 142 (James Wilson), and provide representation to “every individual of the community at large,” id. at 473 (Alexander Hamilton). Thus, as the Supreme Court has explained, “the basis of representation in the House was to include all inhabitants,” Evenwel, 136 S. Ct. at 1127, including women, children, indentured servants, and many other individuals who did not have the right to vote or full legal status. See Garza v. County of Los Angeles, 918 F.2d 763, 774 (9th Cir. 1990); see also Wesberry v. Sanders, 376 U.S. 1, 13 (“[W]hen the delegates agreed that the House should represent ‘people’ they intended that in allocating Congressmen the number assigned to each State should be determined solely by the number of the State’s inhabitants.”).

When drafting the Fourteenth Amendment, Congress reconsidered the proper basis for apportioning House seats and reaffirmed that apportionment must be based on all persons living in each State—including noncitizens. “Concerned that Southern states would not willingly enfranchise freed slaves, and aware that ‘a slave’s freedom could swell his state’s population for purposes of representation in the House,’” the Fourteenth Amendment’s Framers “considered at length the possibility of allocating House seats to states on the basis of voter population” or citizen population. Id. (quoting Joseph T. Sneed III, Footprints on the Rocks of the Mountain: An Account of the Enactment of the Fourteenth Amendment 28 (1997)). For example, on December 5, 1865, Thaddeus Stevens proposed apportioning Representatives among the States “according to their respective legal voters,” specifying that “for this purpose none may be named
as legal voters who are not either natural-born citizens or naturalized foreigners.” Cong. Globe, 39th Cong., 1st Sess. 10 (1865).

Later, on January 16, 1866, the Joint Committee of Fifteen on Reconstruction that drafted the Fourteenth Amendment initially voted to adopt a proposal that would have required apportioning House seats based on “the whole number of citizens of the United States in each state.” Benjamin B. Kendrick, The Journal of the Joint Committee of Fifteen on Reconstruction, 39th Congress, 1865-1867, 49–52 (Ex. 52). After further deliberations, however, Representative Conkling “moved to amend the proposed article by striking out the words ‘citizens of the United States in each state,’ and inserting in lieu thereof the words, ‘persons in each State, including Indians not taxed.” Id. at 52. The Joint Committee adopted Conkling’s amendment by a vote of 11-3. Id.

Representative Conkling explained that basing apportionment on “persons” rather than “citizens” was essential to passage of the Fourteenth Amendment:

It has been insisted that “citizens of the United States” and not “persons” should be the basis of representation and apportionment. These words were in the amendment as I originally drew it and introduced it, but my own judgment was that it should be “persons,” and to this the committee assented.

There are several answers to the argument in favor of “citizens” rather than “persons.” The present Constitution is, and always was opposed to this suggestion. ‘Persons,’ and not ‘citizens,’ have always constituted the basis.

Again, it would narrow the basis for taxation and cause considerable inequalities in this response, because the number of aliens in some States is very large, and growing larger now, when emigrants reach our shores at the rate of more than a State a year.

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13 Where indicated, Plaintiffs have filed certain of the original sources cited in this discussion as Exhibits to these papers. Plaintiffs can provide the Court with copies of other legislative or historical materials if it would assist the Court’s review.
Again, many of the large States now hold their representation in part by reason of their aliens, and the Legislatures and people of these States are to pass upon the amendment. It must be acceptable to them.


The Framers of the Fourteenth Amendment further made clear that the Amendment requires including all immigrants in the apportionment base. As Representative John Bingham explained, the “whole immigrant population should be numbered with the people and counted as part of them” because “[u]nder the Constitution as it now is and as it always has been, the entire immigrant population of this country is included in the basis of representation.” Id. at 432 (emphases added); see also id. at 2944 (Sen. Williams) (“Representation is now based upon population,” including “foreigners not naturalized.”). Proponents of maintaining the total-population apportionment base repeatedly declared their refusal to “throw[] out of the basis at least two and a half millions of unnaturalized foreignborn men and women.” Id. at 1256 (Sen. Henry Wilson); see also, e.g., id. at 2987 (proposal to apportion based on voting population was “blow which strikes the two million one hundred thousand unnaturalized foreigners who are now counted in the basis of representation from that basis”); id. at 411 (Rep. Burton Cook) (representation based on voters improperly “takes from the basis of representation all unnaturalized foreigners”).

The Framers believed that excluding residents from the apportionment base, including immigrants, would fatally undermine a cornerstone of the Constitution—“equal representation for equal numbers of people.” Wesberry, 376 U.S. at 18. A basic “idea of the Constitution” has always been, and continues to be, that “the whole population is represented; that although all do not vote, yet all are heard.” Cong. Globe, 39th Cong., 1st Sess. 705 (1866) (Sen. William Fessenden). No matter a person’s legal status, the Framers emphasized, “[a]ll the people, or all the members of a State or community, are equally entitled to protection; they are all subject to its
laws; they must all share its burdens, and they are all interested in its legislation and government.” *Id.* at 2962 (1866) (Sen. Luke Poland). As Senator Jacob Howard explained when introducing the amendment’s final language on the Senate Floor:

Its basis of representation is numbers . . . that is, the whole population. The committee adopted numbers as the most just and satisfactory basis, and this is the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers; and such . . . is the safest and most secure principle upon which the Government can rest. Numbers, not voters; numbers, not property; this is the theory of the Constitution.


Defendants’ actions to exclude an entire category of persons living in this country from apportionment break this foundational promise and flout the explicit intent of the Framers of the Fourteenth Amendment.

3. **The Supreme Court has determined that the Constitution requires counting all persons, including undocumented immigrants, for apportionment.**

Just four years ago, the Supreme Court confirmed that the Fourteenth Amendment requires including all immigrants in apportioning House seats. In *Evenwel*, the plaintiff’s argued that Texas was required to exclude noncitizens—many of whom are undocumented—in equalizing population for legislative districts within the State. The Supreme Court rejected this claim on the ground that, with respect to *inter*-state apportionment, Section 2 of the Fourteenth Amendment “retained total population as the congressional apportionment base.” *Evenwel*, 136 S. Ct. at 1128. The Court emphasized: “[i]t cannot be that the Fourteenth Amendment calls for the apportionment of congressional districts based on total population, but simultaneously prohibits States from apportioning their own legislative districts on the same basis.” *Id.* at 1128–29. The concurring Justices agreed that “House seats are apportioned based on total population.”
Id. at 1148 (Alito, J., concurring in the judgment); see also id. at 1138 (Thomas, J., concurring in the judgment) (similar).

Thus, all nine Justices in Evenwel agreed that apportionment of House seats among the States must be based on total population, including noncitizens. And that constitutional determination was central to the Court’s rejection of the plaintiffs’ claim there. The Presidential Memorandum thus defies the Supreme Court’s decision of just four years ago.

4. **Centuries of established practice further confirm that the apportionment base must include undocumented immigrants.**

*Evenwel* is consistent with not only the Constitution’s clear text and extensive history, but also more than two hundred years of unbroken practice that has always included all persons residing in each State, regardless of their citizenship or immigration status, in the apportionment base. *See Evenwel*, 136 S. Ct. at 1133 (relying on “settled practice”). Judicial “interpretation of the Constitution” may be “guided by a Government practice that has been open, widespread, and unchallenged since the early days of the Republic.” *Dep’t of Commerce*, 139 S. Ct. at 2567 (internal quotation marks and citations omitted). And the Supreme Court has emphasized “the importance of historical practice in” understanding the Enumeration Clause specifically. *Wisconsin v. City of New York*, 517 U.S. 1, 21 (1996).

Since the first census in 1790, “[t]he Census Bureau has always attempted to count every person residing in a state on Census day, and the population base for purposes of apportionment has always included all persons, including aliens both lawfully and unlawfully within our borders.” *FAIR*, 486 F. Supp. at 576; see, e.g., Census Act of 1790, S. 101, 1st Cong. § 5, (1790). Both Congress and the Executive Branch have long made clear that this unbroken historical practice is constitutionally required.
Congress has repeatedly rejected statutory proposals to exclude all noncitizens or undocumented immigrants from the apportionment base on the ground that the Constitution forbids any such exclusion. For example, in 1929, Congress rejected proposals to amend the Census Act to exclude noncitizens from apportionment after members of the House and Senate repeatedly declared that “the plain mandate of the Constitution” requires counting all persons, including all noncitizens, for apportionment. 71 Cong. Rec. 1910 (May 25, 1929) (Sen. Bratton); see, e.g., id. at 1958 (May 27, 1929) (Sen. Reed), 2451-52 (June 6, 1929) (Rep. Griffith). The Senate’s legislative counsel provided a legal opinion confirming that all immigrants living here must be included given the Constitution’s “‘natural and obvious’ meaning,” “the history of the fourteenth amendment, the evidence of the records of the Constitutional Convention, and the uniform past congressional construction of the term by Congress in its apportionment legislation.” Id. at 1822 (May 23, 1929).

In 1940, in enacting a bill to amend the 1929 Act, see Pub. L. No. 76-481, Congress again rejected a proposal to exclude noncitizens from apportionment. See H.R. Rep. No. 1787, at 1 (1940) (Ex. 55) (committee report showing proposed exclusion of noncitizens). As Representative Emanuel Celler explained in opposing the proposal:

    For 150 years we have included aliens in the count. We cannot, by mere resolution of this body or the adjoining body, change that constitutional requirement. If you strike out aliens you have parted with a principle of government upon which the fathers agreed some 150 years ago...When we use the word “persons” we include all peoples.

Cong. Rec. H4372 (Apr. 11, 1940); 86 Cong. Rec. at 4384-86 (voting 209-23 to strike exclusion).

And in 1980, a bill to exclude undocumented immigrants from the apportionment base failed after New York Senator Jacob Javits explained that there is no plausible way to construe the Constitution’s words as meaning “anything other than as described in Federalist papers, the

The Executive Branch has likewise consistently maintained that the Constitution requires counting all persons, regardless of immigration status, in the apportionment base. For example, in FAIR v. Klutznick, the Department of Justice, on behalf of the President, Secretary of Commerce, and Director of the Census Bureau, urged a district court to reject claims demanding exclusion of undocumented immigrants from the apportionment base. Defs.’ Mem. of Points & Authorities in Support of Mot. to Dismiss or for Summary Judgment, No. 79-3269 (D.D.C.), reprinted in 1980 Census, supra, at 125-156. The government explained that “the plain language of the Constitution, as well as the intent of its framers, establishes that all inhabitants, including illegal aliens, must be enumerated for the purpose of apportioning Representatives.” Id. at 131. Similarly, the Department of Justice’s Office of Legislative Affairs has opined that the Constitution “require[s] that inhabitants of States who are illegal aliens be included in the census count.” Letter from Assistant Attorney Gen. Carol T. Crawford to Honorable Jeff Bingaman (Sept. 22, 1989), in 135 Cong. Rec. S22,521 (daily ed. Sept. 29, 1989).

Defendants have acknowledged that the decennial enumeration that necessarily determines the apportionment base must count all persons living in the United States, without any exclusions. For example, on March 14, 2019, Secretary Ross testified under oath during a congressional committee hearing that “[t]he constitutional mandate, sir, for the census is to try to count every person residing in the U.S. at their place of residence on the dates when the census is conducted.” Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 31 (Mar. 14, 2019) (emphasis added); see id. (“We intend to try to count every person taking all necessary
actions to do so.” (emphasis added)). During a congressional committee hearing in February 2020, Census Bureau Director Dillingham testified that the Bureau will “count everyone, wherever they are living,” including undocumented immigrants. Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 12 (Feb. 12, 2020) (emphasis added).

In multiple filings in this Court, many of the Defendants here repeatedly admitted that the Constitution requires enumerating every person residing in the United States, no matter their immigration status, for inclusion in the apportionment base. See, e.g., New York v. Dep’t of Commerce, Defs.’ Post-Trial Proposed Findings of Fact and Conclusions of Law 1, 18-CV-2921 (JMF) (S.D.N.Y. Nov. 21, 2018), ECF No. 546 (“Constitution requires the federal government to conduct a Decennial Census counting the total number of ‘persons’—with no reference to citizenship status—residing in each state.” (internal citations omitted)).

And, under a final rule adopted for the 2020 census, the Census Bureau has already decided to count undocumented immigrants for apportionment purposes. See Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525, 5533 (Feb. 8, 2018).

Defendants’ attempt to reverse course at the last minute after the actual enumeration is already underway, and to exclude undocumented immigrants from the apportionment base for the first time in our country’s history, reflects a radical break from the consistent understanding and practice of the federal government for more than two centuries. There is simply no textual or historical support for this abrupt break in one of our country’s foundational principles.

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14 See also, e.g., New York v. Dep’t of Commerce, Memo. of Law in Support of Defs.’ Mot. to Dismiss 25, 18-CV-2921 (JMF) (S.D.N.Y. May 25, 2018), ECF No. 155 (“Constitution supplies a simple judicial standard for determining the constitutionality of [Census Bureau] practices—the Secretary must perform a person-by-person headcount” (emphasis added)).
5. Defendants do not have any “discretion” to exclude undocumented immigrants from the apportionment base.

Contrary to the President’s Memorandum, the Executive Branch does not have “discretion” to categorically exclude undocumented immigrants from the “whole number of persons in each State” based solely on their immigration status, without any regard to their physical residence here. 85 Fed. Reg. at 44,679.

The Memorandum reasons that apportionment should be based only on the number of “inhabitants” of each State, and that the President purportedly has discretion to deem undocumented immigrants who reside here as not “inhabitants.” Id. But even if being an “inhabitant” were the relevant criterion, millions of undocumented immigrants who live in this country are indisputably inhabitants because they live here, many for years or even decades. An “inhabitant” is “a person . . . that lives in a particular place.” Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/inhabitant. The President has no discretion to declare that undocumented residents of this country are not “inhabitants.”

The text of the Constitution and an unbroken line of history also foreclose any discretion here. The Supreme Court has held that “[u]sual residence” is “the gloss given the constitutional phrase ‘in each State’” in Section 2 of the Fourteenth Amendment—meaning all persons whose “usual residence” is in the United States “must be included in the enumeration of the population and the apportionment of House seats.” Franklin v. Massachusetts, 505 U.S. 788, 805 (1992). And “usual residence” has always been the criterion for enumeration and apportionment since “the first enumeration Act.” Id. Conversely, the Framers specifically considered and rejected the notion that a person’s legal status—including voter, citizenship, or immigration status—could ever override their physical residence in the United States and result in their exclusion from the apportionment base. See 85 Fed. Reg, at 44,680. Defendants lack any authority to
exclude undocumented immigrants who maintain their usual residence in the United States from the apportionment.

The Memorandum’s conclusory attempts to support its invocation of “discretion” rely on inapposite examples. For example, the Memorandum asserts that noncitizens who are only temporarily in the United States for a vacation or a business trip are not included in the decennial enumeration used for apportionment even though they may be “physically present.” 85 Fed. Reg. at 44,679. But temporary visitors are not included in the apportionment base precisely because the United States is not their “usual residence.” See 83 Fed. Reg. at 5533. By contrast, the millions of undocumented immigrants whom Defendants seek to exclude from apportionment are not merely “physically present” as a fleeting matter but rather are residents here—many for years or even decades. The policy of excluding temporary visitors provides no support for Defendants’ attempt to exclude actual residents of this country who happen to be undocumented immigrants.

Defendants also point to the Secretary of Commerce’s decision, “at various times, to include” in the apportionment federal military and civil personnel who are not physically present in this country but are temporarily serving overseas. 85 Fed. Reg. at 44,679. But the policy of including overseas federal personnel takes as a given the principle that all persons living in the United States must be counted for apportionment purposes, and simply extends that principle to persons who can be deemed to maintain a “usual residence” in the country—because they have “retained their ties to the States”—even though they have been “temporarily stationed abroad” by the government. Franklin, 505 U.S. at 806 (emphasis added). In no sense does this inclusionary policy to include persons who are not currently physically present in their home...
States authorize Defendants to exclude persons who indisputably reside here and thus are part of the “whole number of persons in each State.” U.S. Const. amend. XIV.

B. Apportioning Representatives based on numbers other than the actual enumeration from the decennial census is also unconstitutional.

The Presidential Memorandum violates the Constitution for a second, independent reason: it requires the use of data other than the “actual Enumeration” of the population ascertained by the decennial census to apportion Representatives. The actual enumeration in the 2020 census indisputably will include undocumented immigrants, and the Constitution requires Defendants to rely solely on this “actual Enumeration” for congressional apportionment. The subtraction of undocumented immigrants to create an apportionment base that is different from the population included in the actual enumeration violates this constitutional requirement.

Article 1, Section 2 mandates that House seats be allocated based on the “numbers” determined by the “actual Enumeration” of the decennial census. U.S. Const. art 1, § 2. While the Executive Branch may maintain some discretion over the manner of conducting the census, see Franklin, 505 U.S. at 799; Utah v. Evans, 536 U.S. 452 (2002), once the decennial census determines the “actual Enumeration,” Defendants must use those numbers—and only those numbers—to apportion House seats. As the Supreme Court has explained, “the Constitution provides that the results of the census shall be used to apportion the Members of the House of Representatives among the States.” Wisconsin, 517 U.S. at 5 (emphasis added). And “[t]he decennial census is the only census that is used for apportionment purposes.” Dep’t of Commerce v. U.S. House of Representatives, 525 U.S. 316, 341 (1999) (quotation marks omitted) (emphasis added).

The Framers required that apportionment be based solely on the numbers from the actual enumeration to provide a fixed rule “that would limit political chicanery.” Utah, 536 U.S. at 500
(Thomas, J., concurring in part and dissenting in part). The Framers’ “principal concern was that the Constitution establish a standard resistant to manipulation.” Id. at 503. George Mason described having a “permanent and precise standard as essential to fair representation,” because absent such a standard, “those who have power in their hands will not give it up while they can retain it.” Id. at 502 (quoting The Founders’ Constitution 102-03 (P. Kurland & R. Lerner eds. 1987)). Roger Sherman agreed that “the rule of revising the Representation ought to be fixt by the Constitution.” Id. (quoting The Founders’ Constitution 104). And Alexander Hamilton, writing about the Enumeration Clause’s apportionment of direct taxes among the States, explained that “an actual Census or enumeration of the people must furnish the rule,” so as to “shut[] the door to partiality or oppression.” The Federalist No. 36 at 220 (emphasis added).

For the 2020 census, the actual Enumeration will continue to include undocumented immigrants. Defendant Dillingham recently confirmed in congressional testimony that the Memorandum “does not change the Census Bureau’s plans for field data collection across the nation,” and that the Bureau will “continue full steam ahead with . . . counting every person,” including undocumented immigrants. Prepared Statement of Dr. Steven Dillingham Before the House Oversight and Reform Committee (July 29, 2020). Dillingham reaffirmed that the Census Bureau will continue to adhere to its Residence Rule for the 2020 census, see id., which requires enumerating undocumented immigrants “at the U.S. residence where they live and sleep most of the time.” 83 Fed. Reg. at 5533. And Defendants confirmed to this Court in this case that “[t]he Census Bureau is conducting a complete enumeration of the total population and

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15 https://docs.house.gov/meetings/GO/GO00/20200729/110948/HHRG-116-GO00-Wstate-DillinghamS-20200729.pdf.

The Presidential Memorandum, however, directs the use of population totals excluding undocumented immigrants for apportionment—which are different from the actual Enumeration. To implement the Memorandum, Defendants would need to take the actual Enumeration numbers and subtract some estimate of the undocumented immigrants who live in each State, using administrative data or statistical models from sources other than the decennial actual Enumeration. *See* 85 Fed. Reg. at 44,679-80. Defendants would then use the resulting figures—rather than the actual Enumeration numbers—as the apportionment base. *See id.* Defendants’ recent submission to this Court confirmed that, under the Memorandum, “an apportionment number . . . will be chosen by the President after the census is complete.” Joint Letter 5, *New York v. Trump*, 20-CV-5770 (JMF), ECF No. 37 (S.D.N.Y. filed Aug. 3, 2020). In other words, the President will “choose” a “number” for the apportionment base that differs from the “complete enumeration of the total population.” *Id.* at 9.

The Constitution prohibits Defendants from apportioning seats in this manner. The President does not have “discretion” to add to, subtract from, or otherwise alter the numbers of persons actually enumerated through the decennial census to “choose” a separate apportionment base of his own liking. As the Census Bureau has recognized for decades, there is unbroken

\(^{16}\) If Defendants assert, contrary to Dillingham’s congressional testimony, the Residence Rule, and Defendants’ recent submission, that the “actual Enumeration” is the numbers derived after subtracting undocumented immigrants from the 2020 census count, that also would violate the Enumeration Clause. The Enumeration Clause prohibits Defendants from subtracting enumerated people out of the actual Enumeration numbers, and it certainly prohibits Defendants from doing so based on statistical estimates that rely on sampling and administrative data from outside agencies. *See, e.g.*, *U.S. House of Representatives*, 525 U.S. at 346-47 (Scalia, J., concurring in part) (“an ‘enumeration’ requires an actual counting”).
“historical precedent of using the actual Enumeration for purposes of apportionment” rather than any other population count.  *U.S. House of Representatives*, 525 U.S. at 340. The Constitution’s fixed “rule” bars the President from using an apportionment base that differs from the actual Enumeration numbers.  The Federalist No. 36 at 220.

Indeed, Defendants’ scheme to deviate from the actual Enumeration numbers in shaping political power for the next decade represents precisely the type of “political chicanery” and “manipulation” that the Framers prevented by adopting the Enumeration Clause.  *Utah*, 536 U.S. at 500, 503 (Thomas, J., concurring in part and dissenting in part).  The Memorandum makes no secret that Defendants seek to exclude undocumented immigrants from the apportionment base for political reasons.  The Memorandum explicitly seeks to prevent certain States from being “rewarded with greater representation in the House of Representatives,” and even singles out a particular state—California—whose political power Defendants wish to reduce.  85 Fed. Reg. at 44,680.  The Framers foresaw that leaders could seek to manipulate congressional apportionment for their own political benefit, and they guarded against such abuse by mandating that apportionment be determined by the actual Enumeration of the population ascertained through a decennial census, and nothing else.

**IV.  The Memorandum is ultra vires under the statutory scheme Congress enacted to implement the required decennial census and reapportionment of House seats.**

The President’s Memorandum also violates statutory provisions Congress enacted to implement those constitutional requirements. See 13 U.S.C. § 141(a), (b); 2 U.S.C. § 2a. The Memorandum is ultra vires under these statutes in at least three ways.

A.  **The Memorandum violates the statutory requirements to count the total population, and to report and use that total for apportionment purposes.**

Congress enacted a statutory scheme directing that the whole population of the States—including undocumented immigrants who reside here—must be counted in the decennial census
and then used to apportion representatives. 13 U.S.C. § 141; 2 U.S.C. § 2a. As Congress explained in enacting predecessors to these two provisions in a single statute,17 “the functions served by them interlock,” because “there is but one basic constitutional function served by the census. It is to provide an enumeration of the people for the purpose of redistributing congressional representatives proportioned thereto.” S. Rep. No. 71-2, at 2 (1929) (Ex. 53).

As codified at 13 U.S.C. § 141(a), the Census Act instructs that the Secretary of Commerce “shall . . . take a decennial census of population . . . .” Subsection (b) then specifies that “[t]he tabulation of total population by States under subsection (a) . . . as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.” Id. § 141(b); see also Act of June 18, 1929, § 2, 46 Stat. 21, 21 (requiring same tabulation). These provisions together require that there be a “census of population” under subsection (a), that this census include a “tabulation of total population by States as required for” apportionment, and that this tabulation then be provided in a report to the President.

In turn, 2 U.S.C. § 2a(a) directs the President to provide Congress an apportionment report that is based solely on the census’s tabulation of population and application of a mathematical apportionment method to that result. As the statute provides, “the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent 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 . . . .” 2 U.S.C. § 2a (emphases added); see also Act

17 See Act of June 18, 1929, §§ 2, 22.
of June 18, 1929, § 2, 46 Stat. 21, 21; Pub. L. No. 77-291, § 1 (amending provision of 1929 Act to require use of “equal proportions” method). The “method of equal proportions” is a method of apportionment based on each State’s population designed to minimize disparities in “population per Representative” among States. 71 Cong. Rec. at 4965 (Mar. 2 1929) (“Memorandum on the Method of Equal Proportions” by Professor Edward Huntington noting unanimous adoption of method by Advisory Committee of the Census); 67 Cong. Rec. at 7078 (Apr. 7, 1926) (Advisory Committee report describing method as providing “an apportionment in which the ratios between the representation and the population of the Several States are as nearly alike as possible”). The Department of Justice has recognized that the method of equal proportions relies on each State’s population. Br. for Appellants, Dep’t of Commerce v. Montana, 503 U.S. 442 (1992), 1992 WL 672939, at *9-*11 (“Under all of the methods, the formula for establishing each State’s priorities has as its numerator the population of the State.”).

By requiring the exclusion of undocumented immigrants from the statutory phrases “total population” and “whole number of persons in each State,” the Memorandum directs the President and the Secretary of Commerce to perform unlawful, ultra vires actions.

The Commerce Secretary is not empowered to provide the President with information “as required for the apportionment” other than a “tabulation of total population.” 13 U.S.C. § 141(b) (emphasis added). And the President is not empowered to exclude undocumented immigrants from “the whole number of persons in each State” or from the apportionment numbers in his apportionment report to Congress. 2 U.S.C. § 2a(a). The reason is simple: undocumented immigrants are persons. As a matter of plain language, the word “person” in § 2a makes no distinction based on citizenship or immigration status. See also supra Part III.A. (same discussion in context of Fourteenth Amendment). At no point has Congress had trouble
distinguishing among persons, citizens, and noncitizens when it wishes to do so—and it certainly had no such trouble in 1929 when §§ 141 and 2a were initially enacted. See, e.g., Pub. L. No. 71-962, § 6(b) (prohibiting “alien” from “being admitted to citizenship” without being “a person of good moral character” as shown by, inter alia, testimony of two “citizens of the United States”). Similarly, the single exception reflected in § 2a’s text—“Indians not taxed”—suggests no other exclusions were intended. See Greene v. United States, 79 F.3d 1348, 1355 (2d Cir. 1996) (“mention of one impliedly excludes others”).

Congress is also “presumed to legislate with familiarity of the legal backdrop for its legislation.” Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela, 863 F.3d 96, 114 (2d Cir. 2017). That backdrop speaks volumes. Congress adopted the “whole number of persons” statutory language in 1929 (and again in 1941) against (1) its own unbroken legislative practice to count noncitizens, including undocumented immigrants, for apportionment purposes; and (2) Supreme Court precedent holding that “person” in the Fourteenth Amendment includes undocumented immigrants. See supra Part III.A. This further shows that the statute requires including such individuals in apportionment. When “Congress used the materially same language [in a statute] it presumptively was aware of the longstanding judicial interpretation of the phrase and intended for it to retain its established meaning.” See Lamar, Archer & Cofrin, LLP v. Appling, 138 S. Ct. 1752, 1762 (2018) (unanimous court on this point); see also New York v. U.S. Dep’t of Homeland Sec., __ F.3d __, 2020 WL 4457951, at *21 (2d Cir. Aug. 4, 2020) (Congress “ratified the settled meaning” of a term in immigration law “[i]n light of the judicial, administrative, and legislative treatments” of that term from 1882 to 1996).

For the vast majority of the nation’s history, Congress apportioned seats in the House by statute enacted shortly after the decennial census. See Br. for Appellants, Dep’t of Commerce v. Montana, 503 U.S. 442 (1992), 1992 WL 672929, at *4–*15.
The Memorandum also contradicts Congress’s unambiguous rejection of proposals to exclude noncitizens from the apportionment base. As discussed above, in enacting the 1929 Act in which 2 U.S.C. § 2a originated, both the Senate and House considered and rejected amendments to exclude noncitizens from the “whole number of persons in each State” for apportionment purposes.\textsuperscript{19} Congress again rejected such a bill in 1940, and again in 1980. \textit{See supra} Part III.A.4. These votes show that Congress understood that the ordinary meaning of the phrase “persons in each state” included noncitizens: “at the time of the [Fourteenth Amendment’s adoption] and since, an alien was and has been a ‘person.’” 71 Cong. Rec. at 1821 (May 23, 1929). They also show that Congress understood that its own historical legislative practice had “been uniformly in favor of inclusion of aliens,” \textit{id.} at 1822, such that enactment of the “whole number of persons” language would continue that unbroken practice.

The Census Bureau’s longstanding interpretation of its statutory obligations further confirms that undocumented immigrants residing in the United States are part of the enumerated population used to apportion House seats. “Congress is presumed to be aware of an administrative . . . interpretation of a statute.” \textit{Lorillard v. Pons}, 434 U.S. 575, 580 (1978); \textit{see also New York}, -- F.3d --, 2020 WL 4457951, at *21. On February 8, 2018, after notice-and-comment rulemaking, the Census Bureau promulgated its “Residence Rule” for the 2020 census, which is used to “determine where people are counted during each decennial census” in order “to apportion the seats in the U.S. House of Representatives among the States.” \textit{Final 2020 Census Residence Criteria and Residence Situations}, 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018). Its

\textsuperscript{19} \textit{See 71 Cong. Rec.} 2065 (vote on amendment by Sen. Sackett fails, 29-48) (1929); \textit{id.} at 2360-63 (House adopts alienage exclusion as amendment to section 22 on June 4, 1929); \textit{id.} at 2448-2445 (Rep. Tilson of Connecticut offers substitute for section 22 of the bill without alienage exclusion, House by vote of 202-129 sustains ruling of the chair against point of order against Tilson amendment, House adopts Tilson amendment 212-102, and House passes bill).
purpose is “to ensure that the concept of usual residence is interpreted and applied, consistent with the intent of the Census Act of 1790, which was authored by a Congress that included many of the framers of the U.S. Constitution and directed that people were to be counted at their usual residence.” Id. at 5526.

Under the Residence Rule, “[c]itizens of foreign countries living in the United States” must be “[c]ounted at the U.S. residence where they live and sleep most of the time.” Id. at 5533. The Census Bureau elaborated that the “Census Bureau is committed to counting every person in the 2020 Census,” including citizens of foreign countries living in the United States. Id. at 5526. And it considered comments “express[ing] concern about the impact of including undocumented people in the population counts for redistricting because these people cannot vote,” id. at 5530, but declined to make any changes to its residence criteria and indicated that it “will retain the proposed residence situation guidance for foreign citizens in the United States.” Id.

The Memorandum attempts to manufacture ambiguity on whether undocumented immigrants “inhabit” a State such that they constitute a “person[] in each State” for constitutional purposes. 85 Fed. Reg. at 44,679. But there is no such ambiguity: the phrase “whole number of persons in each State,” as used in 2 U.S.C. § 2a, has always been understood to include people who reside in a particular State regardless of alienage or immigration status. See supra Part III.A. Congress has repeatedly rejected measures to exclude aliens from § 2a—measures that would have made little sense if § 2a already excluded categories of aliens. Moreover, it would be inconsistent with § 2a—under which the President has a ministerial role to report the census’s count of total population and mandated to use a method designed to minimize per-district population disparities—to grant him discretion to exclude whole classes of persons.
B. The Memorandum violates the Census Act by producing apportionment figures that are not based solely on the decennial census.

The Memorandum’s reliance on non-census data to determine the number of undocumented immigrants to be removed from the apportionment base violates the requirement under 2 U.S.C. § 2a to use census data only.

Section 2a is clear that both the “whole number of persons” and the apportionment data must be ascertained from the decennial census.\(^\text{20}\) The provision specifies that this number must be “ascertained under the . . . decennial census of the population.” In *Franklin v. Massachusetts*, 505 U.S. 788 (1992), the Supreme Court affirmed that “Section 2a . . . expressly require[s] the President to use . . . the data from the ‘decennial census.’” *Id.* at 797.\(^\text{21}\)

The broader statutory scheme makes clear that the apportionment data reported by the President must come from the census alone. The Census Act specifies that “[t]he tabulation of total population by States” is “required for the apportionment of Representatives in Congress among the several States.” 13 U.S.C. § 141(b). As the Senate Report for the 1929 bill explained, “[t]he census would be taken in November, 1929. One year later, with these figures in

\(^{20}\) The President’s statement must “show[] the whole number of persons in each State . . . as ascertained under the seventeenth and each subsequent decennial census of the population.” 2 U.S.C. § 2a. Apportionment must be based on “the method of equal proportions,” relying on that data. *Id.*

\(^{21}\) *Franklin* held that certain elements of 2 U.S.C. § 2a(a) are non-ministerial, but the Court appeared to limit those to circumstances in which the Secretary of Commerce has exercised policy judgment. *See* 505 U.S. at 799 (“§ 2a does not curtail the President’s authority to direct the Secretary in making policy judgments that result in ‘the decennial census’; he is not expressly required to adhere to the policy decisions reflected in the Secretary’s report.”). Whatever those non-ministerial duties may be, *Franklin* is equally clear that use of the census data and the calculation of apportionment figures are ministerial. *Id.* at 797 (“Section 2a does not expressly require the President to use the data in the Secretary’s report, but, rather, the data from the “decennial census.”); *id.* at 799 (the President’s apportionment calculation is of a “ministerial nature”).

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hand, the President would report the census figures, together with a table showing how, under these figures, the House would be apportioned.” S. Rep. 71-2 at 4 (emphases added) (Ex. 53).

The President’s use of the census’s count of the whole number of persons in each State, and application of the chosen mathematical method (equal proportions), are not discretionary matters. “The Department of Commerce counts the people (as it always has done),” and “the President reports upon a problem in mathematics which is standard, and for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer.” S. Rep. 71-2, at 4-5 (Ex. 53); see also H.R. Rep. 70-2010, at 7 (official providing report “is left with no discretionary power” and must use “without deviation, the population of each State” as reported in census) (Ex. 54). The Supreme Court has made equally clear that, under 2 U.S.C. § 2a, the President must use census data and that an apportionment based on that data is “admittedly ministerial.” Franklin, 505 U.S. at 797, 799.

The Supreme Court has further confirmed that the President’s apportionment report must be based on the population figures from the census, noting that the Apportionment and Census Acts “mandat[e] a population count that will be used to apportion representatives.” Dep’t of Commerce, 139 S. Ct. at 2568-69; see also U.S. House of Representatives, 525 U.S. at 321-22 (“Using this information [from the Census], the President must then “transmit to the Congress a statement showing the whole number of persons in each State . . . and the number of Representatives to which each State would be entitled.”).

The Department of Justice has also historically recognized that the apportionment must be based on the total population figures produced by the census. Reply Br. for the Federal Appellants at 15, Franklin v. Massachusetts (“[I]t is true that the method of equal proportions calls for application of a set mathematical formula to the state population totals produced by the
census’’); Tr. of Oral Argument at 12, *Franklin*, 505 U.S. 788 (Deputy Solicitor General Roberts) (‘‘The law directs [the President] to apply, of course, a particular mathematical formula to the population figures he receives . . . .’’); id. at 12 (‘‘It would be unlawful [for the President] . . . just to say, these are the figures, they are right, but I am going to submit a different statement.’’); id. at 13 (‘‘I think under the law he is supposed to base his calculation on the figures submitted by the Secretary.’’).

The President’s Memorandum violates these requirements. To exclude undocumented immigrants from the apportionment base, see 85 Fed. Reg. at 44,680, the President will necessarily have to rely on information that is not contained within the census, because the 2020 census questionnaire is not gathering information concerning citizenship or immigration status. *See, e.g.*, Order, *New York v. U.S. Dep’t of Commerce*, 18-CV-2921 (JMF) (S.D.N.Y. Aug. 7, 2019), ECF No. 653 (permanently enjoining the inclusion of a citizenship question on the 2020 decennial census questionnaire).

Further, the Memorandum itself concedes that it will rely on information other than that obtained by the census. The Memorandum distinguishes between the enumeration information gathered by the census under the governing Residence Rule, and the information the President will use to exclude undocumented immigrants from the census count of whole persons:

[T]he Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President’s discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary shall also include in that report information tabulated according to the methodology set forth in [the Residence Rule].

85 Fed. Reg. at 44,680 (emphasis added). The Memorandum additionally indicates that other “data on illegal aliens . . . relevant for the purpose of conducting the apportionment” may be available as a result of Executive Order 13,880, in which the President “instructed executive
departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country.” 85 Fed. Reg. at 44,680.

Simply put, the Memorandum violates statutory requirements by requiring the reporting to the President and the subsequent Presidential use of non-census data to calculate a whole number of persons in each State that is different from census results, and to apportion seats in Congress according to that latter figure.

C. The Memorandum violates 2 U.S.C. § 2a by producing apportionment figures that are not based solely on a ministerial calculation.

The President is required to report an apportionment calculation “by the method known as the method of equal proportions.” 2 U.S.C. § 2a. In Franklin, the Supreme Court made clear that the President’s apportionment calculation is of a “ministerial nature.” See Franklin, 505 U.S. at 799. Franklin noted that the Senate Report for the bill that presaged 2 U.S.C. § 2a, states that the President is to report “upon a problem in mathematics which is standard, and for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer.” Id. (quoting S. Rep. No. 2, 71st Cong., 1st Sess., at 4–5) (emphasis added).

The legislative history confirms the point. In 1920, for the first time, Congress failed to pass a reapportionment act. Montana, 503 U.S. at 451–52. Accordingly, in 1929, in passing the modern precursor to 13 U.S.C. § 141 and 2 U.S.C. § 2a, Congress ensured “an automatic reapportionment through the application of a mathematical formula to the census.” Franklin, 505 U.S. at 809 (Stevens, J., concurring in part and concurring in the judgment). “The automatic connection between the census and the reapportionment was the key innovation of the Act.” Id.
In 1941, the Act was modified to change the allocation formula to the current method of equal proportions. See id. at 809 n.5 (citing Montana, 503 U.S. at 451–52 & n.25).

Indeed, congressional debate makes clear that Congress intended to give the President no discretion in how reapportionment figures would be calculated. The sponsor of the bill, Senator Vandenburg, explained that the President had no discretion in such a calculation and that “as a matter of indisputable fact, th[e] function served by the President is as purely and completely a ministerial function as any function on earth could be.” 71 Cong. Rec. 1858 (1929); see also supra IV.B. (noting similar statements in committee reports).

As discussed supra, the Memorandum establishes a policy under which the President will perform additional calculations beyond those set forth by the method of equal proportions in order to derive an apportionment figure that excludes undocumented immigrants. 85 Fed. Reg. at 44,680 (“[I]t is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”). But Congress designed a system with only “one mathematical answer” to the question of apportionment, S. Rep. 71-2, at 4-5 (Ex. 53). By altering Congress’s required apportionment computation to add calculations not specified by 2 U.S.C. § 2a, the Memorandum causes the President to violate his ministerial duty to report apportionment figures under the “rigid specifications” provided by the method of equal proportions. S. Rep. No. 71-2, at 4–5 (Ex. 53).

Such calculations therefore violate the “automatic connection between the census and the reapportionment” that Congress established. Franklin, 505 U.S. at 809 (Stevens, J., concurring in part and concurring in the judgment).
D. **This Court has equitable authority to correct the Presidential Memorandum’s ultra vires mandates.**

Because the Memorandum requires Defendants Trump and Ross to act beyond the plain scope of their statutory authority, the equitable jurisdiction of this Court is available to correct this ultra vires action and provide redress to Plaintiffs.

The Supreme Court has long recognized that federal courts have inherent equitable authority to grant relief to enjoin ultra vires action, such as that ordered by the Memorandum, even in the absence of an express statutory provision. The Court most recently reaffirmed this authority in *Armstrong v. Exceptional Child Center*, which explained that federal courts may grant injunctive relief absent a statutory cause of action “with respect to violations of federal law by federal officials.” 575 U.S. 320, 326-27 (2015). This inherent equitable authority, the Court noted in *Armstrong*, has been recognized for centuries “and reflects a long history of judicial review of illegal executive action, tracing back to England.” *Id.* at 327; *see also generally Am. Sch. of Magnetic Healing v. McAnulty*, 187 U.S. 94, 108, 110 (1902); *Carroll v. Safford*, 44 U.S. 441, 463 (1845).

The core purpose of inherent equitable authority is not just to provide redress for individuals whose statutory or constitutional rights are violated, but also to ensure the proper separation of powers and require “the executive to obey [Congress’s] statutory commands.” *Bowen v. Mich. Acad. of Family Physicians*, 476 U.S. 667, 681 (1986); *see also Leedom v. Kyne*, 358 U.S. 184, 191 (1958) (“This Court cannot lightly infer that Congress does not intend judicial protection of rights it confers against agency action taken in excess of delegated powers.”).

The modern doctrine of ultra vires review provides inherent, nonstatutory review for executive action in excess of statutory authority. *See, e.g., Mountain States Legal Found. v. Bush*, 306 F. 3d. 112!2, 1136 (D.C. Cir. 2002) (“the Supreme Court has indicated generally that
review is available to ensure that the Proclamations are consistent with constitutional principles and that the President has not exceeded his statutory authority”); *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1327-28 (D.C. Cir. 1996) (“When an executive acts *ultra vires*, courts are normally available to reestablish the limits on his authority”). Such review exists independently from the Administrative Procedure Act (“APA”), and the APA does not restrict or “repeal the review of *ultra vires* actions.” *Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988); see also *Hawaii v. Trump*, 878 F.3d 662, 682 (9th Cir. 2017) (finding equitable cause of action “which exists outside of the APA”), rev’d on other grounds, 138 S. Ct. 2392 (2018); *Mittleman v. Postal Regulatory Comm’n*, 757 F.3d 300, 307 (D.C. Cir. 2014) (“the absence of a cause of action for judicial review under the APA does not necessarily foreclose all judicial review”); *Reich*, 74 F.3d at 1326-27 (engaging in *ultra vires* review where APA claim not pled).

Further, courts have consistently acknowledged that *ultra vires* review extends to review of actions taken by the President, not just subsidiary executive branch actors. See, e.g., *Hawaii*, 878 F.3d at 682-83 (finding equitable cause of action “allows courts to review *ultra vires* actions by the President that go beyond the scope of the President’s statutory authority”); *Mountain States Legal Found.*, 306 F.3d at 1136 (finding equitable review generally available to determine whether presidential executive memoranda exceed statutory authority); *Reich*, 74 F.3d at 1327-28 (finding, under equitable review, that presidential executive order violated National Labor Relations Act). Indeed, the Supreme Court has often reviewed whether presidential actions comply with congressional statutes without specifying or identifying a cause of action. See, e.g., *Sale v. Haitian Ctrs. Council*, 509 U.S. 155 (1993) (reviewing presidential actions relating to Haitian migrants for compliance with the INA without discussing cause of action); *Dames &
Moore v. Regan (453 U.S. 654 (1981)) (upholding executive orders, including their conformity with various statutes, without discussing causes of action).

*Ultra vires* review may be inappropriate in two circumstances, but neither exception applies here. First, inherent equitable authority is unwarranted where Congress has demonstrated an “intent to foreclose” equitable relief by providing alternate enforcement mechanisms and because the statute is judicially unadministrable. *See Armstrong*, 575 U.S. at 327-29. Here, there is no alternate mechanism for enforcing the statutory provisions at issue, and the statutory mandate and remedy—to include undocumented immigrants with all other people in the apportionment base—is eminently administrable.

Second, equitable review may be inappropriate “[w]here a statute . . . commits decisionmaking to the discretion of the President.” *Dalton v. Specter*, 511 U.S. 462, 477 (1994). But that is plainly not the case here, where Congress has mandated that the Secretary and the President perform specifically prescribed actions without any meaningful discretion. Indeed, the Supreme Court has held that by “mandating a population count that will be used to apportion representatives” under 13 U.S.C. § 141(b) and 2 U.S.C. § 2a, Congress did *not* commit unreviewable discretion the executive. *Dep’t of Commerce*, 139 S. Ct. at 2568-69.

It is beyond any question that the Memorandum requires action in excess of the authority granted by statute to the President and the Commerce Secretary. As such, this Court has ample power to grant the requested relief to ensure compliance with the law.

V. **Alternatively, a preliminary injunction is warranted to prevent irreparable harm.**

In the alternative, Plaintiffs are entitled to a preliminary injunction on their claims that the Memorandum violates the Constitution and federal law. Plaintiffs are likely to succeed on the merits of their claims that the decision to exclude undocumented immigrants from the apportionment base violates the Constitution and federal law, and that the Presidential
Memorandum violates Article I and Section 2 of the Fourteenth Amendment and violates the Census Act, for the reasons set out in Part III and Part IV above.

As this Court has recognized, “[a] showing of irreparable harm ‘is the single most important prerequisite for the issuance of a preliminary injunction.’” *XL Specialty Ins. Co. v. Level Glob. Inv’rs, L.P.*, 874 F. Supp. 2d 263, 270 (S.D.N.Y. 2012) (quoting *Faiveley Transport. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009)). Plaintiffs need only show a “threat of irreparable harm, not that irreparable harm already [has] occurred.” *Mullins v. City of New York*, 626 F.3d 47, 55 (2d Cir. 2010).

Plaintiffs will suffer irreparable and imminent harm because the Memorandum discourages immigrant households from responding to the 2020 census. The well-publicized Memorandum will produce a chilling effect on response rates by sowing confusion, mistrust, and fear among immigrant households about the consequences of responding to the census. The resulting decline in response rates will both degrade the quality of census data—thereby compromising the Governmental Plaintiffs’ policy and planning decisions that rely on that data—and result in an ultimate undercount of immigrant communities that will reduce the federal funds flowing to those communities. Plaintiffs will also suffer imminent, irreparable harm because the Memorandum will dilute the political power of Plaintiffs’ constituents.

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22 This Court may take judicial notice of the evidentiary record from the related case of *State of New York v. Department of Commerce*, 18-CV-2921 (JMF), under the “established . . . approach that permits courts in subsequent related cases to rely upon the evidence presented in earlier litigation . . . to reach their own, independent findings of fact in the cases before them.” *Haim v. Islamic Republic of Iran*, 784 F. Supp. 2d 1, 6 (D.D.C. 2011); see *Hake v. Citibank, N.A.*, No. 19-MC-125 (JGK), 2020 WL 1467132, at *5 (S.D.N.Y. Mar. 26, 2020) (“[T]he court could ‘take judicial notice of the evidentiary record in another similar case and, from that, make certain factual findings that obviate the need for Plaintiffs to re-present the same evidence.’”) (citation, brackets, and internal quotation marks omitted).
A. The Presidential Memorandum will deter immigrants and their households from responding to the 2020 census.

The Memorandum, and Defendants’ corresponding public statements, are already predictably deterring participation in the ongoing decennial census and undermining the Census Bureau’s efforts to count immigrants and their families. Just as adding a citizenship question to the decennial census would have made non-citizen and Hispanic households “unlikely to respond (or to give a complete response) to in-person NRFU enumerators,” New York, 351 F. Supp. 3d at 585, so too will the exclusion of undocumented immigrants from the apportionment base make immigrant households less willing to respond to the census or to NRFU enumerators. Barreto Decl. ¶ 85 (Ex. 56).

Defendants’ decision to exclude undocumented immigrants from the apportionment base sends a clear message that this community does not count and should be left out of the democratic process. Bird Decl. ¶ 9 (Ex. 9); Choi Decl. ¶¶ 16-18 (Ex. 14); Colon Decl. ¶ 11 (Ex. 16); Cullinane Decl. ¶ 7 (Ex. 17); Espinosa Decl. ¶ 11 (Ex. 18); Khalaf Decl. ¶¶ 12 (Ex. 26); Matos Decl. ¶ 11 (Ex. 30); Mostofi Decl. ¶ 8 (Ex. 34); Oshiro Decl. ¶¶ 12-13 (Ex. 36); Sarmiento Decl. ¶ 5 (Ex. 42); Seon Decl. ¶¶ 13-14 (Ex. 43); Soto Decl. ¶ 12 (Ex. 45); Torres Decl. ¶ 19 (Ex. 47). This message, and its import, is widely known across immigrant communities, particularly those that consume Spanish-language media. Barreto Decl. ¶ 14 (Ex. 56); Oshiro Decl. ¶ 12 (Ex. 36); Torres Decl. ¶ 18 (Ex. 47). The Memorandum undercuts Plaintiffs’ messaging that “everyone counts” and effectively discourages immigrant households from responding to the census at all. Alvarez Decl. ¶ 11 (Ex. 1); Baldwin Decl. ¶ 8 (Ex. 4); Bird Decl. ¶ 12 (Ex. 9); Broughton Decl. ¶ 6 (Ex. 10); Brower Decl. ¶ 11 (Ex. 11); Bysiewicz Decl. ¶ 8 (Ex. 12); Choi Decl. ¶¶ 16-18 (Ex. 14); Colon Decl. ¶ 7 (Ex. 16); Espinosa Decl. ¶¶ 7, 12-13 (Ex. 18); Matos Decl. ¶ 9, 12 (Ex. 30); Murray Decl. ¶ 5 (Ex. 35); Oshiro Decl. ¶¶ 12-13 (Ex. 36);
Sarmiento Decl. ¶ 5 (Ex. 42); Seon Decl. ¶¶ 9, 14 (Ex. 43); Sivongxay Decl. ¶ 12 (Ex. 44); Soto Decl. ¶ 6 (Ex. 45); Torres Decl. ¶¶ 12, 13, 19 (Ex. 47); Barreto Decl. ¶¶ 33, 54 (Ex. 56). As the Chief Demographer for New York City has explained, the Memorandum “discredits the essential message that everyone’s response matters and makes an already fearful group more apprehensive about the perceived risks associated with responding [to the census].” Salvo Decl. ¶ 10 (Ex. 41).

As Dr. Matthew A. Barreto, a Chicano/a Studies professor with decades of experience in public opinion research in the Latino community, writes, the Memorandum both reduces the benefits and raises the risks of Census participation for undocumented immigrants because “the July 21 PM states they won’t count, and there is now a risk of their information being linked to immigration records and facing immigration enforcement.” Barreto Decl. ¶ 62 (Ex. 56); see also Torres Decl. ¶ 20 (Ex. 47). Following the issuance of the Memorandum, immigrant community members living in Monterey County, for example, expressed that “[w]e don’t matter, why be counted if at the end of the day being counted doesn’t matter in terms of political power, which is where we need it most.” Soto Decl. ¶ 12 (Ex. 45). And immigrant community members in Virginia explained that “they don’t see a benefit in filling out the [census] form if they will not be counted.” Sarmiento Decl. ¶ 6 (Ex. 42).

Furthermore, the Memorandum sows fear that the Trump Administration is again seeking to identify the location and numbers of undocumented immigrants, ostensibly for exclusion from apportionment (a grave harm in its own right), but also potentially for immigration enforcement purposes. Alvarez Decl. ¶ 10 (Ex. 1); Bird Decl. ¶ 6 (Ex. 9); Cullinane Decl. ¶ 8 (Ex. 17); Espinosa Decl. ¶¶ 12-13 (Ex. 18); Matos Decl. ¶ 12 (Ex. 30); Mostofi Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 10, 14 (Ex. 36); Roche Decl. ¶ 6 (Ex. 38); Sarmiento Decl. ¶ 12 (Ex. 42); Sivongxay Decl. ¶ 13 (Ex. 44). As Dr. Barreto explains, the Memorandum is likely to “generate a chilling
effect and incentivize households with undocumented immigrants to provide no additional information to the Federal Government that they feel would implicate their immigration status,” particularly with respect to census questionnaire items “asking about nativity or ethnic/racial group.” Barreto Decl. ¶ 31 (Ex. 56). Since the Memorandum was issued, mixed-status families have questioned “whether they should participate in the Census as a result of their fears that the Government could probe into the undocumented individuals in [their] extended fam[ilies].” Espinosa Decl. ¶ 13 (Ex. 18); see also Choi Decl. ¶ 19 (Ex. 14); Oshiro Decl. ¶ 10 (Ex. 36); Torres Decl. ¶ 20 (Ex. 47). As with the citizenship question, these fears will predictably reduce census response rates in these communities, particularly with respect to government-related NRFU efforts.

Plaintiffs have already begun to see signs that the Memorandum is deterring census response in their own communities. See Baldwin Decl. ¶¶ 8-9 (Ex. 4); Bird Decl. ¶ 12 (Ex. 9); Choi Decl. ¶ 27 (Ex. 14); Espinosa Decl. ¶¶ 10-13 (Ex. 18); Khalaf Decl. ¶¶ 11-12 (Ex. 26); Mostofi Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 11-14 (Ex. 36); Sarmiento Decl. ¶ 7 (Ex. 42); Seon Decl. ¶¶ 13-17 (Ex. 43); Sivongxay Decl. ¶ 13 (Ex. 44); Soto Decl. ¶ 12 (Ex. 45); Torres Decl. ¶¶ 2, 16 (Ex. 47); Aranda-Yanoc Decl. ¶ 7 (Ex. 51). Plaintiffs have also observed an appreciable increase in the number of questions from immigrant and Latinx constituents and media (particularly Spanish-language media) about the privacy and confidentiality of their census responses, Barreto Decl. ¶ 16 (Ex. 56); Baldwin Decl. ¶ 8 (Ex. 4); Banerji Decl. ¶ 5 (Ex. 5); Choi Decl. ¶ 19 (Ex. 14); Mostofi Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 10, 12, 14 (Ex. 36); Seon Decl. ¶ 16 (Ex. 43); Sivongxay Decl. ¶ 22 (Ex. 44); Torres Decl. ¶ 18 (Ex. 47); Aranda-Yanoc Decl. ¶ 7 (Ex. 51); as well as how the Administration would identify undocumented immigrant populations for exclusion from the apportionment count. Alvarez Decl. ¶ 10 (Ex. 1); Choi Decl.
¶ 18, 27 (Ex. 14); Cullinane Decl. ¶ 8 (Ex. 17); Espinosa Decl. ¶¶ 12-13 (Ex. 18); Oshiro Decl. ¶ 10 (Ex. 36); Seon Decl. ¶ 16 (Ex. 43). These concerns about privacy, confidentiality, and potential immigration consequences reflect further reluctance to respond to the census among an already hard-to-count population at a critical point in the enumeration—right before the start of NRFU operations.23

Because of the Memorandum’s chilling effect on immigrant communities, the NGO Plaintiffs will have to divert resources from mission critical programs—including education, housing, and pandemic-related assistance—to additional census outreach. See New York, 351 F. Supp. 3d at 616-17; Choi Decl. ¶¶ 20-26 (Ex. 14); Espinosa Decl. ¶¶ 14-17 (Ex. 18); Khalaf Decl. ¶¶ 14-15 (Ex. 26); Oshiro Decl. ¶¶ 15-16 (Ex. 36); Seon Decl. ¶¶ 17-18 (Ex. 43); Torres Decl. ¶ 23 (Ex. 47). Plaintiffs’ census outreach efforts have centered on publicizing the importance of counting every person, regardless of citizenship or immigration status, including for apportionment purposes. See Choi Decl. ¶ 12; Espinosa Decl. ¶ 7 (Ex. 18); Oshiro Decl. ¶ 7 (Ex. 36); Seon Decl. ¶ 9 (Ex. 43); Torres Decl. ¶ 12 (Ex. 47). The Memorandum directly contradicts these messages, which has resulted in members of the communities that the NGO Plaintiffs serve expressing reluctance to respond to the census. Choi Decl. ¶¶ 17, 27 (Ex. 14); Espinosa Decl. ¶¶ 13-14 (Ex. 18); Khalaf Decl. ¶¶ 12-15 (Ex. 26); Oshiro Decl. ¶¶ 10-14 (Ex. 36); Seon Decl. ¶¶ 12-15 (Ex. 43). The NGO Plaintiffs are diverting resources to increase or revise their outreach efforts to overcome the Memorandum’s damage because once the enumeration period closes the opportunity for Plaintiffs to ensure their communities are counted—and receive the political power and government funding to which they are entitled—is


Defendants’ recent decision to accelerate the conclusion of nonresponse followup operations heightens the urgency—and exacerbates these injuries—because it limits the timeframe in which this Court can grant meaningful relief to redress these harms. The Bureau announced earlier this year that it would collect census responses through October 30. Thompson Decl. ¶ 14 (Ex. 57). On August 3, Defendants abruptly reversed course, opting to end field operations even earlier—on September 30, just 54 days from the date of this filing. See *Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count* (Aug. 3, 2020), https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html. This change dramatically reduces the remaining time during which individuals can respond to the census and the time for Plaintiffs to conduct outreach efforts to ensure a complete count. Bird Decl. ¶¶ 10-11 (Ex. 9); Choi Decl. ¶ 24 (Ex. 14); Espinosa Decl. ¶¶ 15, 21 (Ex. 18); Oshiro Decl. ¶ 18 (Ex. 36); Seon Decl. ¶ 22 (Ex. 43); Torres Decl. ¶ 24 (Ex. 47); Thompson Decl. ¶ 16 (Ex. 57). Furthermore, many of the Governmental Plaintiffs’ jurisdictions have already observed low response rates in immigrant communities. Alvarez Decl. ¶ 9 (Ex. 1); Baldwin Decl. ¶ 7 (Ex. 4); Brower Decl. ¶ 10 (Ex. 11); Bysiewicz Decl. ¶ 10 (Ex. 12); Hardcastle Decl. ¶ 5 (Ex. 21); Mohamed Decl. ¶ 8 (Ex. 33); Murray Decl. ¶ 7 (Ex. 35); Salvo Decl. ¶ 4 (Ex. 41); Sivongxay Decl. ¶ 10 (Ex. 44). The compounding deterrent effect of the Memorandum on response rates and the short window of time remaining to encourage response requires emergency relief.
B. By depressing response rates, the Presidential Memorandum will irreparably degrade the quality of census data vital to public policymaking and cause Plaintiffs to lose federal funding.

The Memorandum’s harm to response rates will inflict irreparable injury on Plaintiffs by degrading the quality of the resulting Census Bureau data and reducing the funding streams guided by that data. First, the decline in self-response and the decreased NRFU effectiveness resulting from the Memorandum’s chilling effect on immigrant communities will degrade the quality of the data that the Governmental Plaintiffs rely upon to “allocate educational and public health resources efficiently and effectively,” New York, 351 F. Supp. 3d at 610-11, as well as other critical public resources. Salvo Decl. ¶ 8 (Ex. 41); Aragon Decl. ¶ 5 (Ex. 2); Arwady Decl. ¶ 4 (Ex. 3); Baldwin Decl. ¶ 28 (Ex. 4); Bayer Decl. ¶ 6 (Ex. 6); Bell Decl. ¶ 5 (Ex. 7); Bird Decl. ¶ 13 (Ex. 9); Brower Decl. ¶ 13 (Ex. 11); Bysiewicz Decl. ¶ 9 (Ex. 12); Cassidy Decl. ¶ 5 (Ex. 13); Cline Decl. ¶ 5 (Ex. 15); Freedman Decl. ¶ 5; ¶ 5 (Ex. 20); Hardcastle Decl. ¶ 6 (Ex. 21); Jimenez Decl. ¶¶ 3-4 (Ex. 24); Kaneff Decl. ¶¶ 5-6 (Ex. 25); Lundine Decl. ¶ 4 (Ex. 29); Medina Decl. ¶ 4 (Ex. 32); McCaw Decl. ¶ 7 (Ex. 31); Rapoza Decl. ¶ 7 (Ex. 37); Rodriguez Decl. ¶ 5 (Ex. 39); Rynerson Decl. ¶ 13; Sternesky Decl. ¶ 9 (Ex. 46); Wheeler Decl. ¶ 9 (Ex. 48); Wyatt Decl. ¶ 13 (Ex. 49); Wortman Decl. ¶ 5 (Ex. 50). Indeed, the decennial census is the “statistical backbone of our country”; census data allows the Government Plaintiffs to “guide[] policy decisions, assists in the direction of city resources generally, and informs responses to public health emergencies and disasters.” Salvo Decl. ¶ 13 (Ex. 41). The Governmental Plaintiffs rely upon the census to produce accurate characteristics data to make decisions about housing (Wyatt Decl. ¶¶ 3, 6-7, 11-12 (Ex. 49); Lopez Decl. ¶ 12 (Ex. 20); Sternesky Decl. ¶ 3 (Ex. 46)); school resources (Bird Decl. ¶¶ 14-15 (Ex. 9); Cassidy Decl. ¶ 3 (Ex. 13); Howell Decl. ¶ 2 (Ex. 23); Lane Decl. ¶ 5 (Ex. 27); Lopez Decl. ¶¶ 14-15 (Ex. 28); McCaw Decl. ¶ 6 (Ex. 31); Mohamed Decl. ¶ 6 (Ex. 33); Salvo Decl. ¶ 15 (Ex. 41)); public
health (Arwady Decl. ¶ 6 (Ex. 3); Hammond Decl. ¶ 3 (Ex. 20); (Ex. 29); McCaw Decl. ¶ 6 (Ex. 31), Salvo Decl. ¶ 14 (Ex. 41)) and infrastructure and transportation (Aragon Decl. ¶ 5 (Ex. 2); Baldwin Decl. ¶ 16 (Ex. 4); Biagi Decl. ¶¶ 4-5 (Ex. 8); Brower Decl. ¶ 15 (Ex. 11); Lopez Decl. ¶ 13 (Ex. 28); Kanef Declar. ¶ 3 (Ex. 25); McCaw Decl. ¶ 6 (Ex. 31); Mohamed Decl. ¶ 6 (Ex. 33); Salvo Decl. ¶ 17 (Ex. 41); Wheeler Decl. ¶ 4 (Ex. 48)), among other key decisions. A decline in the quality of that data will impair the Governmental Plaintiffs’ “ability to make and implement such policies.” New York, 351 F. Supp. 3d at 600.

Moreover, as with the citizenship question, reduced response rates among immigrant households due to the Memorandum will result in a net differential undercount of these households, as “each of NRFU’s steps will replicate or exacerbate the effects of the net differential decline in self-response rates among noncitizen households.” New York, 351 F. Supp. 3d at 583; Barreto Decl. ¶ 70 (Ex. 56) (“[T]he PM increases the likelihood that Latinos, immigrants, and noncitizens are less likely to self-respond to the 2020 census” and that “non-responding individuals are also unlikely to respond after household visits by census enumerators because of fear of government interaction.”); Thompson Decl. ¶ 13 (Ex. 57) (explaining that the Memorandum will impact the macro environment and undermine NRFU, “significantly increas[ing] the risk of larger total and differential undercounts”). This undercount will disproportionately deprive Plaintiffs and their constituents of federal funding for education and social services. New York, 351 F. Supp. 3d at 597-98; see also Aragon Decl. ¶ 6 (Ex. 2); Baldwin Decl. ¶ 15 (Ex. 4); Brower Decl. ¶ 25 (Ex. 11); Kanef Decl. ¶ 4 (Ex. 22); Lopez Decl. ¶ 11 (Ex. 28).
C. **Plaintiffs will be irreparably harmed by Defendants’ efforts to reallocate political power away from their jurisdictions.**

The Memorandum’s stated goal—to shift political power away from jurisdictions that are home to substantial numbers of undocumented immigrants, 85 Fed. Reg. at 44,680—effectively concedes that Plaintiffs will be irreparably harmed by Defendants’ actions. “The Supreme Court has squarely held that the loss of a seat or seats in the House of Representatives” imposes direct harms “because of the dilution of political power that results from such an apportionment loss.” *New York*, 351 F. Supp. 3d at 595, 607; *see also Carey v. Klutznick*, 637 F.2d 834, 836-38 (2d Cir. 1980) (finding irreparable harm based on the “deprivation of [the plaintiffs’] right to a fair apportionment” based on the likelihood that New York would lose a congressional seat). The likely loss of political power as a result of the exclusion of undocumented immigrants in the apportionment count constitutes a “concrete,” “actual or imminent” injury that is “not ‘conjectural’ or ‘hypothetical.’” *U.S. House of Representatives*, 525 U.S. at 332 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)).

There is no dispute that an apportionment excluding undocumented immigrants will result in the loss of congressional seats in states in which at least some of the Plaintiffs are located—this is the express purpose of the Memorandum. Dr. Christopher Warshaw confirms that the Memorandum will “almost certainly” cause states with large undocumented immigrant populations to lose congressional seats—its intended impact. Warshaw Decl. § 11 (Ex. 58); *see U.S. House of Representatives*, 525 U.S. at 330 (affirming summary judgment based on expert testimony concerning the loss of congressional seats in apportionment). Dr. Warshaw found that if undocumented immigrants are excluded from the apportionment count, Texas—home to three of the Governmental Plaintiffs’ jurisdictions and numerous members of the NGO Plaintiffs—has a 98.3% chance of losing a congressional seat. Warshaw Decl. § 43, Tbl. 7 (Ex. 58). Dr.
Warshaw further found that New Jersey and California are highly likely to lose seats under the Memorandum, and Florida, Illinois, New York and Arizona are also at risk of losing seats. *Id.*

These harms require immediate relief, as “time is of the essence,” and “[d]elayed review would cause hardship to Plaintiffs.” *New York*, 351 F. Supp. 3d at 502. The President must report to the Clerk of the House the apportionment population counts for each state within one week of the opening of the next session of Congress, and the Clerk of the House must inform each state governor within fifteen days of receiving the apportionment population counts. 2 U.S.C § 2a(a). Where an invalid apportionment base count threatens to yield a misallocation of congressional seats, “the possibility of irreparable harm . . . is likely, if not certain.” *U.S. House of Representatives v. U.S. Dep’t of Commerce*, 11 F. Supp. 2d 76, 88 (D.D.C. 1998). Waiting until Defendants actually alter the apportionment in January 2021 by excluding undocumented immigrants will only create confusion and disruption.

**D. The balance of equities and public interest favor a preliminary injunction.**

In deciding a motion for a preliminary injunction against the federal government, the inquiries into the “balance of equities” and whether “an injunction is in the public interest” merge. *See Make the Road N.Y. v. Cuccinelli*, 419 F. Supp. 3d 647, 665 (S.D.N.Y. 2019) (citations omitted). In this merged inquiry, the court must “‘balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief,’” as well as “‘the public consequences in employing the extraordinary remedy of injunction.’” *Id.* (quoting *Winter*, 555 U.S. at 24). Here, the balance of the equities and public interest tip sharply in Plaintiffs’ favor.

The public interest in a complete and accurate census is paramount. “The integrity of the census is a matter of national importance. As noted, the population count has massive and lasting consequences. And it occurs only once a decade, with no possibility of a do-over if it turns out to
be flawed.” *New York*, 351 F. Supp. 3d at 517. Defendants’ actions drive immigrants away from responding to the census and, in so doing, degrade the accuracy and integrity of the resulting headcount. This harm is cumulative and irreparable; each day the Memorandum remains in effect, it will continue to drive down response rates and undermine the “statistical backbone” of the country. *Salvo Decl. ¶ 13 (Ex. 41).* Likewise, Plaintiffs and the public have an interest in ensuring that the apportionment count and resulting distribution of political power accurately reflects the population at large.

By contrast, Defendants will suffer no injury at all if the Memorandum is enjoined pending a final decision on the merits. As discussed *supra*, the Memorandum’s exclusion of undocumented immigrants from the apportionment count violates the Constitution and the Census Act, and “the Government does not have an interest in the enforcement of an unconstitutional law.” *New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (quoting *ACLU v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003)). Moreover, the current crisis is one of Defendants’ own making, if not their own design. Despite issuing an Executive Order calling for the collection of citizenship data for redistricting purposes more than a year ago,24 President Trump waited to announce the Memorandum until the middle of the counting period, just as the census was poised to begin critical NRFU operations. Nearly simultaneously, Defendants chose to end the response period a month earlier than scheduled, further limiting the Bureau’s ability ensure an accurate headcount. The Memorandum is part of a pattern of conduct by Defendants that is directed at undermining the enumeration, particularly with respect to the counting of immigrants and communities of color. Among other remedial value, a preliminary

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injunction will serve the “strong interest in ensuring that the census proceeds in an orderly, transparent, and fair manner—and, relatedly, that it is conducted in a manner that bolsters public confidence in the integrity of the process and helps strengthen this mainstay of our democracy.”

New York, 339 F. Supp. 3d at 150-51 (quotation marks omitted). In particular, a preliminary injunction will help restore some measure of trust in the census that Defendants have repeatedly attempted to erode among immigrants and give Plaintiffs an opportunity to conduct outreach in an atmosphere less polluted by Defendants’ misinformation and attempts to intimidate and marginalize immigrants. Barreto Decl. ¶¶ 66-69 (Ex. 56); Espinosa Decl. ¶ 15 (Ex. 18); Choi Decl. ¶ 24-25 (Ex. 14); Seon Decl. ¶ 22 (Ex. 43); Torres Decl. ¶ 24 (Ex. 47).

CONCLUSION

For the foregoing reasons, the Court should grant partial summary judgment in favor of Plaintiffs, or alternatively a preliminary injunction.

DATED: August 7, 2020

Respectfully submitted,

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Exhibit 56
Expert declaration of Matthew A. Barreto, Ph.D.

I. Background and Qualifications

1. I am currently a Professor of Political Science and Chicana/o Studies at the University of California, Los Angeles. I am the co-founder and faculty director of the Latino Politics and Policy Initiative (LPPI) in the Luskin School of Public Affairs, a national research center that studies policy issues that impact the Latino and immigrant community.

2. Before I joined UCLA in 2015, I was a professor at the University of Washington for more than nine years, where I was promoted to Associate Professor with tenure, and then Full Professor with tenure. At the University of Washington, I was an affiliated faculty member of the Center for Statistics and the Social Sciences, and an adjunct Professor of Law at the UW School of Law. I am also the co-founder of the research firm Latino Decisions.


4. I earned a Ph.D. in Political Science at the University of California, Irvine in 2005, with an emphasis on racial and ethnic politics in the United States, political behavior, and public opinion.

5. I have published multiple peer-reviewed academic research papers on Latino participation in the U.S. Census, immigrant public opinion and immigrant political engagement (among other topics).

6. In 2018 I provided expert reports and testimony in three federal lawsuits challenging the Department of Commerce’s inclusion of a citizenship status question on the 2020 Census, which included an extensive literature review and evaluation of how immigrants react to changes to the U.S. Census. In all three federal trials, the courts recognized my expertise in studying immigrant political and civic participation, and cited my literature review in ruling in favor of the plaintiffs.
7. I have conducted research nationwide and in New York, California, Indiana, Wisconsin, Pennsylvania, Alabama, Texas, North Dakota, and North Carolina in connection with litigation assessing, among other things, how the public responds to, and is affected by, changes in the law. Courts have accepted my research studies as viable and methodologically accurate instruments to understand how the public responds to changes in state law. In particular, my previous research has focused on understanding sub-group analysis to evaluate differential impacts by race and ethnicity. Recently in North Carolina, a federal court relied on my research in issuing an injunction against the state’s voter ID law. In addition, the United States District Court for the District of North Dakota stated in Brakebill v. Jaeger (No. 1:16-cv-008) that “the Court gives the findings of the Barreto/Sanchez Survey, and the other studies and data presented by the Plaintiffs, considerable weight.” Prior to this, in 2014 in Veasey v. Perry (No. 13-CV-00193), the United States District Court for the Southern District of Texas, and in findings affirmed by the Fifth Circuit Court of Appeals, found that my survey was statistically sound and relied upon my survey findings to evaluate the impact of Texas’s voter ID law. Likewise, in Frank v. Walker (No. 2:11-cv-01128), a survey I administered and included as part of my expert report was given full weight by the United States District Court for the Eastern District of Wisconsin in a voter ID case in Wisconsin.

8. In Fish v. Kobach (No. 16-2105-JAR-JPO), the plaintiffs retained me as an expert witness to evaluate the methodology of the defendant’s survey, and the United States District Court for Kansas found me to be an expert on best practices of survey research and credible and qualified to discuss survey methodology.

9. I have also regularly presented my expert review and summary of social science literature as part of expert witness reports and declarations, which have been accepted as valid and relied upon by the courts. Review of published social science literature is a well-established method among political scientists and social scientists in general for drawing valid conclusions regarding the general consensus in the field. Literature reviews are an essential component of all academic research and a requirement for publishing peer-reviewed academic research because they
establish the baseline set of knowledge and expectations within the field. As noted above, in litigation challenging the addition of a citizenship question to the 2020 decennial census, three federal courts in New York, California, and Maryland relied upon my literature review as providing credible and valid evidence to help the courts form their opinions.

10. Earlier in 2020, in _New York v. Immigration and Customs Enforcement_, I provided an in-depth literature review examining how immigrant communities respond to increased immigration enforcement, surveillance and monitoring of undocumented immigrants.

11. My full professional qualifications and activities are set forth in my curriculum vitae, a true and correct copy of which I have attached hereto as Appendix A.

II. **Scope of Work**

12. Plaintiffs in this action retained me to evaluate whether the Presidential Memorandum (PM) issued by President Donald Trump on July 21, 2020 to exclude undocumented immigrants from the apportionment base in 2020 would have a negative impact on the Census participation rates of immigrant communities, including undocumented immigrants, legal permanent residents, and naturalized U.S. citizens. To conduct my evaluation, I reviewed two sources of information. First, I compiled an analysis of news coverage of the PM to assess the reach of the announcement. Second, I conducted a comprehensive literature review on survey methodology, response rates, sensitive questions and methodology, and census procedures addressing missing data and imputation.

13. I worked on this project with Mr. Marcel Roman, a Ph.D. student in the department of Political Science at UCLA and Mr. Chris Galeano, a J.D. student in the UCLA School of Law. Mr. Roman and Mr. Galeano both helped me compile sources for the literature review and news coverage of the aforementioned PM.
III. Executive Summary

14. Based on my review of the news coverage of the PM, the extant literature published in the social sciences, and my own extensive experience with immigrant civic engagement, I conclude that the July 21 PM will reduce participation in the 2020 census, and ultimately will reduce the accuracy of the 2020 census. The PM generates the perception of real and immediate threat for undocumented immigrants that will erode their trust in the census, which will lead to increased non-response in immigrant communities. Calling attention to the citizenship or immigration status of immigrants in a negative light causes immigrants to reduce their civic engagement. The new PM sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count, eroding trust that was restored after the threat of a citizenship question on the Census was removed. The strength of that negative signal is visible in coverage of the PM in Spanish-language media, which is a trusted source of news within Latino and immigrant communities. Signals of a threat to the status of undocumented immigrants generate a well-documented “chilling effect” on public participation for immigrants, i.e., the perception of threat will erode trust that leads to a reduction in immigrant engagement with government programs and officials. However, subsequent official action to counteract such threats--either court orders or changes in agency policy--have positive effects on trust and engagement. The perception of immigration status-related threat generated by the PM will make undocumented and mixed-status households less likely to engage with the Census—particularly with enumerators conducting in-person Non-Response Follow-Up (NRFU). The reduction in response rates among undocumented immigrant and mixed-status households will result the Census Bureau using proxy-response and imputation techniques that are error-prone and tend to undercount immigrant households.

15. My review of news accounts following President Trump’s July 21 PM finds there was widespread coverage, particularly within Spanish-language news media. Whether through television, print, or online outlets, the message relayed by the media was that the PM singled out immigrants through a process that invoked citizenship status, or a lack thereof, as part of the 2020
Census, in an effort to exclude them from the apportionment process. Spanish-language news journalists reported that as a result of the PM there was confusion, fear, and anxiety in immigrant communities about fully participating in the 2020 Census. According to a journalist for Telemundo\(^1\) who spoke with many people familiar with the PM, “activists have already reported that this attempt may have scared many people off from responding to the Census, which is particularly detrimental to states with high immigrant populations such as California, Texas, and New York.” This sentiment was widely reported across Spanish-language news in the days and weeks following the July 21 PM.

16. Extensive research studies show Spanish-language media acts as a catalyst for engaging, informing and mobilizing Latino and immigrant communities. Spanish-language journalists and news anchors act as a medium for the feelings and concerns prevalent within Latino immigrant communities, specifically those who are undocumented. Spanish-language media plays a central role in mobilizing and educating the immigrant community on immigration issues in particular. The high levels of trust in Spanish-language media amongst immigrants plays a key role when listening and learning about the issues that matter most to them, in particular those related to immigration policy. Research studies have documented that many immigrants take direct cues related to civic engagement and participation from what they hear, read, and watch on Spanish-language media.

17. Undocumented immigrants are deeply intertwined into the fabric of American communities. Research and statistical reports have repeatedly found that undocumented immigrants see themselves as part of American society and indeed have longstanding ties in the cities and towns in which they permanently live. A clear majority of undocumented immigrants have lived in the United States for over five years and have families, hold jobs, own houses, and are part of their community. A survey of Latino undocumented immigrants\(^2\) found that 89% had

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lived in the U.S. over five years, that 74% have children living with them in the U.S. and 85% have a family member in the U.S. who is a U.S. citizen, and indeed that 87% of undocumented immigrants themselves said they hoped to one day become U.S. citizens if legislation were passed to provide that opportunity.

18. Following the June 2019 ruling by the U.S. Supreme Court blocking the inclusion of a citizenship question, Census partners known as Trusted Voices conducted extensive outreach to undocumented immigrants to assure them that the federal government would not be monitoring their citizenship status as it relates to the 2020 Census. The new PM sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count, significantly eroding trust.

19. The published literature is quite clear: a critical component to ensure an accurate response rate on any survey, including the census, is trust between the public and the survey administrator. The prior published studies conclude that response rates will fall without a high degree of trust. The new PM erodes the trust that many community-based organizations with experience serving immigrants had built up over the past year.

20. Trust is particularly important in communities with undocumented populations as many prior reports and publications by the Census Bureau have made clear. The Census Bureau has identified vulnerable population subgroups concerned about the potential misuse of personal information provided to the Census as at-risk for low participation rates and for undercounts. From this perspective, the new PM lowers trust and makes it much harder to stimulate participation in the census from vulnerable populations such as immigrant and minority communities, if such communities do not trust the Census.

21. Far-ranging social science research documents a phenomenon called “the chilling effect” in which immigrant communities withdraw and avoid interactions with government officials or agencies if they believe there could be a risk of adverse consequences for their own

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3 Here we mean persons who are foreign-born and emigrated to the United States.
immigration status or the status of others in the community. Specifically, some studies have found that Census participation rates drop in immigrant communities when federal immigration enforcement is perceived to be connected to the Census. In fact, the Census Bureau has published studies pointing to fears over the federal government learning their about citizenship status as a major obstacle in some immigrant communities.

22. Social science research since the 1990s, but especially so in more recent years, is near consensus in finding evidence of the “chilling effect,” i.e., strong patterns of avoidance, withdrawal, and exclusion during times of increased immigration enforcement. This research is often community-focused and highlights how increased attention to immigration status or immigration monitoring by authorities, results in noticeable withdrawal in that specific context. Immigrants, and often their children and others in their close network, will purposely avoid or withdraw from an environment where they fear potential immigration enforcement. The fear associated with detention, separation from their children or family, and possible deportation is so paralyzing that many immigrants – when faced with possible immigration enforcement – avoid even necessary public services such as police protection, health services, going to work, sending their children to school, or attending court to defend their rights. The takeaway is clear – increased negative attention to citizenship status issues decreases trust in those specific agencies or actors and leads to immigrant withdrawal.

23. If trust is low, attempts to re-interview or re-contact households will be far less successful either. Census respondents must believe that there is no jeopardy or threat of disclosure to ensure their participation in a survey, regardless of how many attempts one might make to prompt their participation.

24. Already, a prior study from 2018 about perceptions of the 2020 Census found that levels of trust in immigrant and minority communities in the United States were low as a result of concerns over citizenship. The extensive media attention to the citizenship question resulted in high levels of fears among immigrants. When asked about the protection of their and their family members’ sensitive information, including citizenship status, immigrant respondents were
statistically less likely to trust that the Trump administration will protect their information and not share it with other federal agencies (just 35% were trusting). Among Latino respondents overall, just 31% trust the Trump administration to protect their personal information, which is statistically lower than among non-Latinos. While the June 2019 SCOTUS decision may have alleviated these fears by striking the citizenship question, the July 2020 PM effectively re-confirms those immigrant fears because it sends a signal to immigrant communities that the Trump administration will be monitoring their citizenship status so they may subtract these participants from the 2020 base population count for the apportionment base. In essence, Trump has returned the immigrant community to a condition of wariness similar to when the citizenship question was to appear on the census. They believe their participation is either no longer safe, or not required due to the PM of July 2020 to specifically single out undocumented immigrants.

25. The survey also found that large percentages of immigrants and minorities are concerned specifically that their personal information reported on the census will be shared with Immigration and Customs Enforcement (ICE). Overall, 41% of immigrants surveyed state they are concerned about this, along with 40% of Latinos.

26. When households do not initially self-respond to the census, the Census relies on nonresponse follow up (NRFU) to re-contact households to encourage them to respond. In simulated re-contact, my research has demonstrated that a majority of non-responders to the 2020 census will not switch and become participants when asked again to do so. In particular, research has found that NRFU is less successful when immigrant communities have fears about information concerning their citizenship status being collected or revealed.

27. Larger households will be the most difficult to successfully convert from non-participation to participation if there are fears about citizenship status data being collected or monitored, further undermining an accurate count. Existing research has found that among immigrants who would take the census upon NRFU recontact, their average household size is 2.91 compared to an average household size of 3.94 for immigrants who would not participate upon recontact, leaving them, and their larger households uncounted.
28. One of the ways Census Bureau officials try to account for people who refuse to respond to the census is to mathematically account for non-responders through statistical methods such as “substitution” or “imputation.” Both of these methods use information on responding households to estimate population information on non-responding households. However, when there are fears about citizenship status are introduced, non-responding households are statistically different than responding households on a variety of critical demographics, which violates an important assumption of substitution or imputation. For these methods to serve as viable alternatives, missing units and reported units should be roughly equivalent. However, the existing research reveals that when fears over citizenship status emerge, non-responding households are more likely to be larger in size, be foreign-born, and have different age and educational outcomes than responding households. This will make substitution and imputation inaccurate and unreliable, and makes it highly likely that there will be a net undercount of households refusing to respond to the census due to the citizenship question.

IV. Literature Review and Research Findings

A. The July 21 Presidential Memorandum Received Wide Coverage in Spanish News Media and Created Confusion and Fear About the 2020 Census

29. On July 21, 2020 President Trump issued a Presidential Memorandum declaring that undocumented immigrants will be excluded from the decennial census for apportionment purposes.\textsuperscript{4} Specifically, following the completion of the 2020 Census, the PM requires that individuals without lawful immigration status be excluded from the apportionment base for the purpose of the reapportionment of the U.S. House of Representatives. The PM refers to last year’s Executive Order 13880,\textsuperscript{5} which instructed executive departments and agencies to share

\textsuperscript{4} Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census (July 21, 2020), \url{https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/}

\textsuperscript{5} Collecting Information About Citizenship Status in Connection With the Decennial Census (July 11, 2019), \url{https://www.whitehouse.gov/presidential-actions/executive-order-collecting-information-citizenship-status-connection-decennial-census/}
information with the Department of Commerce . . . to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country.” This order signals to hard-to-count populations, such as undocumented immigrants and mixed status families, that the federal administration is compiling citizenship related data on them, and that they are to be excluded from the 2020 Census. While there are technicalities that an undocumented immigrant may fill out the Census form, and then be deducted later, this nuance is lost on a community that has been under constant attack and threat from President Trump and his administration. A memorandum issued by the President stating that undocumented immigrants will be identified in specific communities and then excluded from the official Census population count sends a clear message of exclusion.

30. In particular, the PM reverses recent progress that has been made by community-based organizations following the June 2019 Supreme Court ruling which blocked the citizenship question from being added to the 2020 Census. In an effort to mitigate the challenge posed by the citizenship question, outreach advocates also sought to use the U.S. Supreme Court’s decision as a starting point “to convince everyone to participate in the census count” and emphasize the benefits of participating in the census. Because the highest and definitive court in our country had struck down the citizenship question, outreach to immigrant communities could emphasize this as a selling point to fill out the census without any fears about someone’s immigration status being reported. For the Census Bureau’s part, they would enact a public outreach plan that involved “working with local organizations to encourage census participation among immigrants, communities of color and other groups the bureau considers hard to count” to combat the mistrust by these communities.

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6 Some point out that matching census and administrative data will lead to matching errors and exclude millions of U.S. citizens from the apportionment process. Randy Capps et al., Millions of U.S. Citizens Could Be Excluded under Trump Plan to Remove Unauthorized Immigrants from Census Data, Migration Policy Institute (July 2020), https://www.migrationpolicy.org/news/millions-us-citizens-could-be-excluded-under-plan-remove-unauthorized-immigrants-census

7 https://www.huffpost.com/entry/2020-census-citizenship-question_n_5d2f378ce4b02f01d1dd9f74

31. The new PM undermines these efforts and implies the government is attempting to enumerate the undocumented immigrant population, which could undercut participation. Because of the 2019 Supreme Court decision, there is no direct mechanism for assessing whether a Census response includes data from an undocumented immigrant using Census responses. If the federal government is attempting to exclude undocumented immigrants from the Census count, immigrant communities are likely to draw two conclusions. First, undocumented immigrants, the people they live in the same household with, and others in immigrant communities may be worried the government is attempting to find out their legal status through other means. This is not beyond the realm of possibility, given that the Trump administration has instructed federal agencies to use existing state and federal records to determine citizenship status (Levine, 2020). This could generate a chilling effect and incentivize households with undocumented immigrants to provide no additional information to the Federal Government that they feel would implicate their immigration status. Second, undocumented immigrants and those with ties with undocumented immigrants may think the government will use other means to find them, such as their responses to questions asking about nativity or ethnic/racial group. Therefore, they will not fill out the Census form writ large since probabilistically, providing information on other characteristics might facilitate government efforts to track and identify undocumented immigrants.

32. After the President announced the PM, widespread reports about how the PM would seek to exclude undocumented immigrant populations from the reapportionment process were published by major news outlets throughout the U.S. Major Spanish-language media and

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9 For instance, Nebraska, South Dakota, and South Carolina voluntarily agreed to transfer citizenship data from their state driver’s license and state ID records to the U.S. Census Bureau (Wang, 2020).
print news outlets throughout the nation also reported on the PM. They included Telemundo,11 Univision,12 Azteca America,13 and Estrella TV14—all major media sources for Spanish-speaking viewers with hundreds of local television stations and affiliates throughout the U.S.15 Newspapers and online media outlets for Spanish-speaking readers also reported on the PM’s intention to leave out undocumented immigrants from the reapportionment process.16 Whether


through television, print, or online mediums, the message relayed by the media was that the order singled out immigrants through a process that invoked citizenship status, or a lack thereof, as part of the 2020 Census, in an effort to exclude them from the apportionment process. Since the PM was signed, it has prompted discussion by Spanish-language news segments on its implications for the immigrant community. These reports have conveyed to Spanish-speaking audiences that millions of undocumented immigrants living in the U.S. would not be counted when deciding how to apportion congressional seats because of the PM, affecting states such as California, Florida, and Texas, each of which includes large undocumented immigrant populations within their communities.

33. Across these news accounts, immigrants, as well as individuals who worked with community-based organizations that serve immigrants, and even journalists, all stated that they believed the July 21 PM was an effort to sow confusion and distrust, and to reduce the count of Latinos and immigrants on the 2020 Census. Examples of some of the direct quotations from these news sources include:


why the Hispanic community does not participate in the 2020 Census or feels that their participation is low? Unfortunately, this is not the first time that President Trump has threatened and intimidated our undocumented immigrant community... and yes, he has fostered fear in our communities. Once again, he tells our immigrant community, don't count yourselves, we don't need you.”19

b. “Hay varias organizaciones que están reaccionando y no están de acuerdo con esta movida de la casa blanca porque ya llevan más de un año tratando de incentivar a la comunidad de indocumentados para que participen del censo, para que no tenga miedo y hagan escuchar su voz, ahora esta acción prácticamente se convierte en un golpe bajo para la comunidad de inmigrantes indocumentados en este país.” “There are several organizations that are reacting and do not agree with this move by the White House because they have been trying for more than a year to encourage the undocumented community to participate in the census, so that they are not afraid and make their voice heard, now this action practically becomes a low blow to the undocumented immigrant community in this country.” 20

c. “Además, afirman que el anuncio del presidente "claramente" tiene la intención de promover el miedo y disuadir la participación en el censo de inmigrantes y sus familias, ya que se produce solo unas semanas antes de que los enumeradores estén programados para salir y alentar a los hogares a responder al censo.” “In addition, it claims that the president's announcement is "clearly" intended to promote fear and discourage participation in the census by immigrants and their families, since it comes just weeks before enumerators are scheduled to leave and encourage households to respond to the census.”21

d. “Algunos oponentes afirman que es un intento para suprimir el creciente poder político de los latinos en Estados Unidos y discriminar a las comunidades inmigrantes de otras minorías no blancas.” “Some opponents claim it is an attempt to suppress the growing political power of Latinos in the United States and to discriminate against other non-white, minority immigrant communities”22

e. “Es una manera de tratar de eliminarlos numéricamente del mapa, borrarnos en cuanto a números” “It is a way of trying to wipe us out numerically, wipe us out in terms of numbers”

34. The PM has threatened to upend a year’s worth of outreach efforts by groups focused on hard-to-count populations. These groups now face a big challenge: reach out to...


people who haven’t filled out their census form yet who are now worried the federal administration will use whatever information they provide in the 2020 Census to target them. Solving this challenge is now more urgent for these groups given the Census Bureau’s recent decision to shorten the period for collecting responses, including NRFU operations, by 31 days. 23

35. According to Arturo Vargas, the CEO of NALEO, one of the nation’s top civic engagement organizations in the Latino and immigrant community, the new PM is a setback that creates fear in the immigrant community. NALEO has been identified by the Census Bureau itself as one of the most important “trusted voices” to earn trust in the Latino community. Vargas stated on Twitter 24: “With a successful #NALEOVirtual Conference done, time now to refocus on #Census2020 - which just got even MORE DIFFICULT with @POTUS effort to exclude immigrants from the apportionment numbers and cutting short @uscensusbureau's time to finish the count. Our community is scared.” Vargas went further to note 25 that the new PM was undoing progress made after striking the citizenship question, “#Census2020 is the most challenging to promote participation I have seen in my career. After @SCOTUS stopped a citizenship question, we had a fighting chance. Now @POTUS has made it much harder by his July 21 memo and by cutting off @uscensusbureau’s field work early. @NALEO”

B. Spanish-Language News Media is a Trusted Source for Immigrants

36. Studies show Spanish-language media acts as a catalyst for engaging and mobilizing Latino and immigrant communities. Spanish-language journalists and news anchors act as a medium for the feelings and concerns felt amongst Latino immigrant communities, in particular among undocumented immigrants. Green-Barber discuss these trends in Spanish-speaking media. 26 She found that Spanish-speaking households have high utilization of internet

24 https://twitter.com/ArturoNALEO/status/1291764313405812737?s=20
25 https://twitter.com/ArturoNALEO/status/1291792560390729728?s=20
26 Lindsay Green-Barber, Latinos and the media: Patterns, changes and ideas for more connection, Center for Investigative Reporting.
and Spanish TV and radio, indicating the large presence and critical role of the Spanish-language media has in Spanish speaking homes. She also found that the Spanish-speaking media plays a central role in mobilizing and educating Latino communities on immigration issues in particular.

37. Research shows that households who more closely follow Spanish-language news rely on that information when it comes to civic and political engagement. Garcia-Rios and Barreto (2016) investigated media habits of Latino immigrants and found that people with high rates of Spanish-language news consumption were more informed and had high rates of immigrant identity, meaning that they were particularly aware and responsive to immigration-related news and current affairs. In 2012, a positive association between Spanish news coverage of President Obama’s DACA program and immigrant identity spurred naturalized citizens to vote at higher rates. In other instances, exposure to negative information can lead to withdrawal.

38. Research on Spanish-language media by Federico Subervi-Velez (2008) notes “the intersection between media and Latinos when assessing political socialization and mobilization of Latinos.” To put simply, Spanish-language media is a critical bridge that informs and influences immigrants in politics and is often a direct reflection of Latino immigrant opinion in America. One example is the reliance of Spanish-language radio to share and spread information about anti-immigrant legislation in the U.S. Congress (Felix et. al, 2008). Research found that Spanish media personalities such as Almendarez Coello (El Cucuy), Eduardo Sotelo (El Piolín) and Christina Saralei presented and educated the community on the anti-immigration rhetoric that was becoming prominent in politics (Felix et al, 2008). Coello and Sotelo’s provided daily updates and created awareness about H.R. 4437, a bill that could negatively impact immigrant communities. In particular, research has found that the high levels of trust in

Spanish-language media plays a key role when Latino immigrants read or hear about the issues that matter most to them, like immigration policy.

C. **Trust and Socio-Political Context are Two Key Factors That Impact Survey Response Rates and Accuracy**

39. The decennial census is a population survey. There have been extensive studies across the social sciences documenting the best practices and potential pitfalls in collecting accurate survey data. With respect to evaluating the 2020 Census there are two key takeaways that are quite clear in the published literature. First, trust between the public and the survey administrator is crucial. Prior studies conclude that response rates will fall without a high degree of trust, leading to a biased survey project because it excludes people from the data and is no longer representative. Second, the social and political context during survey implementation can greatly impact trust, confidence, and participation rates. This is especially the case for vulnerable populations when they perceive an unwelcoming environment or context. Of these key takeaways, the hallmark of cooperation in any survey is trust. Subjects are more likely to participate in a survey, to complete survey items accurately, and respond fully to survey items when they trust the survey administrator. When potential respondents are suspicious, uncertain, anxious or untrusting, non-response rates significantly increase. An early study on this topic framed the issue as how much threat potential respondents perceive through the source of the survey (Ball 1967; Bradburn et al. 1978). When subjects identify the survey as being implemented on behalf of authorities who they perceive could use their answers against them, they are likely to not-respond, or to respond untruthfully (Ball 1967). From this perspective, newfound fears about citizenship status due to the July 21 PM will make securing participation of immigrant communities much harder than if the PM had never been issued.

40. A research study by the U.S. Government Accountability Office in 2003 (GAO-03-605) laid out the most appropriate approaches to surveying the Latino population specifically. The report was commissioned because prior government surveys, in particular the Census, were
characterized by high rates of non-response with Latino respondents. The report stated that distrust — especially of those representing the government — was a leading factor in Latino immigrant non-response. To fix this, the report recommended increasing trust so that potential survey respondents are not fearful of their participation, and not suspicious of the census questions being asked, or the census enumerators visiting their community. The July 21 PM related to undocumented immigrants does precisely the opposite, increasing distrust and, therefore, making it substantially less likely that members of the Latino immigrant subgroups will respond to the census.

41. De la Puente (1995) examined issues related to trust, confidentiality, and fear among potential census respondents in El Paso, Texas and found that fear and apprehension on part of the sample area residents led to concealment of information from the Census Bureau and from the ethnographers, due to their belief that the government will not keep their information private or confidential when it comes to highly sensitive questions. This research establishes that the Census Bureau already knows it has challenges with trust in some immigrant communities and attempts to overcome those challenges by not asking sensitive questions that make it very difficult to persuade communities with low trust. While the threat of a citizenship question was dropped, this brand new PM of July 21 instills a new sense of confusion and fear and will result in increased problems with trust in such communities and a corresponding reduction in Census response.

42. In a follow-up study a decade later, de la Puente (2004) concluded that individuals with unstable immigration statuses were much less likely to trust the government and specifically less likely to fill out the census questionnaire. Indeed, properly counting undocumented immigrants has long been a concern for the Census Bureau. De la Puente’s research demonstrated that respondents with irregular immigration statuses are unlikely to directly cooperate with the Census if they perceive their immigration status will be revealed. The July 21 PM does precisely this; it sends a strong signal to undocumented immigrants that the federal government is collecting data about them, and will match various government records to find and exclude certain immigrants. One respondent in the de la Puente study, who did have legal status as a student, was afraid to participate in the Census because she feared that at some point in the future she may go out of
status and that the information she provided to the Census Bureau might be used to track her down. According to de la Puente, it is critical that immigrant respondents clearly understand that their immigration status is not associated with the Census population count.

43. An important practice that ensures higher participation rates in surveys is respondent anonymity, particularly when there might be concerns over immigration status. The Census violates anonymity by requiring the respondent to list the names of all household members. If respondents do not trust the survey administrator, and there is no anonymity, vulnerable respondents are far less likely to participate. Tourangeau and Yan (2007) explain how the “threat of disclosure” can result in non-response. Generally, people have concerns about the possible consequences of participating in a survey, or giving a truthful answer should information become known to a third party with enforcement powers. The authors explain a survey may be “sensitive” if it raises fears about the likelihood or consequences of disclosure of the answers to agencies or individuals directly, or not directly involved in the survey. As an example, Tourangeau and Yan (2007) discuss asking a question about marijuana use to a group of teenagers. If the teens suspect that the answers could be shared with their parents, they opt out of the survey or lie. But if the survey is completely anonymous and implemented by their peers, they are much more likely to participate and be truthful. The perceived threat of disclosure to authorities is what matters. With the July 21 PM, the federal government has clearly created a perception of threat for immigrants and the 2020 Census.

44. A review of findings across different surveys suggest that the likelihood of survey response largely depends on timing and contextual factors, including the respondent’s personal situation and the features of the data collection, such as the degree of privacy it offers. The exact same survey might be highly sensitive and risk non-participation in one setting, but be acceptable and proper in another. To this point, a comprehensive review of survey environment research indicates that highly sensitive surveys will be disruptive, produce non-response, or result in biased data when the respondent is concerned that their answers could be known by authorities. However, if the respondent feels secure and has total privacy and anonymity, they are likely to participate.
and provide truthful answers (Tourangeau and Smith 1996). In particular, Krysan (1998) found evidence that respondents greatly modified their answers to questions and issues related to views about race, ethnicity, and immigration based on how they felt the interviewer would perceive or judge their responses.

45. Concerns about confidentiality are likely to exacerbate the unwillingness of certain communities to respond to the Census in the current socio-political context created by the July 21 PM. A study of immigrant communities’ knowledge and awareness of the Census found that one major concern was confidentiality of personal information (Raines 2001). Beyond the Latino immigrant community, this study reported evidence that immigrants from Laos, Somalia, Iraq, Bosnia, and Haiti expressed concerns over anonymity and confidentiality. The general takeaway is that as additional private, personal, or sensitive questions are added, the degree of concern over anonymity and confidentiality raises considerably. Even if the Census Bureau provides assurances, many may not believe or trust those assurances. In part, this might be due to the current social and political context (laid out above in paragraphs 29-34) or could also be due to prior experiences in their home country with authoritarian regimes and government data collection. Thus, for a population survey to be accurate, it is critical that respondents truly believe their answers to questions will always remain confidential and not used against them. The July 21 PM opens the door to that exact fear because the federal government plans to use administrative data and records to exclude undocumented immigrants from the base population count.

D. The Threat of Non-Response is Real and Immediate

46. The overall national sociopolitical environment has raised awareness and alertness among immigrant communities, but by itself, the national context does not depress immigrant participation. Instead the published literature is clear that immigrants react to specific threats as they develop, and they engage fully when those threats are removed. Indeed, in areas with low levels of immigration enforcement and threat of deportation, or in so-called sanctuary cities, research does not find evidence of a chilling effect or withdrawal (e.g. Garcia 2019). However,
the national context does cause immigrants to take more notice of their surroundings and be aware of the potential for a negative interaction with immigration officials. When immigration enforcement is heightened, the current (2017-2020) national sociopolitical climate can result in a more significant withdrawal. Put simply, President Trump has put the immigrant community on edge. In June of 2019, they had the protection of the U.S. Supreme Court which gave assurances that their citizenship status could not be connected to the 2020 Census. The July 21 PM changed the risk of threat in the minds of many immigrants who hear Trump’s words as connecting a federal monitoring program of undocumented immigrants to the 2020 Census. They may not do the full research to realize they can still fill out the Census safely, because they hear the news which is connecting the July 21 PM to Trump’s longstanding desire to increase deportation of undocumented immigrants. Further, the July 21 PM sends the signal to undocumented immigrants to avoid the Census because they will not be counted. If the President issues a memorandum saying you will not be counted on the Census base population count, and you have a lingering fear over your citizenship status, there is virtually no reason at all to transmit your entire household’s personal information to the federal government. Existing research makes clear that when new threats emerge due to changes in policy, immigrants take note and withdraw.

47. Perhaps the best summary of how the combination of federal policies and political environments interact is found in a new book by Angela Garcia, *Legal Passing: Navigating Undocumented Life and Local Immigration Law* (2019). In this book, Garcia reviews a plethora of data and research on how immigrant communities respond and react to both threatening and accommodating environments, and how a national climate of hostility does not automatically create a chilling effect for immigrants everywhere. Rather, Garcia showed with extensive evidence that specific context and the proximate threat of immigration enforcement versus accommodation is what matters the most. Instances with the highest levels of threat produce the most withdrawal. In her study of more accommodating or welcoming environments, Garcia finds immigrants are able to navigate life effectively, writing “At the same time, this book also argues against the popular depictions of undocumented immigrants being pushed underground, their perception of
threat so strong that they avoid engaging in public life... As compared to restrictive destinations, the integrative outcomes of accommodating locales that I describe in this book are evident in undocumented Mexicans’ ease of physical navigation, deeper willingness to interact with local police, and place-based sense of belonging.” Of particular importance is the timing of when threats pop up or become visible. Garcia describes “initial reactions immediately after new clampdowns – sweeps, raids, and checkpoints” being the most intense periods of avoidance. However eventually immigrants learn how to navigate their communities, and to avoid locations of particular threat, but otherwise effectively go about their day.

48. Thus, the literature demonstrates that the current era is a particularly anxiety-inducing period in American history for undocumented immigrants, and those concerned about immigration enforcement. However, this just serves to frame the environment, it does not by itself lead to wholesale withdrawal. Rather, the literature points to the importance of specific instances of threat that result from new policies that create fear, anxiety and avoidance.

49. Prior survey research in January 2020\textsuperscript{30} assessed how Latinos in New York reacted to information about whether or not ICE was present in and around state courthouses. The question there was whether increased threat of immigration enforcement resulted in immigrant withdrawal. ICE was sporadically conducting immigration-related searches in or near state courthouses across New York. In our survey experiment, we randomly assigned one set of respondents to a condition in which we reminded them of ICE presence at state courthouses, while other respondents were randomly assigned to a condition without the information about ICE presence.

50. Across the full sample of Latinos in New York, the survey experiment results demonstrate that being informed about ICE presence at state courthouses has a strong, and statistically significant causal effect on increasing avoidance behavior and withdrawal. This effect is consistent across eight different types of engagement. When confronted with information about

\textsuperscript{30} Survey conducted as part of the expert declaration by Matthew A. Barreto in NY v. ICE lawsuit.
ICE conducting arrests and detention at courts in New York, Latino participants reduced their intention to attend state court as a witness, as a defendant, to accompany a family member, to protect their rights, or to testify about a housing complaint. In addition, they were less likely to go to the police as witness, or to call the local police if they witness a crime, or to submit a police report as a victim. This suggests that when Latinos and immigrants learn about a new threat, they respond immediately with reduced intention to participate or engage.

51. Because the overall sample size of the survey was large (n=1,001) the New York courthouse research included additional analyses on immigrant segments within the main sample. The results of the subset analysis are consistent with the extant literature and expectations, with much stronger causal effects of avoidance and withdrawal among the foreign-born Latinos, and much stronger effects among non-citizens, and the strongest causal evidence of the chilling effect among Latinos are acquainted with an undocumented immigrant. These analyses provide very strong evidence that is theoretically motivated and consistent with decades of social science research on the immediate chilling effect of immigration enforcement.

52. A newer study conducted during the period of Trump’s presidency finds similar results. The Violence Against Women Act (VAWA) allows women who are victims of domestic violence to petition to change their immigration status and was used effectively when women felt safe enough to call immigration officials. However, in February 2017 the Trump administration reactivated the Secure Communities program which coordinated local police databases with ICE. As such, in areas of increased ICE presence, the study found that fewer and fewer women initiate police reports of domestic violence. The authors explain this is due to fears over being reported to, or detained by ICE. As the authors conclude, “intensified immigration enforcement might increase misreporting due to fear of being over scrutinized and, potentially, placed in a position that jeopardizes the possibility of staying in the country.” (Amuedo-Dorantes and Arenas-Arroyo 2019). This is yet another example of a before/after study which finds direct and immediate evidence of immigrant withdrawal after a change in policy, in this case, by the Trump administration.
E. Extensive Research Confirms Fears About Immigration Enforcement and The Chilling Effect

53. Additional ethnographic research has revealed that undocumented immigrants and mixed-status households are likely to avoid government contact when they suspect it is not safe to participate (de la Puente 1995). This is especially the case when sensitive topics will be potentially discussed or revealed. Velasco (1992) maintains that undocumented immigrants in his sample area in San Diego, CA avoided contact with government. He argues that this avoidance was one of the important contributing factors to census omission and estimates that over half of the sample area residents were undocumented immigrants. Similar situations were also reported in the Miami, FL sample area (Stepick 1992) and in the 26 rural Marion County, OR sample areas (Montoya 1992). However, the ethnographic research all concludes that participation barriers can be overcome by not including worrisome questions about citizenship status and by working with community based organizations and cultural facilitators to increase trust and confidence in data privacy.

54. Levels of trust in immigrant and minority communities are very low with respect to issues related to citizenship. In a prior national survey about the 2020 Census, when asked about protecting sensitive information, including citizenship of themselves and family members, only 35% of immigrants expressed trust that the Trump administration will protect their information and not share it with other federal agencies. Among Latino respondents overall, just 31% trust the Trump administration to protect their personal information. According to my prior survey research, a very large percent of immigrants and minorities believe the Trump administration will share their personal information with other federal agencies.

55. Research related to the 2020 Census suggests that the Census Bureau was well aware of potential issues related to non-response over immigration fears. A comprehensive study by the Census Bureau’s Center for Survey Measurement presented at the National Advisory Committee on Racial, Ethnic, and Other Populations Fall Meeting 2017 (Meyers 2017) reported an increase in respondents expressing concerns to researchers and field staff about confidentiality and data
access related to immigration, legal residency, and citizenship status, and their perception that certain immigrant groups are unwelcome. There was an observation of increased rates of unusual respondent behaviors during pre-testing and production surveys, including item-nonresponse, break-offs, and refusals, especially when the questions involved citizenship status. The most commonly occurring finding was that respondents appeared visibly nervous about disclosing their private information and who would have access to such data. The current political climate was of concern to respondents: in one Spanish interview, a respondent stated, “the possibility that the Census could give my information to internal security and immigration could come and arrest me for not having documents terrifies me.”

56. As this finding makes clear, immigrant communities can be especially vulnerable to the social and political context surrounding the implementation of a survey. A study of immigrants in California and Texas found that respondents’ fear over citizenship status correlated with their non-participation in the health sector (Berk and Schur 2001). This study found strong evidence that a threatening context can lead immigrants to withdraw and limit their access to public services, including access to medical care which they greatly needed. Likewise, anxiety and fear over immigration status has been found to reduce utilization of services related to health care, law enforcement, and education (Pedraza and Osorio 2017). In particular, research has identified the context of heightened “immigration policing” as one that erodes trust in other public institutions and creates an environment in which immigrant communities are very selective as to where, when, and how they engage with government agencies (Cruz Nichols, LeBrón and Pedraza 2018). The finding is not just limited to first-generation immigrants themselves; the research also finds a strong spillover effect to U.S.-born Latinos who have immigrant parents, or feel connected to the immigrant community, and also demonstrates non-participation during times of threatening context.

57. Studies have shown that the political context after 2016 and the election of Donald Trump has significantly diminished Latinos’ trust of the federal government. For instance, Michelson and Monforti (2018) find that Latinos, including those who are undocumented, were
less trusting of government in 2016 than in 2012. In 2012, trust amongst Latinos was strong across all subgroups of Latino immigrants—citizens, non-citizens with legal status, and undocumented immigrants. Four years later, Latinos registered lower levels of trust in government, with fewer than 1 in 20 Latinos in any subgroup responding that they trust the government “just about always.” In addition, Sanchez and Gomez-Aguinaga (2017) report that an overwhelming majority of Latinos described Trump and his policies as scary (74%), dangerous (77%), hostile (78%), and unwelcoming (80%) and they conclude that the current context is creating tension, anxiety, and nervousness among Latinos and immigrants. While the June 2019 Supreme Court decision striking the citizenship question allowed community outreach groups to push reset and create a campaign that citizenship would not be associated with the Census at all, the new PM reinjects concerns about citizenship status into the 2020 population count.

58. Beyond the Latino and immigrant communities, there is also reason to expect that increased fears about citizenship could increase non-response rates among Arab and Middle Eastern Americans. Research by Oskooi (2016) and Lajevardi and Oskooi (2018) demonstrates that American Muslims and those of Arab and Middle Eastern ancestry currently perceive a high rate of discrimination and an unwelcoming environment. Oskooi (2016) explains how perceived social exclusion can result in withdrawal and non-participation by these communities and documents this fact empirically in his published research. In research by the Center for Survey Measurement, focus groups conducted in Arabic among immigrants from the Middle East revealed the potential for Census non-response due to questions about citizenship status in light of the current political climate. (Meyers 2017). Some focus group participants referred to the “Muslim Ban” when expressing why they would be nervous about reporting their immigration and citizenship status to the federal government.

59. This context is particularly important as it relates to the issues about citizenship status, because this is the point of tension for many in the immigrant community today. That is, there is grave concern over providing information to the federal government given the perceived high rates of immigrant policing. And now that newfound distrust and fear is directly related to citizenship
status as a result of the July 21 PM, a considerable non-response is the likely outcome.

60. A clear implication identified in the relevant literature on surveys is that when respondents perceive a threatening survey, and if trust is low, non-participation will result in an inaccurate survey. Further, attempts to re-interview or re-contact households will not be successful, and some re-contact may only serve to further erode trust. Survey respondents must believe that there is no potential jeopardy before participating. Once a respondent believes that participation in the survey could bring them harm, and that the survey enumerator is acting on behalf of an official agency, attempts at repeated re-contact typically do not result in a completed survey (Ball 1967). In interviews with the enumerators themselves, there is a sense that the issues related to citizenship status will make their jobs harder, if not impossible (Meyers 2017).

61. Prior experiences with census data collection efforts that overlapped with anti-immigrant contexts provide evidence that non-response follow-up (NRFU) will be much more difficult in 2020 given the political climate and the PM. Terry et al. (2017) describe the connection between a threatening context and Census non-response in Arizona and Texas among immigrant communities: “the wider social context also had an important role in enumeration. Just before the NRFU enumeration program started in 2010, Arizona passed a very strong anti-immigration law that coincided with legal ordinances in two Dallas-area cities. These ordinances were aimed at identifying illegal immigrants through police stops or the reporting of immigration status of applicants wishing to rent apartments. The new law provoked heightened tensions around the country, particularly in the Dallas/Fort Worth-area Hispanic community. As a result, these reports conclude that non-response was high and that NRFU was less successful.

62. Undocumented immigrants may already fear providing their information to the government. They are a hard-to-reach population that is difficult for enumerators to gain access to and follow-up on in the event of non-response. To overcome these difficulties, non-governmental organizations and the Census Bureau have engaged in targeted messaging toward immigrant communities that participation in the Census would help increase access to public resources, federal funding, and political representation (Levine, 2020; Liptak et al., 2020; Smith,
2020). However, the PM, by excluding the count of undocumented immigrants from the apportionment base, completely undercuts this incentive to participate. If the government is going to remove them from the base population count, why bother filling out the 2020 Census at all? Undocumented immigrants are likely to perceive that there is no benefit to participation, as the July 21 PM states they will not count, and there is now an increased risk of their information being linked to immigration records and facing immigration enforcement.

63. It is important to note undocumented immigrants and their social ties are often risk-averse, assume the worst-case scenario, and are highly suspicious about whether their information would be shared with Federal immigration authorities (Yoshikawa, 2011; Dreby, 2015; Torres-Ardila, Bravo, and Ortiz, 2020). For example, even U.S.-citizen Latinos reduced their participation in Medicaid as a result of a punitive immigration enforcement environment (Watson, 2014; Vargas, 2015). It is unlikely Medicaid service providers will use their records to find undocumented friends or family, but the perception of legibility to immigration authorities was sufficient to produce system-avoiding behaviors. In another research paper, U.S.-born children of undocumented immigrants avoided a variety of record-keeping institutions (e.g. banking, formal employment, voter registration) as a result of their social ties with an undocumented parent (Desai, Su, and Adelman, 2019).

64. Undercounting undocumented immigrants will have spillover effects on effectively counting the broader legal non-citizen and citizen population. Mixed-status households are affected by the PM. The PM suggests the government may be using various forms of information to identify undocumented immigrants. If undocumented immigrants are the head of the household or if the head of household is responsible for undocumented immigrant friends and/or family members, they may not respond or allow themselves to be contacted by follow-up enumerators in order to protect the anonymity of their undocumented social ties. This means citizen children, documented spouses of undocumented immigrants, documented partners of undocumented immigrants, and/or documented family of undocumented immigrants will be less likely to be counted in the census.
65. One implication of the fear and unrest in the immigrant community is the increased mobility which could render any attempt at imputation or substitution incomplete and inaccurate. For imputation to work, the missing unit household cannot be vacant, and likewise cannot be a second home or vacation home of someone already counted. The missing unit household should have someone living there as their primary residence. However, as Frost notes that many undocumented immigrants who receive government letters or notices may pick-up and move their entire family, rather than wait around and figure out a way to interact with public officials. Similarly, this is documented by O’Hare (2017) who notes that Latino children are especially susceptible to being undercounted due to mobility. There is evidence that if immigrants are fearful of attempts by the federal government to obtain the personal information, identities, and citizenship statuses of all members of their household, they may vacate their homes and move to avoid being contacted again (Meyers 2017). To the extent this happens, attempts at imputation or substitution will be inaccurate, both on the national level, but especially on state and local levels.

F. When Subsequent Official Action is Taken to Remove Threats Related to Immigration Status, Immigrants Respond with Participation

66. On January 9, 2018, a federal court in the Northern District of California issued a nationwide preliminary injunction against the Trump administration effort to phase-out DACA. The January 2018 decision allowed existing DACA recipients to apply for renewals. Later, on February 13, 2018 a second federal court in the Eastern District of New York also issued a nationwide preliminary injunction to allow DACA renewals to continue. When the court enjoined the effort by the Trump administration to repeal DACA and allowed undocumented immigrants to begin applying for DACA, there was an immediate rush of applications by undocumented immigrants who held DACA status, but were expired. According to data from the United States Customs and Immigrant Services (“USCIS”), 64,210 immigrants applied for renewal immediately after the January 2018 injunction, and 31,860 were approved by March 31,
2018 and 32,280 were pending, with only 70 having been denied.\textsuperscript{31} Over the course of 2018, USCIS reported 287,709 total requests for DACA renewal were made by undocumented immigrants.\textsuperscript{32} Despite additional legal challenges, throughout 2019 the injunctions from Northern California and Eastern New York remained in place nationwide and 406,586 persons applied for DACA renewals across 2019.\textsuperscript{33} Despite the Trump administration’s continued legal challenges to DACA, public statements denigrating immigrants, once the courts issued the injunctions to protect DACA, undocumented immigrants became trusting of this program.

67. On July 2, 2015, the Priority Enforcement Program (PEP) was implemented by U.S. Immigration and Customs Enforcement (ICE). It was announced by then-DHS Secretary Jeh Johnson in a November 2014 memo, and was meant to replace the then-existing Secure Communities program, which coordinated local police databases with ICE. PEP implemented a series of mandates that immigration enforcement should prioritize individuals who have engaged in serious criminal activity or who pose national security threats. In short, it mandated that ICE cast a smaller net in identifying, detaining, and deporting undocumented immigrants. In addition, PEP made it more difficult for ICE to execute immigration detainers. ICE had to state probable cause (via reference to the priorities) in order to execute a detainer in addition to the local law enforcement agency having to serve a copy of the detainer request on the individual in order for it to take effect. The intent of the new policy was for police to collaborate less with ICE and to only focus their detention efforts on serious criminals. The Dallas County Sheriff, which controls the county jails and oversees the processing of immigrants detained agreed to participate in the PEP program to reduce the local prominence of ICE in Dallas.\textsuperscript{34} A research paper

\textsuperscript{31} Approximate Count of DACA Receipts: Since January 10, 2018, As of Mar. 31, 2018

\textsuperscript{32} Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012-Mar. 31, 2020

\textsuperscript{33} Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012-Mar. 31, 2020

\textsuperscript{34} Dallas county jails complied with the PEP. Dallas County Sheriff Lupe Valdez formally agreed to participate in the program after meeting with ICE representatives in July and August 2015. In August 2015, Dallas County
analyzing Dallas Police Department (DPD) police reports finds clear evidence that the implementation of PEP increased crime reporting to DPD by Hispanic and immigrant subjects in Dallas. The data shows Hispanic and immigrant engagement with police increased significantly in the immediate quarter after PEP was implemented. And in the six quarters following the change in policy, Hispanics and immigrants voluntarily reported around 6,000 more incidents to the police than they would have been if the enforcement priorities had not changed. Thus, reversals or limitations imposed on executive actions may have measurable consequences on promoting trust among immigrant communities and influencing behavioral interactions with various aspects of government.

68. In prior survey research in 2018 to test the impact of a citizenship question being included or excluded from the 2020 Census, there was a clear finding of increased Census participation after removing any fear of immigration status being exposed. Initially, after being told about the citizenship question, a sizable share of respondents said they would not participate in the 2020 Census. Later in the survey, respondents were randomly assigned to a condition in which they were told the government changed their mind and a citizenship question would NOT be included after all. A second set of participants were randomly assigned to a condition in which it was reaffirmed that the government would in fact include a citizenship question.

90. **Table 7: Percent of Non-Responders Who Change to Responders at Q7 / Q8**

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>White</th>
<th>Latino</th>
<th>Black</th>
<th>AAPI</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q8 Yes - with citizenship</td>
<td>45.2</td>
<td>49.5</td>
<td>38.9</td>
<td>62.2</td>
<td>0.2</td>
<td>17.2</td>
</tr>
<tr>
<td>Q7 Yes - without citizenship</td>
<td>84.3</td>
<td>89.3</td>
<td>80.1</td>
<td>78.6</td>
<td>53.3</td>
<td>94.9</td>
</tr>
<tr>
<td>Difference</td>
<td>-39.1</td>
<td>-39.7</td>
<td>-41.2</td>
<td>-16.5</td>
<td>-53.1</td>
<td>-77.7</td>
</tr>
</tbody>
</table>

officials began reviewing ICE’s request prior to honoring them with the vetting guidelines being similar to PEP priorities, ensuring only individuals who posed a threat to public safety were transferred to ICE’s custody. This is evidenced in data by Jacone (2018), who finds total detainers dropped by roughly 1,000 by the end of 2015 due to decreases in detainers issued for individuals convicted of misdemeanors and those with no conviction.


Among Latinos who said they would not participate in the census with a citizenship question, 80 percent changed their mind and said they would participate once they learned that the citizenship question would be removed. The mechanism here is whether or not those in the immigrant community believe their participation creates increased risk of exposing themselves to immigration enforcement. Members of immigrant communities are very concerned about their citizenship status being monitored or revealed. When they believe the threat is real, they will withdraw from the Census, and when that threat has been removed, they reengage. This provides very strong evidence that when fears about citizenship status being revealed are removed, a large share of Latinos will indeed increase their participation in Census 2020.37

69. Across the wide-ranging literature, a key finding is that immigrants are normally eager to engage in public life and with political institutions, but when there is a threat of negative consequences for their immigration status, avoidance behavior is likely. (e.g. Garcia 2019).

G. Non-Response Follow-Up (NRFU) and Imputation of Non-Responding Households

70. The Census Bureau is aware that some households will not respond to the initial request for participation, and as such they have long had a program called Non-Response Follow-Up (NRFU) which provides follow-up contact with any households that do not initially respond. The Census Bureau estimates they conducted follow-up with around 50 million households in 2010 (Rao 2017). NRFU is critical for the Census Bureau to increase participation rates, but it is a costly and difficult undertaking by their own admission. Any increased non-response at initial contact makes NRFU much more difficult, especially if non-responding households come to not trust the survey questions that enumerators are attempting to ask. What’s more, NRFU is now profoundly more difficult due to COVID-19 and the time available has been shortened. As discussed in this report, the PM increases the likelihood that Latinos, immigrants, and noncitizens are less likely to self-respond to the 2020 census. These non-responding individuals are also unlikely to respond

37 See id.
after household visits by census enumerators because of fear of government interaction. (de la Puente 1995; 2004).

71. In fact, with the new focus on excluding undocumented immigrants directed by the PM, the Census outreach efforts after July 21, 2020 could actually create more fear and anxiety in immigrant communities and further drive down response rate and increase the net undercount. For example, the Census Bureau plans to send enumerators into non-responding communities on behalf of the federal government, and if nobody is home, they will leave a “Notice of Visit” from the federal government which includes a unique household “census identification number.” Further, they inform the household that additional visits will be made back to their house by enumerators on behalf of the federal government. This sends a clear signal of federal government monitoring of the household and will result in increased anxiety and concern over cooperating (e.g. Menjivar 2011; Szkupinski Quiroga et al. 2014). Research by Hagan et al. (2011) documents with clear evidence the extensive chilling effect of increased presence of government officials who appear to be monitoring immigrants and checking on their status. They find immigrants “withdrawing from the community” as well as “avoiding public places” and that they “spend most of their non-working hours in their homes because it is the safest way to avoid detection.” (Hagan et al. 2011.) According to Abrego (2011), undocumented immigrants will go to great lengths to reduce their visibility in society when they perceive a potential threat of deportation. Her research identifies withdrawal from interactions with government agencies as awareness of immigration checks increases. From the perspective of an anxious immigrant, each additional household visit from a government Census worker, following a PM directing the exclusion of undocumented people, is the exact environment that would produce withdrawal. According to Abrego: “In effect, their well-being and stability are perennially threatened because, as they are constantly reminded, there may be an ICE raid. . . at any time” (2011).

72. Research also finds that increased presence and visibility of government officials who appear to be collecting immigration information creates withdrawal and also misreporting on government forms (Rodriguez and Hagan 2004). Increased presence of immigration officials in
the community lead to a decline of student attendance in the nearby school to avoid any contact with the government officials. However, in communities without ICE presence, school attendance is not impacted. The research study observed this trend across three different cities in Texas and attributed increased withdrawal to an increased visibility and presence of government officials asking about immigration status. Further, the same study reported that Hispanics began to change their racial identification to White on government forms at health clinics to avoid any risk of association with immigration officials (Rodriguez and Hagan 2004).

73. Another study specifically examined the willingness of immigrants to participate in surveys and data collection efforts, in particular examining how fear of deportation impacted response rates and general engagement with government services (Arbona et al. 2010). One of the most important findings of this study was that if immigrants fear their participation could somehow lead to their deportation, they will not participate unless they are fully comfortable and trusting of the survey taker. As the research study progressed, Arbona et al. reported, through quantitative data, that fear of deportation was a strong motivating factor for avoidance and that over 80% of immigrants in their sample stated that they avoided activities such as “ask[ing] for help from government agencies, report[ing] an infraction to the police, attend[ing] court if requested to do so,” and other items. The more census enumerators visit immigrant communities to attempt household counts, following the July 21 PM to exclude undocumented immigrants, the more likely they will be to not participate. That is, the outreach itself will produce further non-response as a result of the socio-political climate following the PM.

74. NRFU enumerators may not be able to make contact with adult households. Enumerators may not be sufficiently linguistically or culturally competent in order to persuade undecided households to respond. For example, they may not be able to effectively convince Latinos who may be concerned about immigration issues or enforcement to respond. Many Latinos, in the context of heightened immigration enforcement, are told to not open the door to strangers due to commercial scams and guidance from immigration legal advisors regarding ICE visits (Kissam et al., 2019). Moreover, even if enumerators are able to convince members of
immigrant communities to respond despite the existence of a chilling effect, it may be logistically difficult for enumerators to make contact with adult householders. In many immigrant communities, work hours are long and weekend work is common, increasing the difficulty for NRFU enumerators to conduct a direct interview of the household (Kissam et al., 2019).

75. NRFU also cannot account for households omitted from the Master Address File as a result of “complex households” in low-visibility unconventional and/or hidden housing units (Kissam, 2019). These complex households may be more likely to be made up of immigrants and their direct social ties. Kissam (2019) notes in the San Joaquin Valley, only 95% of the Latino immigrant study population live in housing units included in the Census Bureau’s Master Address File, resulting in a 5% household omission rate. The only way these households can be counted in the Census is if they proactively respond via online non-ID processing operations or by phone. However, these alternative mechanisms may not work if these complex households are concerned about the prospect of providing information to a government seeking to identify their citizenship status or exclude them from the count for specific purposes, such as apportionment, as required by the PM.

76. Even if NRFU results in data production, it may be faulty data. High levels of non-response force the Census Bureau to rely on alternative statistical procedures such as triangulation via administrative records, proxy interviews with neighbors, and, imputation. Some of these alternative efforts might fail in immigrant communities. Proxy interviews may fail to resolve undercounting due to mistrust of Federal authorities and lack of willingness to provide information on neighbors. Indeed, only 17% of respondents in a survey of the San Joaquin Valley immigrant community indicated they were willing to provide an enumerator with information about neighbors in the San Joaquin Valley (Kissam, 2019). It is important to note proxy interview efforts are error-prone, since they are, at best, estimates by neighbors of the number and characteristics of neighboring households. The same survey of immigrant communities in the San Joaquin Valley indicates less than half of potential Census respondents believe they know enough about their
neighbors to provide accurate responses (Kissam, 2019).

77. Moreover, finding administrative records that match households is likely to be more difficult for immigrant households, who may be less prone to providing personal or household information to various aspects of government and may not be eligible for a variety of government programs that keep records (Kissam, 2019; Asad, 2020). While the Trump administration may assume they can rely on administrative records, the reality is that this creates major methodological problems for NRFU and then imputation. The data is fraught with errors and inconsistencies and will lead to lower quality data and undercounts. Research by Bhaskar, Fernandez, and Porter (2018), who are Census Bureau researchers, indicates matching an administrative record to a household requires a Personal Identification Key (PIK). They also find foreign-born households are less likely to have a PIK than U.S.-born households. Lack of having a PIK is associated with more people in a household, living in a Census tract with a high density of foreign-born individuals, Latino/Hispanic race/ethnicity, non-citizen status, limited English or no English proficiency, and being a recent immigrant. IRS administrative records may not serve as effective proxies for enumeration given not all undocumented immigrants file income tax returns on a regular basis (Gee, Gardner, and Wiehe, 2016). Social Security Administration (SSA) records may be incomplete if immigrant workers have only worked in the informal or underground economy. Parents also may never apply for an SSN for foreign-born children without legal status. Foreign-born non-working spouses may have never applied for an SSN (Kissam, 2019). Often, the use of borrowed SSNs is prevalent among immigrant workers, which may result in potential undercounts or discrepancies in the count. Moreover, employer reports of employee’s earnings do not provide reliable or exhaustive information on household size.

78. Even if a match to an administrative record is found for a specific address, it may not accurately enumerate household size and composition because the record may be out of date or exclude peripheral household members who are not part of the primary core family living in the housing unit (Kissam, 2019). There may be discrepancies via administrative matching in neighborhoods where low-income renter households move often and administrative records may
not update frequently in immigrant communities such that newly born children will be disproportionately omitted (Kissam, 2019). If information via administrative records or proxy interviews do not bear fruit, the Census Bureau may attempt to use hot-deck imputation to determine the characteristics of households that did not respond. The problem is that non-responding households in immigrant communities may be systematically larger than those that do respond. Thus, each imputation will contribute to a differential undercut given that “donor” households have less inhabitants (Kissam, 2019).

79. In addition to trying to match households to their administrative records, the Census Bureau has indicated that it may employ statistical imputation techniques to address nonresponse. During the collection of any survey, two types of nonresponse can emerge: unit nonresponse and item nonresponse. Unit nonresponse concerns an entire missing case resulting from either non-contact, refusal, or inability to participate. Item nonresponse concerns missing values on certain questions in the survey. Bias, or incorrect and faulty data, can emerge from nonresponse when the causes of the nonresponse are linked to the survey statistics being measured, which is referred to as nonignorable nonresponse (Groves et al 2004). By way of illustration, public health officials designed a survey to measure the prevalence of HIV in the population during the early days of the HIV epidemic. Despite incentives, cooperation rates among those who were HIV-positive were extremely low because of the stigma of the disease. Thus, the key statistic sought – namely, the percentage of HIV-positive people – was causally related to the likelihood of self-response; specifically, in that case, those who were HIV-positive did not want to participate in the study at all. Non-ignorable nonresponse is particularly egregious because even if the causal influence is known “there is no way that the statistic among respondents can be made free of nonresponse bias (without making heroic assumptions about the status of the nonrespondents)” (Groves et al. 2004). What this means is that if a factor influencing the decision to not respond is correlated with an important outcome variable, imputation is impractical because you cannot observe the existence of the precise variable you are trying to count. In the case of the 2020 Census, the key outcome variable is producing an accurate count of total household size; yet, prior research establishes that
larger households are more likely to not respond when the responder’s citizenship status may be implicated. Thus, the decision whether to respond is correlated with household size, a key outcome variable of interest.

80. Some statistical tools are available to deal with nonresponse. At one end of the spectrum, if every variable of interest is known for the nonrespondent, except one, then we can use these variables to form an imputation model that will predict a value for the missing value – for example, we may know the existence of the respondent and that person’s age, but may not know their income level and can use predictive models to impute income for that respondent. At the other end of the spectrum we have entire missing cases (unit nonresponse), where the existence of the person is unknown. Imputation for unit nonresponse, sometimes called “whole person imputation,” is used almost exclusively in longitudinal surveys where ample data from prior waves exists for a missing respondent. It is extremely rare to impute for unit nonresponse if little is known about the nonrespondent case (Groves and Couper 1998). Unit nonresponse is typically dealt with by some form of post-stratification or response rate weighting adjustment\(^{38}\) (Kalton 1983). While imputation can be useful for missing values in an otherwise completed survey form (item nonresponse), it is particularly problematic for imputing the existence of whole persons, and is especially likely to end up with an undercount in vulnerable communities. This is part of the reason that social scientists and government statisticians want the decennial census to be as nonburdensome and non-sensitive as possible, to ensure an overall accurate count through high rates of participation (Wines 2018).

81. In general, whole-person imputation itself relies on a number of assumptions to work correctly. If data is missing completely at random (MCAR) (Rubin 1976), then non-response generally introduces less bias. Models are of less help with non-ignorable nonresponse, as noted above, where nonresponse depends on the values of a response variable. In this case, models can

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\(^{38}\) After the survey data are collected, statisticians can use the known universe of respondent demographics to apply weights and possibly correct for non-response, however this only corrects the dataset for use in a data analysis project or academic research paper, not necessarily population counts, which are supposed to serve as the baseline universe estimate in the first place.
help but never eliminate all nonresponse bias (Lohr 1999). Indeed, recent reviews of cutting edge
imputation procedures like “hot deck imputation” argue that “hot deck” methods for situations
where nonresponse is non-ignorable have not been well explored (Andridge and Little 2010).
Whole person imputation, then, has its dangers. The Census Bureau currently acknowledges that
“whole person substitutions and whole person imputations are not very accurate.” (See Abowd
30(b)(6) Deposition 2018)

82. With respect to the U.S. census and counts of Latino and immigrant households,
previous research has shown that whole person imputation efforts are seriously error-prone.
Because family arrangements, housing styles and total household sizes vary considerably, attempts
to impute the population of non-respondent households have been shown to undercount the
population (Kissam 2017). First, many non-traditional housing units are simply not included in
the imputation, leaving them as vacant when in reality they had tenants or dwellers. Second, the
household size of missing units tends to be larger, on average, than of reported units. Reports also
document differences by socioeconomic status. The end result is that even with imputation, there
can still be a significant undercount of the Latino immigrant population.

83. Beyond the raw count being inaccurate, there is also evidence of misattribution of those
imputed, because they rely on higher acculturated units for which there is data to make adjustments
(i.e. substituting data on U.S.-born, English-speaking and college educated households when in
fact missing cases are more likely to be foreign-born, Spanish-speaker, less educated households),
suggesting the imputed data do not accurately describe the true population (Kissam 2017). The
U.S. Government Accountability Office has itself admitted this is a problem with respect to getting
a complete count of Latinos. In the 2003 report on trying to improve the Latino count, they wrote
“even with the Bureau’s guidelines and training, deciding whether a house is unfit for habitation
or merely unoccupied and boarded-up can be very difficult. An incorrect decision on the part of
the census worker could have caused the dwelling and its occupants to get missed by the census.”

84. By examining data from a prior 2018 survey specifically about the Census, we can
conclude that unit non-response on the 2020 census will not be at random. Households that do not respond and represent missing units, are certain to have very different characteristics and demographics than the households that do respond. In this event, it makes it nearly impossible to impute or infer the population totals or any other demographic information about missing units (e.g. missing households) because we do not have enough reliable information on “matched” or similar units. Further, it is quite likely that unit non-response in 2020 will be clustered geographically, meaning that there will be fewer available adjacent units for imputation, and that analysts will have to rely on dissimilar households for imputation, thus violating the most important assumption needed for accurate imputation. In particular, non-responders were found more likely in dense urban areas and locales with high numbers of renters. These factors are known to be related to census undercounts and make NRFU difficult and result in erroneous imputation (U.S. GAO Report, 2003).

85. It is virtually certain that the reduced self-response caused by the July 21 PM related to citizenship status will lead to a net undercount among those populations with lower rates of self-response. Previous census reports have documented that high rates of non-response to the initial questionnaire result in undercounts, and that NRFU is not always successful in converting those cases into respondents. In addition, matching household to administrative records can be an unreliable method of enumerating the household, particularly for immigrant communities. Prior census reports have also documented that errors are made in imputation and that undercounts persist even after attempted imputation. Ultimately, the worse the initial non-response is, the worse the initial undercount is, making it increasingly more difficult to convert those cases into responding cases, and increasing more difficult to impute missing units (US Census Bureau 2017b; National Research Council 2002; 2004).

86. This problem has been documented to be worse in Latino and immigrant communities where the Census admits the undercount is problematic, and that their efforts at NRFU and imputation have errors (Erickson and Deфонсо 1993; O’Hare et al. 2016). One primary reason is that issues related to trust of government officials significantly hampers the NRFU process, and in
2020 the citizenship question will greatly exacerbate issues of trust in immigrant communities (See section below “Perceptions of Trust and Confidentiality” at paragraph 96). In particular, young children in Latino households have been found to be regularly undercounted by previous census efforts and that imputation methods do not appropriately find or count this population. The best assurance for an accurate count is high response rates on the initial census request for participation, which requires a high degree of trust (O’Hare et al. 2016; Casey Foundation 2018). Previous self-reports by the Census Bureau are clear: immigrant communities are already at-risk of an undercount because of lower levels of trust of government officials, and have particular anxiety over citizenship information being shared. What’s more, these previous census reports have documented that low self-participation on round one of invitations ultimately leads to an undercount that no amount of NRFU, administrative-record matching, or imputation can correct. In 2020, the PM will only create more problems, more anxiety in immigrant communities, and less self-participation on round one. With nearly 17 million people, including 6 million citizen children, living in households with at least one person who is an undocumented immigrant (Casey Foundation 2018), there is enormous potential for a massive non-response with a newly created anxiety over citizenship status as a result of the July PM.

87. After reviewing defendants report(s), I plan to offer rebuttal opinions as requested by plaintiffs.

Executed on August 7, 2020 at Agoura Hills, CA.

I declare under penalty of perjury that the foregoing is true and correct.

Matthew A. Barreto

August 7, 2020
References


Torres-Ardila, Fabian, Daniela Bravo, and Franklin Ortiz (2020). “Increasing Latino Participation Rates in the 2020 Census in Chelsea, MA”.


Abowd, John, Depositions on August 15, 2018 (hereinafter Abowd Deposition) and August 29, 2018 (Abowd 30(b)(6)).


Center for Survey Measurement. 2017. “MEMORANDUM FOR Associate Directorate for Research and Methodology (ADRM).”


Appendix A
MATT A. BARRETO – BARRETO@UCLA.EDU
UNIVERSITY OF CALIFORNIA, LOS ANGELES, 3345 BUNCHE HALL, LOS ANGELES CA 90095 / 909.489.2955

EMPLOYMENT:
Professor, Political Science, University of California Los Angeles (2015 – present)
Professor, Chicano/a Studies, University of California Los Angeles (2015 – present)
Co-Founder & Faculty Director, Latino Policy & Politics Initiative
Dept. Political Science, University of Washington
Professor (2014 – 2015)
Associate Professor (2009 – 2014)
Assistant Professor (2005 – 2009)
Co-Founder & Director, Washington Institute for the Study of Ethnicity and Race
Founding Director, Center for Democracy and Voting Rights, UW School of Law

Affiliated Research Centers
Latino Policy & Politics Initiative (LPPI), University of California, Los Angeles
Chicano Studies Research Center (CSRC), University of California, Los Angeles
Center for the Study of Los Angeles (CSLA), Loyola Marymount University

PERSONAL:
Born: June 6, 1976
San Juan, Puerto Rico

High School: 1994, Washburn Rural HS, Topeka, KS

EDUCATION:
Ph.D., Political Science, June 2005
University of California – Irvine
Sub Fields: American Politics / Race, Ethnicity and Politics / Methodology
Thesis: Ethnic Cues: The Role of Shared Ethnicity in Latino Political Participation
Thesis Committee: Bernard Grofman (chair), Louis DeSipio, Katherine Tate, Carole Uhlaner
Thesis Awards: Ford Foundation Dissertation Fellowship for Minorities, 04-05
University of California President’s Dissertation Fellowship, 04-05
University of California Institute for Mexico & the U.S. Dissertation Grant, 04-05

Master of Science, Social Science, March 2003
University of California – Irvine

Bachelor of Science, Political Science, May 1998
Eastern New Mexico University, Portales, NM
Minor: English. Cumulative GPA: 3.9, Summa Cum Laude
PUBLICATION RECORD

Google Scholar citation indices: Cites: 3,768  h-index: 28  i10-index: 54  Years post-PhD: 15  Cites/year: 236

BOOK MANUSCRIPTS:

Barreto, Matt and Christopher Parker. nd. The Great White Hope: Donald Trump, Race, and the Crisis of American Politics. Under Contract, University of Chicago Press. expected Fall 2020


PEER-REVIEWED ARTICLES


**Edited Volume Book Chapters**


<table>
<thead>
<tr>
<th>Date</th>
<th>Organization and Initiative</th>
<th>Amount</th>
<th>Duration</th>
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| Aug 2018 | Provost Initiative for Voting Rights Research  
UCLA Latino Policy & Politics Initiative [With Chad Dunn] | $90,000  | 24 months |
| April 2018 | Democracy Fund & Wellspring Philanthropic  
UCLA Latino Policy & Politics Initiative [With Sonja Diaz] | $200,000 | 18 months |
| March 2018 | AltaMed California  
UCLA Latino Policy & Politics Initiative [With Sonja Diaz] | $250,000 | 12 months |
| Dec 2017 | California Community Foundation  
UCLA Latino Policy & Politics Initiative [With Sonja Diaz] | $100,000 | 12 months |
| July 2013 | Ford Foundation  
UW Center for Democracy and Voting Rights | $200,000 | 12 months |
| April 2012 | American Values Institute [With Ben Gonzalez]  
Racial Narratives and Public Response to Racialized Moments | $40,000  | 3 months |
| Jan 2012 | American Civil Liberties Union Foundation [With Gabriel Sanchez]  
Voter Identification Laws in Wisconsin | $60,000  | 6 months |
| June 2011 | State of California Citizens Redistricting Commission  
An Analysis of Racial Bloc Voting in California Elections | $60,000  | 3 months |
| Apr 2011 | Social Science Research Council (SSRC) [With Karam Dana]  
Muslim and American? A national conference on the political and social  
incorporation of American Muslims | $50,000  | 18 months |
| Jan 2011 | impreMedia [With Gary Segura]  
Latino public opinion tracking poll of voter attitudes in 2011 | $30,000  | 6 months |
| Oct 2010 | National Council of La Raza (NCLR) [With Gary Segura]  
Measuring Latino Influence in the 2010 Elections | $128,000 | 6 months |
| Oct 2010 | We Are America Alliance (WAAA) [With Gary Segura]  
Latino and Asian American Immigrant Community Voter Study | $79,000  | 3 months |
| May 2010 | National Council of La Raza (NCLR) [With Gary Segura]  
A Study of Latino Views Towards Arizona SB1070 | $25,000  | 3 months |
| Apr 2010 | Social Science Research Council (SSRC) [With Karam Dana]  
Muslim and American? The influence of religiosity in Muslim political incorporation | $50,000  | 18 months |
| Oct 2009 | American Association of Retired Persons (AARP) [With Gary Segura]  
Health care reform and Latino public opinion | $25,000  | 3 months |
| Nov 2008 | impreMedia & National Association of Latino Elected Officials (NALEO)  
[With Gary Segura] 2008 National Latino Post-Election Survey, Presidential Election | $46,000  | 3 months |
| July 2008 | National Association of Latino Elected Officials (NALEO) [With Gary Segura]  
Latino voter outreach survey – an evaluation of Obama and McCain | $72,000  | 3 months |
| June 2008 | The Pew Charitable Trusts, Make Voting Work Project  
[with Karin MacDonald and Bonnie Glaser] Evaluating Online Voter Registration (OVR) Systems in Arizona and Washington | $220,000 | 10 months |
RESEARCH GRANTS AND FELLOWSHIPS CONTINUED...

April 2008  National Association of Latino Elected Officials (NALEO) & National Council of La Raza (NCLR), 2008 Latino voter messaging survey  $95,000 – 6 months

Dec. 2007  Research Royalty Fund, University of Washington 2008 Latino national post-election survey  $39,000 – 12 months

Oct. 2007  Brennan Center for Justice, New York University [with Stephen Nuñez and Gabriel Sanchez] Indiana Voter Identification Study  $40,000 – 6 months

June 2007 National Science Foundation, Political Science Division [with Gary Segura] American National Election Study – Spanish translation and Latino oversample  $750,000 – 24 months

Oct. 2006  University of Washington, Vice Provost for Undergraduate Education Absentee voter study during the November 2006 election in King County, WA  $12,000 – 6 months

Mar. 2006  Latino Policy Coalition Public Opinion Research Grant [with Gary Segura] Awarded to the Washington Institute for the Study of Ethnicity and Race  $40,000 – 18 months

2005 – 2006  University of Washington, Institute for Ethnic Studies, Research Grant  $8,000 – 12 months

Mar. 2005  Thomas and Dorothy Leavey Foundation Grant [with Fernando Guerra] Conduct Exit Poll during Los Angeles Mayoral Election, Mar. 8 & May 17, 2005 Awarded to the Center for the Study of Los Angeles  $30,000 – 6 months

2004 – 2005  Ford Foundation Dissertation Fellowship for Minorities  $21,000 – 12 months

2004 – 2005  University of California President’s Dissertation Fellowship  $14,700 – 9 months

2004 – 2005  University of California Mexico-US (UC MEXUS) Dissertation Grant  $12,000 – 9 months

Apr – 2004  UC Regents pre-dissertation fellowship, University of California, Irvine,  $4,700 – 3 months

2003 – 2004  Thomas and Dorothy Leavey Foundation Grant [with Fernando Guerra] Awarded to the Center for the Study of Los Angeles  $20,000 – 12 months

2002 – 2003  Ford Foundation Grant on Institutional Inequality [with Harry Pachon] Conducted longitudinal study of Prop 209 on Latino and Black college admittance Awarded to Tomás Rivera Policy Institute  $150,000 – 12 months

2002 – 2003  Haynes Foundation Grant on Economic Development [with Louis Tornatzky] Knowledge Economy in the Inland Empire region of Southern California Awarded to Tomás Rivera Policy Institute  $150,000 – 18 months

2001 – 2002  William F Podlich Graduate Fellowship, Center for the Study of Democracy, University of California, Irvine  $24,000 – 9 months
RESEARCH UNDER REVIEW/WORKING PAPERS:


Barreto, Matt and Christopher Parker. “The Great White Hope: Existential Threat and Demographic Anxiety in the Age of Trump.” Revise and Resubmit

Barreto, Matt, Natalie Masuoka, Gabe Sanchez and Stephen El-Khatib. “Religiosity, Discrimination and Group Identity Among Muslim Americans” Revise and Resubmit

Barreto, Matt, Gabe Sanchez and Barbara Gomez. “Latinos, Blacks, and Black Latinos: Competition, Cooperation, or Indifference?” Revise and Resubmit

Walker, Hannah, Matt Barreto, Stephen Nuño, and Gabriel Sanchez. “A comprehensive review of access to valid photo ID and the right to vote in America” [Under review]


Barreto, Matt, David Redlawsk and Caroline Tolbert. “Framing Barack Obama: Muslim, Christian or Black?” [Working paper]
CONSULTING EXPERT:

- North Carolina, 2019, Expert for Plaintiffs in North Carolina voter ID lawsuit, NAACP v. Cooper
- East Ramapo CSD, 2018, Expert for Plaintiffs in Section 2 VRA lawsuit, assessed polarized voting
- Dallas County, TX, 2017, Expert for Defense in Section 2 VRA lawsuit, Harding v. Dallas County
- Galveston County, TX Redistricting, 2013, Expert report for Dunn & Brazil, LLC, Demographic analysis, vote dilution analysis, and racially polarized voting analysis for Section 2 lawsuit Galveston County JP/Constable districting
- Pasadena, TX Redistricting, 2013, Expert report for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, and racially polarized voting analysis for Section 2 lawsuit within Pasadena School District
- Harris County, TX Redistricting, 2011, Testifying Expert for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, and racially polarized voting analysis for Section 2 lawsuit within Harris County
- Orange County, FL, 2012, Consulting Expert for Latino Justice/PRLDEF, Racially polarized voting analysis in Orange County, Florida
- Anaheim, CA, 2012, Consulting Expert for Goldstein, Demchak & Baller Legal, Racially polarized voting analysis for CVRA redistricting case Anaheim, CA
- Los Angeles County, CA, 2011, Consulting Expert for Goldstein, Demchak & Baller Legal, Racially polarized voting analysis for three redistricting cases in L.A.: Cerritos Community College Board; ABC Unified Schools; City of West Covina
- Harris County, TX Redistricting, 2011, Consulting Expert for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, for Section 5 objection within Harris County
- Monterey County, CA Redistricting, 2011, Consulting Expert for City of Salinas, Demographic analysis, creation of alternative maps, and racially polarized Voting analysis within Monterey County
- Asian Pacific American Legal Center, 2011, Racially Polarized Voting analysis of Asian American candidates in Los Angeles for APALC redistricting brief
- Lawyers’ Committee for Civil Rights and Arnold & Porter, LLP, 2010-12, Racially Polarized Voting analysis of Latino and Asian candidates in San Mateo County, concerning San Mateo County Board of Supervisors
- ACLU of Washington, 2010-11, preliminary analysis of Latino population patterns in Yakima, Washington, to assess ability to draw majority Latino council districts
- State of Washington, 2010-11, provided expert analysis and research for State of Washington v. MacLean in case regarding election misconduct and voting patterns

- Los Angeles County Chicano Employees Association, 2008-10, Racially Polarized Voting analysis of Latino candidates in L.A. County for VRA case, concerning L.A. County Board of Supervisors redistricting (6 reports issued 08-10)

- Brennan Center for Justice and Fried, Frank, Harris, Shriver & Jacobson LLP, 2009-10 Amicus Brief submitted to Indiana Supreme Court, League of Women Voters v. Rokita, regarding access to voter identification among minority and lower resource citizens

- State of New Mexico, consulting expert for state in AAPD v. New Mexico, 2008,

- District of Columbia Public Schools (DCPS), statistical consultant for survey methodology of opinion survey of parents in DCPS district (for pending suit), 2008,

- Brennan Center for Justice, 2007-08, Amicus Brief submitted to U.S. Supreme Court, and cited in Supreme Court decision, Crawford v. Marion County, regarding access to voter identification among minority and lower-resource citizens

- Los Angeles County Chicano Employees Association, 2002-07, Racially Polarized Voting analysis of Latino candidates in L.A. County for VRA case, concerning L.A. County Board of Supervisors redistricting (12 + reports issued during 5 years)

- Monterey County School Board, 2007, demographic and population analysis for VRA case

- Sweetwater Union School District, 2007-08, Racially Polarized Voting analysis, and demographic and population analysis for VRA case

- Mexican American Legal Defense Fund, 2007-08, Racially Polarized Voting analysis for Latino candidates, for City of Whittier city council races, for VRA case


- Nielsen Media Research, 2005-08, with Willie C. Velasquez Institute, assessed the methodology of Latino household recruitment in Nielsen sample
TEACHING EXPERIENCE:

- Minority Political Behavior (Grad Seminar)
- Politics of Immigration in the U.S. (Grad Seminar)
- Introduction to Empirical/Regression Analysis (Grad Seminar)
- Advanced Empirical/Regression Analysis (Grad Seminar)
- Qualitative Research Methods (Grad Seminar)
- Political Participation & Elections (Grad Seminar)
- The Voting Rights Act (Law School seminar)
- Research methodology II (Law School Ph.D. program seminar)
- U.S. Latino Politics
- Racial and Ethnic Politics in the U.S.
- Politics of Immigration in the U.S.
- Introduction to American Government
- Public Opinion Research
- Campaigns and Elections in the U.S.
- Presidential Primary Elections

Teaching Assistant
University of California, Irvine 2002 – 2005

- Intro to American Politics (K. Tate)
- Intro to Minority Politics (L. DeSipio)

Recognized as Outstanding Teaching Assistant, Winter 2002

- Statistics and Research Methods (B. Grofman)

Recognized as Outstanding Teaching Assistant, Winter 2003

BOARD & RESEARCH APPOINTMENTS

- Founding Partner
  Latino Decisions 2007 – Present

Senior Research Fellow
Center for the Study of Los Angeles, Loyola Marymount University 2002 – Present

Board of Advisors
American National Election Study, University of Michigan 2010 – Present

Advisory Board
States of Change: Demographics & Democracy Project
CAP, AEI, Brookings Collaborative Project 2014 – Present

Research Advisor
American Values Institute / Perception Institute 2009 – 2014

Expert Consultant
State of California, Citizens Redistricting Committee 2011 – 2012

Senior Scholar & Advisory Council

Board of Directors
CASA Latina, Seattle, WA 2006 – 2009

Faculty Research Scholar
Tomás Rivera Policy Institute, University of Southern California 1999 – 2009
PHD STUDENTS  UCLA & UW

Committee Chair or Co-Chair
- Francisco I. Pedraza – University of California, Riverside (UW Ph.D. 2009)
- Loren Collingwood – University of California, Riverside (UW Ph.D. 2012)
- Betsy Cooper – Public Religion Research Institute, Washington DC (UW Ph.D. 2014)
- Sergio I. Garcia-Rios – Cornell University (UW Ph.D. 2015)
- Hannah Walker – Rutgers University (UW Ph.D. 2016)
- Kassra Oskooi – University of Delaware (UW Ph.D. 2016)
- Angela Ocampo – Arizona State University (UCLA Ph.D. 2018)
- Ayobami Laniyonu – University of Toronto (UCLA Ph.D. 2018)
- Adria Tumin – in progress (UCLA ABD)
- Bang Quan Zheng – in progress (UCLA ABD)
- Bryan Wilcox-Archuleta – in progress (UCLA ABD)
- Tyler Reny – in progress (UCLA ABD)
- Angie Gutierrez – in progress (UCLA)
- Shakari Byerly-Nelson – in progress (UCLA)
- Vivien Leung – in progress (UCLA)

Committee Member
- Jessica Stewart – Emory University (UCLA Ph.D. 2018)
- Jonathan Collins – Brown University (UCLA Ph.D., 2017)
- Lisa Sanchez – University of Arizona (UNM Ph.D., 2016)
- Nazita Lajevardi – Michigan State University (UC San Diego Ph.D., 2016)
- Kiku Huckle – Pace University (UW Ph.D. 2016)
- Patrick Rock (Social Psychology) – (UCLA Ph.D. 2016)
- Raynee Gutting – Loyola Marymount University (Stony Brook Ph.D. 2015)
- Christopher Towler – Sacramento State University (UW Ph.D. 2014)
- Benjamin F. Gonzalez – San Diego State University (UW Ph.D. 2014)
- Marcela Garcia-Castañon – San Francisco State University (UW Ph.D. 2013)
- Justin Reedy (Communications) – University of Oklahoma (UW Ph.D. 2012)
- Dino Bozzone – Cal State San Marcos (UC Riverside Ph.D. 2012)
- Brandon Bosch – University of Nebraska (UW Ph.D. 2012)
- Karam Dana (Middle East Studies) – UW Bothell (UW Ph.D. 2010)
- Joy Wilke – in progress (UCLA ABD)
- Erik Hanson – in progress (UCLA)
- Christine Slaughter – in progress (UCLA)
- Lauren Goldstein (Social Psychology) – in progress (UCLA)
- Barbara Gomez-Aguinaga – University of Nebraska (UNM Ph.D., in progress)
Exhibit 57
Expert Declaration of Mr. John Thompson

1. Introduction

1. On July 21, 2020 President Trump issued a Memorandum for the Secretary of Commerce on *Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census* (in the remainder of this document I will use the term “Memorandum” to refer to this document). I am extremely concerned that this action will adversely affect the quality and accuracy of the 2020 Census.

2. The 2020 Census results will be of great importance to our nation. The Constitution requires that the census be used for reapportioning the Congress of the United States and the Electoral College. The 2020 Census will also be used for numerous other functions to support good
policymaking and economic growth including: redrawing congressional and state legislative voting districts; allocating over $1.5 trillion of federal funds annually; informing sound policy development; providing critical information for state, local and tribal government planning; and supplying critical information to large and small businesses to generate growth and job creation. Inaccuracies or errors in the 2020 Census will have grave consequences on these uses for the subsequent 10-year period.

3. I have carefully reviewed the Memorandum instructing the Secretary of Commerce to provide information to exclude undocumented persons from the Apportionment counts. I have also reviewed the 2020 Census Operational Plans as well as the documentation that the Census Bureau has issued describing the actions it is taking in response to the COVID-19 pandemic. I have two serious concerns regarding the Memorandum: (1) it will significantly increase the risk of larger total and differential undercounts, relative to previous censuses, for the hard-to-count populations, including immigrant communities; and (2) it lacks transparency as required by law and the Census Bureau Statistical Quality Standards that would allow for the assessment of the methodology that might be used in response to the direction to exclude undocumented persons from the 2020 Census Apportionment counts.

II. Qualifications

4. Below I briefly describe specific aspects of my qualifications and work experience that establishes my credentials as an accomplished statistician and an expert on the Census Bureau and Decennial Census. I have also attached a copy of my CV to this declaration.

5. I have served as both the Director of the U.S. Census Bureau and as the career senior executive in charge of management of all aspects of the 2000 Decennial Census. I am also a distinguished professional in the area of statistics and survey design. I have a deep understanding of the processes that are necessary to achieve a complete and highly accurate Decennial Census.

6. I served as the Director of the U.S. Census Bureau from August 2013 to June 2017. Prior to becoming Director, I worked at the Census Bureau for 27 years (from 1975 to 2002). I started my career as a mathematical statistician in 1975. I spent the majority of my employment at the Census Bureau focused on the Decennial Census and ultimately served as the Associate Director for the 2000 Decennial Census, with management responsibility for all phases of the 2000 Decennial Census.

7. The Census Bureau is the largest Statistical Agency and produces a wide range of demographic and economic statistics including: the Decennial Census; the American Community Survey; the Current Population Survey; the National Crime Victimization Survey, the National Health Interview Survey; the Economic Census; the release of 13 principle key economic indicators on a monthly or quarterly basis; and conducts about 100 additional surveys. The Director of the Census Bureau is appointed by the President and
confirmed by the Senate.

8. My responsibilities as Director of the Census Bureau included overseeing the research and testing that produced the design for the 2020 Census. During my tenure, the original operational plan for conducting the 2020 Census was released, as was an updated version 2.0 of this plan. In addition, major field tests were conducted in 2013, 2014, 2015 and 2016. The results of these tests informed the final 2020 Census Design that was tested in the 2018 end-to-end test. During my service, the Census Bureau reviewed the residence criteria used to determine where to count the residents of the United States. A preliminary proposal for the 2020 residence criteria was issued for public comment on June 30, 2016. In particular, the Census Bureau was following the same principles that had guided each previous Decennial Census – the Constitution requires that everyone living in the United States should be included in the enumeration, regardless of immigration status, for all uses of the census, including Apportionment. The final 2020 Census residence criteria were issued on February 5, 2018, and again followed these same principles to count everyone living in the United States at their usual place of residence regardless of immigration status for Apportionment and all other uses.2

9. Prior to being appointed Director of the Census Bureau I was at National Opinion Research Center (NORC) at the University of Chicago, serving as Executive Vice President from 2002 to 2008 and President from 2008 to 2013. NORC is an objective, non-partisan independent research institution that delivers reliable data and rigorous analysis to guide critical programmatic, business, and policy decisions. Clients include government, corporate, and nonprofit organizations around the world who partner with NORC to transform increasingly complex information into useful knowledge. NORC conducts research in five main areas: Economics, Markets, and the Workforce; Education, Training, and Learning; Global Development; Health and Well-Being; and Society, Media, and Public Affairs. NORC services include designing and conducting surveys (telephone, Internet, and in-person) as well as analytical studies.

10. From July 2017 to August 2018, I served as the Executive Director of the Council of Professional Associations on Federal Statistics (COPAFS). COPAFS is an organization with a membership consisting of professional associations and research organizations that depend on and support high quality federal statistics. The Executive Director of COPAFS must have a deep understanding of the Federal Statistical System and the wide range of data products that are produced. Serving as the Executive Director of COPAFS reinforced my appreciation of the importance of high-quality Decennial Census data to the entire Federal Statistical System.

11. In addition to the work experience described above, I am an elected Fellow of the American Statistical Association and was selected to serve on the National Academies of Science, Engineering, and Medicine Committee on National Statistics.

III. Concerns

A. Background on the Decennial Census

12. The uses of the data generated by the Decennial Census are extremely important for all components of our democracy and economy, including: the constitutionally required reapportionment of the Congress; redrawing congressional and state legislative voting districts; allocating over $1.5 trillion in federal funds annually; supporting evidence-based policy making by state, local and tribal governments; and allowing informed decisions by large and small business to generate economic growth and job creation. Inaccuracies or undercounts in Decennial Census data will result in under-representation of the affected population groups not just in the immediate term, but for ten subsequent years until the next Decennial Census results are available.

B. The 2020 Census was already facing unprecedented challenges prior to the release of the Memorandum.

13. The COVID-19 pandemic forced the delay of key operations out of concerns for the safety of both census workers and the general public. The in-person components of the local partnership program to increase response rates of the traditionally hard-to-count populations were delayed, as was the operation to collect responses from those households that do not self-respond. This operation is referred to as nonresponse follow-up or NRFU. In my opinion, NRFU is the most critical operation to achieving a fair and accurate enumeration. Currently the national self-response rate is 63 percent, which means that over 37 percent or over 50 million housing units and their occupants must still be enumerated. A successful NRFU is therefore essential to achieving a complete enumeration for the 2020 Census.

14. The NRFU operation had been scheduled to start on May 15, 2020 and run through July 31, 2020. However, as a result of the COVID-19 pandemic, the Census rescheduled it to start in most of the United States on August 11, 2020 and initially planned to complete it by October 30, 2020.

15. In order to accommodate this delay, the Census Bureau had requested, through the Department of Commerce, a four-month extension of the legal deadlines to deliver Apportionment and redistricting data. For Apportionment this would extend the current deadline of December 31, 2020 to April 30, 2021. For redistricting data, the requested

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4 Title 13, US Code, Section 141, (b) and (c).
extension was from March 31, 2021 to July 31, 2021.

16. However, the Census Bureau has announced that the deadlines will not be extended, and that the NRFU will now be completed by September 30, 2020. The Census Bureau will have to take steps to complete the NRFU more rapidly than they planned.

17. In this situation the risk that the hard-to-count populations will be underrepresented increases greatly. Cooperation on the part of the households in NRFU is going to be essential. However, as I discuss below, the issuance of the Memorandum will most likely decrease cooperation and willingness to participate further reducing the effectiveness of NRFU in achieving a fair and accurate enumeration.

C. The confidence of respondents that the 2020 Census will be confidential will be significantly eroded leading to increased undercounts

18. The Census Bureau has made good progress since the 1990 Decennial Census, and had great success during both the 2000 and 2010 Decennial Censuses in reducing undercounts. A key component of this success has been the deployment of a combined national and local advertising and local partnership program to deliver a message to hard-to-count populations that the census is important to their community, and that the data collected through the census is completely confidential. No individual’s information is shared with any other organization or law enforcement entities.

19. This messaging program was responsible for dramatic gains in the accuracy and coverage of the 2000 and 2010 Decennial Census relative to the 1990 Census, which did not include such a program. For example, the undercount of Black or African Americans dropped from 4.6 percent in 1990 to 2.1 percent in 2010. For the Hispanic population the undercount dropped from 5.0 percent to 1.5 percent.

20. Census Bureau research conducted in planning for the 2020 Census has identified serious concerns that potential respondents have with respect to the confidentiality of their information prior to the release of the Memorandum. For example:

a. Census Bureau researchers conducted qualitative research that was presented at the 2018 American Association of Public Opinion Research annual conference that

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indicated that fear of government was higher than had been experienced in prior years.  

b. The 2020 Census Barriers Attitudes and Motivators Study was conducted to understand the concerns of potential respondents to help shape the 2020 Census advertising and communication program themes and messages. The study found that the two most significant barriers to participation in the 2020 Census were: (1) concerns that the Census Bureau would share information with other government agencies; and (2) that the information that respondents provided would be used against them. Non-White and Hispanic groups were much more concerned than the White non-Hispanic group. In addition, respondents that were not proficient in English were much more concerned than those who were (39 percent compared to 23 percent).

c. The Census Bureau also conducted research on the potential effects of adding a citizenship question to the 2020 Census questionnaire. This research indicated that the question would reduce self-response of the non-citizen population. Furthermore, the research found that it was likely that households that refuse to respond to the census questionnaire because of the citizenship question are also likely to not respond to NRFU enumerators. It is my opinion, based on my experience in implementing the 2000 Census and my work in leading the design and planning for the 2020 Census, that the Memorandum is likely to have similar effects on NRFU response.

21. In order to address these concerns, a cornerstone of the 2020 Census advertising and partnership program, is a message that respondent information is confidential. The Census Bureau will not share it with any outside entities, including law and immigration enforcement. It is my opinion that the Memorandum will reduce the effectiveness of the 2020 Census advertising and partnership program in gaining the confidence of respondents in traditionally hard-to-count communities.

22. For example, a critical factor in underlying response and participation in the 2020 Census is the macro environment under which the NRFU is being conducted. While the 2020 Census advertising and partnership program is designed to positively influence this environment, other factors such as the issuance of the Memorandum can have the opposite effect. As Census Bureau Chief Scientist, Dr. John Abowd, acknowledged during recent trial testimony in the matter considering the potential effects of adding a citizenship question to the 2020 Census questionnaire, the macro environment was likely to be affected by actions to

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8 AAPOR Panel on Changes in Respondent Privacy, Confidentiality, and Data Sharing Concerns, Meyers, Gorman, Harris-Kojetin, Terry, and Fobia, Denver, Colorado, May 18, 2018
9 CBAMS report
add a citizenship question. Furthermore, Dr. Abowd acknowledged that the political environment around immigration could amplify the effects of a citizenship question on decreased response.

23. It is my opinion that the effects of the Memorandum on the current macro environment are likely to be as great if not greater than the addition of a citizenship question. Therefore, immigrants and the families of immigrants will be reluctant to participate in the NRFU and many will not be enumerated. It is also likely, in my opinion, that this reluctance to participate will extend to other hard-to-count populations as well. The issuance of the Memorandum has significantly increased the risk of larger total and differential undercounts, relative to previous censuses.

D. Lack of transparency

24. At this point, little is known about the ultimate quality and accuracy of the 2020 Census. The location and magnitude of errors caused by potential undercounts and overcounts has not been determined. In addition, the level of inclusion of undocumented persons in the 2020 Census is also unknown.

25. It will be very challenging for the Census Bureau to determine the number of undocumented persons that are included in the 2020 Census at the time when Apportionment data is required to be reported. It is critical for the Census Bureau and the Department of Commerce to describe the methodology that they intend to utilize to estimate the numbers of undocumented persons enumerated in the 2020 Census and what are appropriate measures of accuracy that would support the usage of such methodologies. The Memorandum does not provide any specific directions and the Census Bureau has not described how it will comply with the Memorandum.

26. There are legal and statistical standards that the Census Bureau has followed and should continue to follow with respect to transparency:

a. The Census Bureau is a Federal Statistical Agency and as Director Dillingham noted in sworn testimony July 29, 2020, the Census Bureau intends to follow the principles and practices identified by the Committee on National Statistics for Federal Statistical Agencies. 12 Principle 2, Credibility among Data Users, states: “Also essential to building credibility are for an agency to be open and transparent about its data sources and their limitations, demonstrate understanding of users’ needs and priorities, fully document the processes used to produce and disseminate statistical products, and take proactive steps to preserve data for future use.”

b. The Office of Management and Budget issued a Memorandum on April 24, 2019 *Improving Implementation of the Information Quality Act* to the Heads of all Executive Departments and Agencies strengthening previous guidance in this area.\(^{13}\) This document states: “The IQA requires agencies conduct pre-dissemination review of their information products. During this review, each agency should consider the appropriate level of quality for each of the products that it disseminates based on the likely use of that information.”

27. In 2013 the Census Bureau issued Statistical Quality Standards that are currently guiding the conduct of all their programs including the 2020 Census.\(^{14}\)

a. In particular: Statistical Quality Standard F1, *Releasing Information Products Requirement F1-6* states: “Information products must comply with the Census Bureau’s statistical quality standards and must be free of serious data quality issues in order to be released outside the Census Bureau without restrictions.” Statistical Quality Standard F2, *Providing Documentation to Support Transparency in Information Products* Requirement F2-2 states: “Documentation must be readily accessible in sufficient detail to allow qualified users to understand and analyze the information and to reproduce (within the constraints of confidentiality requirements) and evaluate the results.”

28. The most important information produced and released by the Census Bureau is the constitutionally mandated Apportionment data. Because this information is so vital to our democracy, it is critically important that the Department of Commerce and the Census Bureau are transparent in their adherence to their legal and statistical standards. At a minimum, the Census Bureau has an obligation to assure the public and stakeholders that any methods it develops for determining the number of undocumented individuals is statistically sound.

**VI. Conclusion**

In conclusion, it is my opinion that the issuance of the Memorandum will significantly increase the risk of much larger undercounts for the 2020 Census than measured in previous censuses, including undercounts of immigrant communities. In addition, there is no transparency or documentation of how the quality and fitness for use of the Apportionment counts will be determined, nor is there any documentation of how the number of undocumented persons potentially included in the 2020 Census will be determined.

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\(^{14}\) U.S. Census Bureau Statistical Quality Standards (Jul. 2013).
Executed on August 6, 2020 at Bend, Oregon.

I declare under penalty of perjury that the foregoing is true and correct.

[Signature]

______________________________
John Thompson
Appendix A
JOHN H. THOMPSON

BRIEF CAREER HISTORY

Extensive Senior Executive leadership in the non-profit and federal sectors, with experience in social science research and statistics, congressional advocacy, building coalitions, operational management, business development, stakeholder relations, innovation, and strategic vision.

Independent Consultant, August 2018 to present

Consulting service focusing on survey methodology, executive leadership, the Federal Statistical System, and decennial census. Activities have included:

- Expert witness for the plaintiffs in two court cases opposing the addition of a citizenship question to the 2020 Census
  - New York Immigration Coalition, et al v. United States Department of Commerce and Wilbur Ross, U.S. District Court for the Southern District of New York, and
  - Robyn Kravitz et al., v. United States department of Commerce, et al
- Training news media journalists on the 2020 Census with Georgetown University, the Poynter Center, and the Harvard Shorenstein Center.
- Providing consultation services to NORC at the University of Chicago

Executive Director, Council of Professional Associations on Federal Statistics – July 2017 to August 2018

The Council of Professional Associations on Federal Statistics (COPAFS) was founded in 1981 to coordinate activities of a number of Associations, Organizations, and Businesses that rely on federal statistics to support good governance and economic growth. COPAFS now represents a growing body of stakeholders that support the production and use of high quality statistics. The Executive Director represents these stakeholders in realizing their mission to Advance Excellence in Federal Statistics. Activities include:

- Advocated on behalf of federal agencies. For example, COPAFS is a co-chair of the Friends of the Bureau of Labor Statistics, and the Friends of the National Center for Health Statistics;
- Worked with stakeholder coalitions to support proper funding for the 2020 Census and the American Community Survey;
- Ensured members of Congress, COPAFS members, and other stakeholders were informed of critical issues facing agencies that produce federal statistics;
- Alarmed members and stakeholders of breaking issues that needed immediate support and attention;
- Organized and supported ongoing educational efforts for members of Congress and their staff on the value and importance of federal statistics both nationally and in their own states and districts;
- Created and joined in powerful coalitions of organizations and businesses to advocate on behalf of federal agencies that produce statistics, building broad support across a wide spectrum of data users;
Built partnerships with foundations that help fund critical research in the statistical agencies and academia to ensure the on-going modernization of how statistical data are created and made available to the public and researchers, and to fund educational efforts;

Worked closely with the Chief Statistician of the United States and the statistical agencies to help inform and promote modernization efforts underway and assist agencies in keeping abreast of new stakeholder data needs; and

Hosted events to demonstrate the importance of federal statistics such as the 2018 Federal Committee on Statistical Methodology Research and Policy Conference.

**Director, United States Census Bureau – August 2013 to June 2017**

Appointed by the President as Director of the largest federal statistical agency, with a staff of over 5,000 headquarters employees and approximately 10,000 to 15,000 staff spread across the United States in six regional offices and a major production facility in Indiana, with an annual budget exceeding $1 billion. Key accomplishments include:

- Worked successfully with the executive and legislative branches of the federal government, including the White House, the Office of Management and Budget, Cabinet officials, and members of Congress and congressional staff, to accomplish a major transformation of the Census Bureau into a forward-looking 21st century statistical agency. Testified at 6 congressional hearings on the Census Bureau;
- Provided a conceptual vision and lead a redesign of the 2020 decennial census that is estimated to save $5 billion through effective use of operations research-driven reengineering of field operations, innovative use of technology, and partnership with key stakeholders;
- Lead outreach to key stakeholders including representatives of state local and tribal governments; advocacy organizations; professional associations, business groups, various media; and academic researchers;
- Put in place a robust research program to support mission critical activities, such as linking administrative records, disclosure avoidance methods, economic studies, statistical research, survey methodology, big data, and data dissemination;
- Lead efforts to maintain congressional support and funding for the American Community Survey, a critical data asset of the federal government, including mobilizing a diverse group of key stakeholders to effectively advocate in support of the survey, personally visiting almost all of the House of Representatives and Senate members of the Census Bureau appropriations and oversight committees, and establishing a program of research directly related to the concerns that had been raised;
- Improved economic statistics through research on using alternatives to direct survey data collection to produce statistics that are timelier and have increased granularity, and carrying out three initiatives to advance the release of principal economic indicators on trade, retail sales and services, which allowed the Bureau of Economic Analysis to significantly reduce revisions to Gross Domestic Product (GDP) estimates;
- Recruited outstanding research staff including new senior leadership for Research and Methodology, the Director of a newly established big data center, and seven former Presidential Innovation Fellows; and
- Improved data dissemination to the public, including development of a platform to deliver data in ways that will meet the rapidly evolving demands of a growing body of users. In addition,
in order to meet immediate targeted demands two new tools were released: City SDK (Software Development Kit) to allow easy developer access; and Census Business Builder a tool that combines small area demographic and economic data in a way that is easily accessible for entrepreneurs and small business owners.

**President and Executive Vice President, NORC at the University of Chicago – July 2002 to August 2013**

NORC is a national non-profit organization that conducts high quality social science research in the public interest. As President, I had responsibility for all NORC corporate activities and for the quality of all NORC research efforts. I provided vision for NORC to establish the organization as a leader in the social science research industry. My accomplishments included:

- Strengthened the organization’s high-quality, diverse staff;
- Broadened the scope of the collaborations between NORC and the University of Chicago;
- Realized nearly 50 percent growth in revenue and greatly expanding NORC’s portfolio of business and research programs; and
- Provided leadership in the social science research community - selected to be a Fellow of the American Statistical Association (ASA), elected to serve a term as Chair of the Social Statistics Section of the ASA, and chaired the 2009 ASA Committee on Fellows. Also elected as a member of the Committee on National Statistics, serving on two National Academy of Sciences panels addressing 2010 and 2020 Census concerns.

As Executive Vice President of Survey Operations (2002 – 2008), I provided oversight and direction to the Economics, Labor Force, and Demography Research Department, the Statistics and Methodology Department, and Survey Operations for field and telephone data collection. My major accomplishments included:

- Provided leadership and guidance for a major corporate initiative, the National Immunization Survey, which is conducted on behalf of the Centers for Disease Control and Prevention, and is the largest telephone survey in the United States conducted via random digit dialing for scientific purposes.
- Significantly increased the productivity and cost effectiveness of NORC’s overall data collection activities;
- Successfully utilized skills in directing large project start-ups, and in managing large complex operations, directing the project through the completion of the first contract phase, which included the first year of data collection and the delivery of the first data set; and
- All survey operations were completed on schedule, and within budget including the delivery of an extremely complex data set, and a public use file.
Principal Associate Director and Associate Director for Decennial Census Programs, United States Census Bureau – 1997 to July 2002

Served as the senior career executive responsible for all aspects of the 2000 Decennial Census. This was the largest peacetime mobilization undertaken by the U.S. government, with a budget of $6.5 billion, establishment of over 500 field offices, a temporary workforce that peaked at over 500,000, and establishment of telephone capacity to receive over 5 million calls over a period of one month. I was also chairman and director of the Executive Steering Committee for Accuracy & Coverage Evaluation Policy for the 2000 Census. This Committee was charged with making a recommendation as to whether or not to adjust the 2000 Census redistricting data for coverage errors, an issue fraught with political disagreement and controversy. This work was widely recognized as superb – with the Committee’s recommendation supported by numerous reviews, including the National Academy of Sciences Panel on evaluating Census 2000.

EDUCATION

M.S. Virginia Polytechnic Institute and State University, 1975 Mathematics Graduate course work in statistics - George Washington University 1977-1981
B.S. Virginia Polytechnic Institute and State University, 1973 Mathematics

PROFESSIONAL SERVICE AND ASSOCIATIONS

American Statistical Association, 1975 to Present
   Chair, Social Statistics Section – 2011
   Chair, ASA Committee on Fellows - 2009
National Academy of Sciences,
   Member of the Committee on National Statistics – 2011 - 2013
   Member of the Panel on the Design of the 2010 Census Program of Evaluations and Experiments
   Member of the Panel to Review the 2010 Census

HONORS AND AWARDS

Virginia Tech College of Science Hall of Distinction inaugural class, 2013
Presidential Rank Award of Meritorious Executive, 2001
Department of Commerce, Gold Medal, U.S. Bureau of the Census, 2000
Elected Fellow of the American Statistical Association, 2000
Department of Commerce, Bronze Medal, U.S. Bureau of the Census, 1988
### PAPERS AND PUBLICATIONS

<table>
<thead>
<tr>
<th>Year</th>
<th>Author(s)</th>
<th>Title and Details</th>
</tr>
</thead>
</table>


1988 Navarro, Alfredo, John H. Thompson, and Linda Flores-Baez, "Results of Data Switching Simulation." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, April, 1988.


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.

NEW YORK IMMIGRATION COALITION, et al.

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.

Defendants.

EXPERT DECLARATION OF DR. CHRISTOPHER WARSHAW
I. Introduction

1. My name is Christopher Warshaw. I have been an Assistant Professor of Political Science at George Washington University since August 2017. I was recently awarded tenure, and will become a tenured Associate Professor on September 1, 2020. Prior to working at George Washington University, I was an Associate Professor at the Massachusetts Institute of Technology from July 2016 - July 2017, and an Assistant Professor at MIT from July 2012 - July 2016.

2. I have been asked by counsel representing the plaintiffs in New York Immigration Coalition v. Trump and State of New York v. Trump to analyze relevant data and provide my expert opinions.

3. More specifically, I have been asked:
   - To forecast the populations of every state in the United States in 2020.
   - To estimate the proportion of the population in every state in the United States likely to be excluded if undocumented immigrants are not included in the Census enumeration used for apportionment.
   - To analyze the likely effects of the exclusion of undocumented immigrants on the apportionment of representatives across states for the U.S House of Representatives.

4. My opinions are based on the knowledge I have amassed over my education, training and experience, including a detailed review of the relevant academic literature. They also follow from a statistical analysis that I describe in detail below.
A. Qualifications and Publications

5. My Ph.D. is in Political Science, from Stanford University, where my graduate training included courses in political science and statistics. I also have a J.D. from Stanford Law School. My academic research and teaching focuses on public opinion based on surveys and Census data, as well as the study of representation, elections, and polarization in American Politics. I have also taught courses on statistical analysis.

6. My curriculum vitae is attached to this Declaration at Appendix C. All publications that I have authored and published appear in my curriculum vitae. I have published 30 academic articles and book chapters. My work is published or forthcoming in peer-reviewed journals such as: the American Political Science Review, the American Journal of Political Science, the Journal of Politics, Political Analysis, Political Science Research and Methods, the British Journal of Political Science, Political Behavior, the Annual Review of Political Science, the Election Law Journal, Nature Energy, Public Choice, and edited volumes from Cambridge University Press and Oxford University Press. My non-academic writing has been published in the New York Times and the Washington Post.

7. Most relevantly, I provided an expert report and declaration in New York Immigration Coalition et al v. United States Department of Commerce, No. 18-CV-2921-JMF (S.D. NY). In that report, I assessed the consequences of an undercount caused by a potential citizenship question on the U.S. Census. Specifically, I examined the effects of a net differential undercount of people who live in immigrant households on congressional apportionment. I found that the inclusion of a citizenship question on the Census would likely have led to substantial effects on the population counts of each state, and the apportionment of
representatives across states for the U.S House of Representatives. In that case, the court found my analysis and findings “credible and persuasive.”


9. The opinions in this declaration are my own, and do not represent the views of George Washington University.

**B. Research Design**

10. President Trump recently issued a presidential memorandum charging the Secretary of Commerce to “exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.” In order to assess the consequences of excluding undocumented immigrants from the count of people in the United States used for apportionment, I conduct the following steps:

A. I estimate the baseline population of each state in 2020 based on the Census Bureau’s annual estimates of the population of each state from the past three decades. The populations used for apportionment also include overseas federal employees and their dependents. Then, based on data from the U.S. Military and the Census Bureau, I

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1 See https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/.

estimate the number of overseas federal employees and dependents that would be
added to the population of each state for apportionment.

B. I use data from the Pew Research Center to estimate the number of undocumented
immigrants in each state in 2020. These are the most widely used data in the
academic literature on the undocumented immigrant population. However, I reach
very similar conclusions using a variety of alternative sources of data on the number
of undocumented immigrants in each state.

C. Based on all of these data, I estimate the proportion of each state’s population that
would be excluded from the enumeration used for apportionment due to the
presidential memorandum. I then use the official apportionment table published by
the U.S. Census Bureau to estimate the number of congressional seats that states
would gain or lose. Finally, I report the uncertainty in all of my analyses.

D. I evaluate the robustness of my findings to a variety of alternative data sources and
modeling strategies. I also compare my findings to four other independent reports
from different research groups. My findings are robust to alternative modeling
assumptions and are similar to these other groups’ findings.

C. Summary of Findings

11. Based on my analysis, I have reached the following conclusions:

- The exclusion of undocumented immigrants from the apportionment base (i.e., the
  population enumeration used for apportionment) is likely to have substantial effects on
  the population counts of each state, and the apportionment of representatives across states
  for the U.S House of Representatives.
It will almost certainly lead Texas to lose a seat in Congress. It is likely to lead California and New Jersey to lose a congressional seat. It also could lead other states, such as Arizona, Florida, New York, or Illinois, to lose seats. These conclusions are similar across multiple data sources on the prevalence of undocumented immigrants. They are also similar to the conclusions reached by a variety of independent analysts and organizations.

The exclusion of undocumented immigrants from the apportionment base would affect political representation in Congress. For instance, it is likely to affect the distribution of federal funds to each state, and the general power that each state holds in Congress.

II. Projecting the State Populations in 2020

12. The first stage of my analysis is to develop baseline projections of the population of each state in the country in 2020. These projections are critical to determining the likely effects of excluding undocumented immigrants from the apportionment base. In order to develop these estimates, I use the Census Bureau’s official estimates of the population of each state from 1990-2019. The Census Bureau does not provide public estimates of each geographic unit’s populations in future years.

13. In this section, I first discuss several possible approaches for estimating future populations. I show that my preferred approach performs as well or better at a similar modeling problem than alternative approaches. I then discuss how I incorporate uncertainty into my population projections. Finally, I present estimates of the 2020 populations in each state in the country.

A. Data

14. The Census Bureau’s Population Estimates Program (PEP) produces estimates of the population for the United States, states, counties, cities, towns, and other geographic areas.
These aggregate estimates are based on the demographic components of population change (births, deaths, and migration) at each level of geography. My population projections are based on these official population estimates for each state for the period from 1990-2019.

B. Statistical Model for Population Projections

15. There are a number of potential options for forecasting the likely population of each state in 2020. One possible forecasting option would be to allow the forecasts to increase or decrease over time, where the amount of change over time (called the drift) is set to be the average change in the historical data (see Hyndman and Athanasopoulos 2018, 48-49). Some related methods in this family of forecasting approaches are:

- **Model 1: Linear trend between 2010-2019**: One approach would be to project forward based on the linear trend in the population estimates since the last Census (e.g., Election Data Services 2017). This approach assumes that each geographic unit’s population follows the same linear rate of change in the future that it has followed over the past decade. This approach has the benefit of using many years of data, but it could yield biased estimates if the population trends have changed over this period. I estimate linear trends using a simple linear regression model in the software program R.

- **Model 2: Linear trend between 2016-2019**: Another possibility is to project forward based on the linear trend in the population estimates over the past 4 years. This approach

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3 I do not directly use the more detailed cohort-component method used by the Census for my population projections because this information is unavailable for some geographic levels, particularly for the 2000-2010 period. It is also unclear whether the additional complexities associated with this approach would yield substantial gains in predictive accuracy.

assumes that each geographic unit’s population follows the same linear trend in the future that it has followed over this shorter time period. This approach has the benefit of being sensitive to more recent trends, but it could be noisier than estimates based on the longer time series. That is, it could be overly sensitive to short-term trends. I estimate linear trends using a simple linear regression model in R.

∞ Model 3: Change between two most recent years (i.e., 2018 to 2019): A third possibility is to focus on the change between each geographic unit’s populations in the two most recent years and assume that future years will follow this recent trend. This approach has the benefit of being based on the most recent changes in populations, but it could also be overly sensitive to short-term idiosyncratic trends. I estimate these short-term trends using the software program R.

16. As Hyndman and Athanasopoulos (2018, 50) discusses: “Sometimes one of these simple methods will be the best forecasting method available; but in many cases, these methods will serve as benchmarks rather than the method of choice. That is, any forecasting methods [] will be compared to these simple methods to ensure that the new method is better than these simple alternatives. If not, the new method is not worth considering.” I consider one more complex approach against these benchmarks:

∞ Model 4: A state space model with exponential smoothing: This approach uses an exponential smoothing model that weights levels and trends to an extent determined by the data (Hyndman et al. 2008; Hyndman and Athanasopoulos 2018). This model uses all of the available data, but it gives more weight to the most recent years. I estimate the exponential smoothing model using the ets function in the forecast package in R.
C. Validation of Population Projections

17. The accuracy of forecasting models can only be determined by considering how well a given model performs on new data that were not used when fitting the original model (Hyndman and Athanasopoulos 2018, 62). In order to choose the best model for this analysis, I evaluated each model using a benchmark that is similar to the challenge of forecasting the 2020 populations. Specifically, I forecasted the 2019 population estimates in each state based on 1990-2018 population data. For each analysis I used the following evaluation metrics (see Hyndman and Athanasopoulos 2018, 64-65).

- **The mean error across states (ME):** This helps assess whether a given metric has a systematic bias in one direction or another.

- **The root mean-squared error across states (RMSE):** This helps assess the accuracy of the forecasts. It penalizes larger errors more than smaller errors.

- **The mean absolute error across states (MAE):** This helps assess the accuracy of the forecasts. It penalizes all errors equally.

- **The mean percentage error across states (MPE):** This helps assess whether a given metric has a systematic bias in one direction or another. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

- **The mean absolute percentage error across states (MAPE):** This metric also helps assess the accuracy of the forecasts. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).
Table 1: Validation of State Population Projections at Predicting 2019 State Populations

<table>
<thead>
<tr>
<th>Model</th>
<th>ME</th>
<th>RMSE</th>
<th>MAE</th>
<th>MPE</th>
<th>MAPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1): Linear model (decade)</td>
<td>-20,821</td>
<td>71,748</td>
<td>32,448</td>
<td>-0.29%</td>
<td>0.57%</td>
</tr>
<tr>
<td>(2): Linear model (4 years)</td>
<td>-12,219</td>
<td>33,933</td>
<td>14,513</td>
<td>-0.11%</td>
<td>0.21%</td>
</tr>
<tr>
<td>(3): Delta in last two years</td>
<td>-2,940</td>
<td>12,129</td>
<td>6,073</td>
<td>-0.02%</td>
<td>0.09%</td>
</tr>
<tr>
<td>(4): State spacemodel</td>
<td>-4,034</td>
<td>12,623</td>
<td>6,766</td>
<td>-0.04%</td>
<td>0.13%</td>
</tr>
</tbody>
</table>

18. Table 1 shows the results. Overall, the state space model (4) and delta model (3) perform the best in this validation exercise. These models have much less error than the other models across all the metrics. Other studies have shown that state space models generally outperform other modeling approaches due to its flexibility (Hyndman et al. 2008; Hyndman and Athanasopoulos 2018). It also provides measures of uncertainty. As a result, I use this approach in my main analysis. I also show below, however, that I reach very similar findings using the delta model (3) (see Additional Scenario #6).

D. Baseline estimates of 2020 populations

19. The next stage is to use the official Census population estimates to project each geographic unit’s population in 2020. Table 2 shows the results.\(^5\) Note that all of the analysis of apportionment that follow fully incorporate the uncertainties in these projections.

\(^5\) The projections shown here do not include the overseas military population, federal employees, and dependents. However, the apportionment projections in Table 6 do include these groups.
Table 2: State population projections

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>4,779,736</td>
<td>4,903,185</td>
<td>4,918,700</td>
<td></td>
</tr>
<tr>
<td>Alaska</td>
<td>710,231</td>
<td>731,545</td>
<td>728,000</td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>6,392,017</td>
<td>7,278,717</td>
<td>7,399,400</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>2,915,918</td>
<td>3,017,804</td>
<td>3,025,900</td>
<td></td>
</tr>
<tr>
<td>California</td>
<td>37,253,956</td>
<td>39,512,223</td>
<td>39,724,500</td>
<td></td>
</tr>
<tr>
<td>Colorado</td>
<td>5,029,196</td>
<td>5,758,736</td>
<td>5,833,000</td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,574,097</td>
<td>3,565,287</td>
<td>3,565,300</td>
<td></td>
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<tr>
<td>Delaware</td>
<td>897,934</td>
<td>973,764</td>
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<tr>
<td>District of Columbia</td>
<td>601,723</td>
<td>705,749</td>
<td>710,000</td>
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<td>Florida</td>
<td>18,861,310</td>
<td>21,477,737</td>
<td>21,706,500</td>
<td></td>
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<td>Georgia</td>
<td>9,667,655</td>
<td>10,617,423</td>
<td>10,723,200</td>
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<tr>
<td>Hawaii</td>
<td>1,360,301</td>
<td>1,415,872</td>
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<td>Idaho</td>
<td>1,567,582</td>
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<td>Illinois</td>
<td>12,830,632</td>
<td>12,671,821</td>
<td>12,622,100</td>
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<tr>
<td>Indiana</td>
<td>6,483,802</td>
<td>6,732,219</td>
<td>6,769,900</td>
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<tr>
<td>Iowa</td>
<td>3,046,355</td>
<td>3,155,070</td>
<td>3,168,400</td>
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<tr>
<td>Kansas</td>
<td>2,853,118</td>
<td>2,913,314</td>
<td>2,915,500</td>
<td></td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,339,367</td>
<td>4,467,673</td>
<td>4,474,200</td>
<td></td>
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<td>Louisiana</td>
<td>4,533,372</td>
<td>4,648,794</td>
<td>4,650,500</td>
<td></td>
</tr>
<tr>
<td>Maine</td>
<td>1,328,361</td>
<td>1,344,212</td>
<td>1,349,400</td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>5,773,552</td>
<td>6,045,680</td>
<td>6,071,200</td>
<td></td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,547,629</td>
<td>6,892,503</td>
<td>6,904,900</td>
<td></td>
</tr>
<tr>
<td>Michigan</td>
<td>9,883,640</td>
<td>9,986,857</td>
<td>9,986,900</td>
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<tr>
<td>Minnesota</td>
<td>5,303,925</td>
<td>5,639,632</td>
<td>5,676,100</td>
<td></td>
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<tr>
<td>Mississippi</td>
<td>2,967,297</td>
<td>2,976,149</td>
<td>2,972,300</td>
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</tr>
<tr>
<td>Missouri</td>
<td>5,988,927</td>
<td>6,137,428</td>
<td>6,152,400</td>
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</tr>
<tr>
<td>Montana</td>
<td>989,415</td>
<td>1,068,778</td>
<td>1,077,400</td>
<td></td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,826,341</td>
<td>1,934,408</td>
<td>1,946,500</td>
<td></td>
</tr>
<tr>
<td>Nevada</td>
<td>2,700,551</td>
<td>3,080,156</td>
<td>3,132,200</td>
<td></td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,316,470</td>
<td>1,359,711</td>
<td>1,363,300</td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>8,791,894</td>
<td>8,882,190</td>
<td>8,894,300</td>
<td></td>
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<tr>
<td>New Mexico</td>
<td>2,059,179</td>
<td>2,096,829</td>
<td>2,100,400</td>
<td></td>
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<tr>
<td>New York</td>
<td>19,378,102</td>
<td>19,453,561</td>
<td>19,377,200</td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>9,535,483</td>
<td>10,488,084</td>
<td>10,594,600</td>
<td></td>
</tr>
<tr>
<td>North Dakota</td>
<td>672,591</td>
<td>762,062</td>
<td>766,100</td>
<td></td>
</tr>
<tr>
<td>Ohio</td>
<td>11,536,504</td>
<td>11,689,100</td>
<td>11,706,400</td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,751,351</td>
<td>3,956,971</td>
<td>3,971,200</td>
<td></td>
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<tr>
<td>Oregon</td>
<td>3,831,074</td>
<td>4,217,737</td>
<td>4,260,000</td>
<td></td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>12,702,379</td>
<td>12,801,989</td>
<td>12,803,100</td>
<td></td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,052,567</td>
<td>1,059,361</td>
<td>1,059,400</td>
<td></td>
</tr>
<tr>
<td>South Carolina</td>
<td>4,625,364</td>
<td>5,148,714</td>
<td>5,213,000</td>
<td></td>
</tr>
<tr>
<td>South Dakota</td>
<td>814,180</td>
<td>884,659</td>
<td>891,700</td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,346,105</td>
<td>6,829,174</td>
<td>6,886,700</td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>28,145,561</td>
<td>28,995,881</td>
<td>29,432,600</td>
<td></td>
</tr>
<tr>
<td>Utah</td>
<td>2,763,885</td>
<td>3,205,958</td>
<td>3,259,800</td>
<td></td>
</tr>
<tr>
<td>Vermont</td>
<td>625,741</td>
<td>623,989</td>
<td>624,100</td>
<td></td>
</tr>
<tr>
<td>Virginia</td>
<td>8,001,024</td>
<td>8,535,519</td>
<td>8,570,600</td>
<td></td>
</tr>
<tr>
<td>Washington</td>
<td>6,724,540</td>
<td>7,614,893</td>
<td>7,707,400</td>
<td></td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,852,994</td>
<td>1,792,147</td>
<td>1,790,000</td>
<td></td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,866,986</td>
<td>5,822,434</td>
<td>5,836,800</td>
<td></td>
</tr>
<tr>
<td>Wyoming</td>
<td>563,626</td>
<td>578,759</td>
<td>578,700</td>
<td></td>
</tr>
</tbody>
</table>

III. Estimating the Overseas Federal Population Allocated to each State

20. The population estimates above include all people living in the United States. However, the populations used for apportionment also include overseas federal employees and their
dependents. Thus, it is necessary to estimate how overseas federal employees and dependents would be allocated for purposes of apportionment.

21. In the 2010 Census, the overseas military population were generally allocated to their “home of record” (the address provided when the service member entered the military) for purposes of apportionment. For the 2020 Census, however, all overseas federal personnel will be counted at their usual residential address in the United States. In other words, military personnel will typically be counted as residing in or near the domestic base where they are stationed. Unfortunately, there is no currently available public estimate of how these overseas personnel will be allocated to individual states. The Census Bureau has stated that it plans to count federal personnel living outside the United States, and their dependents living with them outside the United States, using administrative data provided by the Department of Defense and the Department of Homeland Security.

22. I used the following process to estimate the number of overseas federal population that will be allocated to each state for apportionment:

- First, I estimated the number of military personnel overseas in each branch using data from the Department of Defense from March, 2020.

- Second, I allocated these personnel to each state in proportion to the number of service members in each branch based in each state. This approach implicitly assumes that each

6 “Overseas” is defined as anywhere outside the 50 U.S. States and the District of Columbia.


8 See https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/.


10 I used the spreadsheet DMDC_Website_Location_Report_2003.xlsx that is available from https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp.
member of the military has an equal probability of being assigned abroad. While this is clearly a simplification, I believe it is the most reasonable analytical approach with currently available data.

\[ \infty \] Third, I assumed that military personnel have the same number of dependents (1.44) as they did in the 2010 Census.\(^{12}\)

\[ \infty \] Finally, I assumed that the overseas federal civilian population is the same as in 2010 (39,674). Since the majority of overseas federal civilian employees are with the State Department,\(^{13}\) I assume these are all headquarters staff that work in Washington DC. I use ACS Commuting Flows from the Census to allocate them between the District of Columbia, Virginia, and Maryland.\(^{14}\) I also assumed that these civilian employees each have 1.44 dependents.

\[ \infty \] Of course, this estimation method has considerable uncertainty. So I assumed that there is a standard error associated with my estimates of the overseas federal population for each state that is equal to 10\% of the size of the estimates.

23. Based on this methodology, I estimate that there are about 230,000 overseas federal personnel. Including dependents, I estimate there are about 561,000 federal employees and dependents overseas population will be included for purposes of apportionment for the 2020 Census. Table 3 shows the state-by-state results. A copy of Table 3 is provided in Appendix

\(^{11}\) I used the spreadsheet DMDC_Website_Location_Report_2003.xlsx that is available from https://www.dmcd.osd.mil/appj/dwp/dwp_reports.jsp.


A to this Declaration. My estimates indicate that California, North Carolina, Texas, and Virginia have the largest overseas federal populations.\textsuperscript{15} It is important to note that the federal overseas population is down by nearly 50\% since the 2010 Census.\textsuperscript{16} This likely reflects the reduction in the nation’s military deployments in conflict areas over the past decade.\textsuperscript{17}

**IV. Estimating the Number of Undocumented Immigrants in Each State**

24. The President’s Memorandum charges the Secretary of Commerce to “exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”\textsuperscript{18} In order to assess the impact of this memorandum, we next need to estimate the number of undocumented immigrants in each state.

25. There is no official estimate from the Census Bureau or any other federal government agency of the number of undocumented immigrants in each state that would be affected by the President’s memorandum. The most commonly used estimates of the number of undocumented people have been developed by the Pew Research Center.\textsuperscript{19} There are hundreds of citations in Google Scholar for Pew’s estimates of the number of undocumented immigrants in the United States. As a result, I use these estimates in my main analysis. However later, I also examine the estimates of the number of undocumented immigrants from a number of other organizations that use a variety of slightly different methodologies.

\textsuperscript{15} These estimates seem to be in-line with discussions in news coverage of apportionment. See http://www.rollcall.com/2020/02/26/census-troop-counting-rules-could-tip-congressional-balance/.

\textsuperscript{16} I use information on these populations from the 2010 apportionment available at https://www.census.gov/data/tables/2010/dec/2010-apportionment-data.html.

\textsuperscript{17} See Pew’s report on the number of overseas military personnel at https://www.pewresearch.org/fact-tank/2017/08/22/u-s-active-duty-military-presence-overseas-is-at-its-smallest-in-decades/.

\textsuperscript{18} See https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/.

Each of these analyses yields substantively similar conclusion as my main analysis using Pew’s data.

26. Pew estimates the U.S. unauthorized immigrant population from 1995-2017 in each state based on a residual estimation methodology that compares a demographic estimate of the number of immigrants residing legally in the country with the total number of immigrants as measured by either the American Community Survey (ACS) or the March Supplement to the Current Population Survey (CPS).\textsuperscript{20} The difference is assumed to be the number of unauthorized immigrants in the survey, a number that later is adjusted for omissions from the survey (see below). The basic estimate is:

\[
\text{Unauthorized Immigrants (U) = Survey, Total Foreign Born (F)} - \text{Estimated Lawful Immigrant Population (L)}
\]

27. The lawful resident immigrant population was estimated by applying demographic methods to counts of lawful admissions covering the period since 1980 obtained from the Department of Homeland Security’s Office of Immigration Statistics\textsuperscript{21} and its predecessor at the Immigration and Naturalization Service, with projections to current years, when necessary. Initial estimates were calculated separately for age-gender groups in six states (California, Florida, Illinois, New Jersey, New York and Texas) and the balance of the country. This residual method has been used in a wide variety of government reports and peer reviewed articles (e.g., Baker 2018; Warren and Warren 2013; Passel 2016).

28. The overall estimates for unauthorized immigrants built on these residuals by adjusting for survey omissions in these six states and the balance of the country, subdivided for Mexican immigrants and other groups of immigrants (balance of Latin America, South and East Asia, etc.).

\textsuperscript{20} The next few paragraphs of this section are adapted from Pew’s discussion of their methodology at https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigration- estimate-methodology/.

\textsuperscript{21} See https://www.dhs.gov/immigration-statistics/yearbook/2016/.
rest of world) depending on sample size and state. Once the residual estimates were
produced, Pew assigned individual foreign-born respondents in the survey a specific status
(one option being unauthorized immigrant) based on the individual’s demographic, social,
economic, geographic and family characteristics in numbers that agree with the initial
residual estimates for the estimated lawful immigrant and unauthorized immigrant
populations in the survey. A last step in the weighting-estimation process involves
developing state-level estimates that take into account trends over time in the estimates.

29. Overall, Pew estimates there were about 10,481,000 undocumented immigrants in the United
States in 2017. They estimate that the states with the most undocumented immigrants are
California, Texas, Florida, New York, and New Jersey. The states with the fewest
undocumented immigrants are Maine, Montana, Vermont, and West Virginia.

30. Of course, Pew’s estimation process has substantial uncertainties inherent in it. First, there is
no way to know that individual respondents to the ACS and CPS are undocumented
immigrants. Pew estimates undocumented status based on a variety of pieces of
information. Second, the ACS and CPS are themselves surveys, subject to sampling error.
There could also be misreporting of country of birth on the ACS and/or unit non response by
undocumented immigrants (Brown et al. 2018). In order to characterize these uncertainties,
Pew provides a 90% confidence interval for their estimates of the number of undocumented
people in each state.

!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!
22 These estimates seem plausible since the Department of Homeland Security estimated there were 12
million undocumented immigrants in the country in January 2015 (Baker 2018). They are also similar to
estimates of the number of undocumented immigrants developed by other think tanks (see below).
31. Lastly, Pew’s data of the number of undocumented immigrants in each state between 1995-2017 need to be projected 3 years forward to 2020. To determine how to forecast the number of undocumented immigrants in each state, I compared the same four modeling strategies that I discussed earlier for the state population projections. For each method, I used data through 2014 to evaluate its performance at predicting the number of undocumented immigrants three years forward in 2017.

32. All of the models generate significant levels of error compared to the population forecasting validation shown above in Table 4. However, the state space model (4) and a linear time trend (2) using the previous four years of data perform somewhat better than the other models. In my main analysis, I use the state space model to project the number of undocumented immigrants in 2020. Moreover, I ensured that the state space model estimates fully incorporate the uncertainty in Pew’s estimates in the number of undocumented immigrants (see Treier and Jackman 2008; Caughey and Warshaw 2018). I checked the robustness of my analysis by showing that I reach similar substantive conclusions using the linear time trend model (see Additional Scenario #7).

Table 4: Validation of Forecasting Pew’s Estimates of the Number of Undocumented Immigrants in 2017

<table>
<thead>
<tr>
<th>Model</th>
<th>ME</th>
<th>RMSE</th>
<th>MAE</th>
<th>MPE</th>
<th>MAPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1): Linear model (decade)</td>
<td>-21,998.25</td>
<td>90,634.40</td>
<td>31,639.51</td>
<td>-3.34</td>
<td>14.56</td>
</tr>
<tr>
<td>(2): Linear model (4 years)</td>
<td>-10,944.23</td>
<td>50,403.96</td>
<td>25,971.15</td>
<td>-3.95</td>
<td>17.59</td>
</tr>
<tr>
<td>(3): Delta in last two years</td>
<td>-12,884.62</td>
<td>58,005.64</td>
<td>28,961.54</td>
<td>-0.40</td>
<td>19.24</td>
</tr>
<tr>
<td>(4): State spacemodel</td>
<td>-13,688.05</td>
<td>55,204.49</td>
<td>22,794.32</td>
<td>-3.46</td>
<td>15.48</td>
</tr>
</tbody>
</table>

Pew’s data are available at https://www.pewresearch.org/hispanic/interactives/unauthorized-trends/.

Specifically, I used the following approach. First, I constructed 100 simulations of the number of undocumented immigrants in each state from 2005-2017 using Pew’s estimates and the associated confidence intervals. For each simulation, I used the state space model to forecast each state’s number of undocumented immigrants in 2020. I then constructed a bootstrap sample of the forecast of undocumented immigrants in each state based on the mean and confidence intervals in the state space model’s population forecast. Finally, I estimated the number of undocumented immigrants in each state in 2020, and its associated standard error to represent uncertainty, based on these simulations.
33. Table 5 shows the estimates of the number of undocumented immigrants in each state (standard errors that represent uncertainty are in parentheses). A copy of Table 5 is provided in Appendix A to this Declaration. It shows that California, Florida, Illinois, New Jersey, New York, and Texas each have at least 400,000 undocumented immigrants.\textsuperscript{26}

34. These final estimates take into account the uncertainty in Pew’s initial estimates of the number of undocumented immigrants from 2005-2017. They also take into account the uncertainty in projecting the trends in each state from 2017-2020. In general, the additional uncertainty associated with forecasting to 2020 approximately triples the size of Pew’s confidence intervals for their estimates of undocumented immigrants in each state in 2017.

A. Incorporating Uncertainty

35. All modeled estimates have uncertainty. My analyses use bootstrap simulations to incorporate three sources of uncertainty in all my models:

- The uncertainty in the population forecasts in every state for 2020.
- The uncertainty in the estimates of the overseas federal employees and dependents, and how they are allocated to states.
- The uncertainty in the estimate of the number of undocumented immigrants in each state in 2020.

V. State-level Effects of Excluding Undocumented Immigrants from Apportionment Base

36. Now that we have calculated population projections and estimates of the number of undocumented immigrants in each state, we are in a position to estimate state-level impacts.

\textsuperscript{26} These state-by-state figures are similar to those in a 2015 Department of Homeland Security report, which provided estimates of the number of undocumented immigrants in several states (Baker 2018).
A. Effect on State Population Enumerations

37. To begin, I analyzed the effects on the enumerated population of each state in 2020. The results are shown in Table 6. Column (1) of Table 6 shows the baseline apportionment population projections for each state (including the overseas military population, federal employees, and dependents). Column (2) shows my estimate of the number of undocumented immigrants in each state in 2020. Column (3) shows my estimate of the percentage of the apportionment population in each state that consists of undocumented immigrants.
Table 6: Estimates of Effect on State Population Enumerations in 2020

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline 2020 Apportionment Population</th>
<th>Undocumented Immigrants (Pew)</th>
<th>Undocumented Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>Alabama</td>
<td>4,926,400</td>
<td>71,900</td>
<td>1.5%</td>
</tr>
<tr>
<td>Alaska</td>
<td>735,700</td>
<td>8,400</td>
<td>1.1%</td>
</tr>
<tr>
<td>Arizona</td>
<td>7,410,500</td>
<td>274,400</td>
<td>3.7%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>3,028,800</td>
<td>65,300</td>
<td>2.2%</td>
</tr>
<tr>
<td>California</td>
<td>39,799,200</td>
<td>2,066,000</td>
<td>5.2%</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,846,100</td>
<td>190,100</td>
<td>3.3%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,568,100</td>
<td>148,300</td>
<td>4.2%</td>
</tr>
<tr>
<td>Delaware</td>
<td>984,300</td>
<td>29,700</td>
<td>3%</td>
</tr>
<tr>
<td>Florida</td>
<td>21,736,600</td>
<td>796,000</td>
<td>3.7%</td>
</tr>
<tr>
<td>Georgia</td>
<td>10,749,300</td>
<td>375,700</td>
<td>3.5%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,428,900</td>
<td>43,800</td>
<td>3.1%</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,825,700</td>
<td>38,300</td>
<td>2.1%</td>
</tr>
<tr>
<td>Illinois</td>
<td>12,633,400</td>
<td>409,300</td>
<td>3.2%</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,773,300</td>
<td>103,200</td>
<td>1.5%</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,169,100</td>
<td>51,000</td>
<td>1.6%</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,924,300</td>
<td>81,300</td>
<td>2.8%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,485,300</td>
<td>44,700</td>
<td>1%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>4,657,900</td>
<td>100,100</td>
<td>2.1%</td>
</tr>
<tr>
<td>Maine</td>
<td>1,350,400</td>
<td>4,000</td>
<td>0.3%</td>
</tr>
<tr>
<td>Maryland</td>
<td>6,105,000</td>
<td>261,600</td>
<td>4.3%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,907,400</td>
<td>231,900</td>
<td>3.4%</td>
</tr>
<tr>
<td>Michigan</td>
<td>9,889,700</td>
<td>103,800</td>
<td>1%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>5,677,700</td>
<td>86,800</td>
<td>1.5%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,979,500</td>
<td>23,000</td>
<td>0.8%</td>
</tr>
<tr>
<td>Missouri</td>
<td>6,160,800</td>
<td>63,100</td>
<td>1%</td>
</tr>
<tr>
<td>Montana</td>
<td>1,079,300</td>
<td>4,400</td>
<td>0.4%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,950,200</td>
<td>55,800</td>
<td>2.9%</td>
</tr>
<tr>
<td>Nevada</td>
<td>3,137,300</td>
<td>211,200</td>
<td>6.7%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,363,700</td>
<td>10,400</td>
<td>0.8%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>8,899,400</td>
<td>493,200</td>
<td>5.5%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2,107,400</td>
<td>59,200</td>
<td>2.8%</td>
</tr>
<tr>
<td>New York</td>
<td>19,386,100</td>
<td>679,800</td>
<td>3.5%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>10,639,700</td>
<td>330,800</td>
<td>3.1%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>770,300</td>
<td>5,900</td>
<td>0.8%</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,715,100</td>
<td>94,400</td>
<td>0.8%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,981,800</td>
<td>90,100</td>
<td>2.3%</td>
</tr>
<tr>
<td>Oregon</td>
<td>4,261,500</td>
<td>109,100</td>
<td>2.6%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>12,809,600</td>
<td>217,800</td>
<td>1.7%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,061,000</td>
<td>32,900</td>
<td>3.1%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>5,229,800</td>
<td>101,500</td>
<td>1.9%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>893,800</td>
<td>5,700</td>
<td>0.6%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,888,900</td>
<td>139,200</td>
<td>2%</td>
</tr>
<tr>
<td>Texas</td>
<td>29,479,700</td>
<td>1,649,100</td>
<td>5.6%</td>
</tr>
<tr>
<td>Utah</td>
<td>3,263,900</td>
<td>106,100</td>
<td>3.3%</td>
</tr>
<tr>
<td>Vermont</td>
<td>624,400</td>
<td>3,500</td>
<td>0.6%</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,639,600</td>
<td>297,600</td>
<td>3.4%</td>
</tr>
<tr>
<td>Washington</td>
<td>7,730,300</td>
<td>274,400</td>
<td>3.5%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,780,600</td>
<td>4,300</td>
<td>0.2%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,838,300</td>
<td>72,900</td>
<td>1.2%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>580,300</td>
<td>4,800</td>
<td>0.8%</td>
</tr>
</tbody>
</table>

38. Overall, Table 6 indicates that each state would be affected by an exclusion of undocumented immigrants. Figure 1 shows a map of the percentage of people in each state that would be dropped from the Census apportionment base if undocumented immigrants are excluded.
Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Maryland, Massachusetts, Nevada, New Jersey, New York, North Carolina, Rhode Island, Texas, Utah, Virginia, and Washington would all lose at least 3% of their population from their apportionment base. Thus, they could be at risk of losing a congressional seat during apportionment.

Figure 1: Effects on State Populations

B. Effect on Apportionment

39. Next, I used the population projections and estimates of undocumented immigrants in each state to examine the likely effect of excluding undocumented immigrants from the Census count on the apportionment of seats in the House of Representatives. Article 1, Section 2, of the United States Constitution states: “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.”

40. Since the first census in 1790, five methods of apportionment have been used. The government currently uses a method called the Method of Equal Proportions, which was
adopted by Congress in 1941 following the census of 1940. This method first assigns each state one seat. Then, additional seats in the House of Representatives are assigned to a “priority” value. The priority value for each seat is determined by multiplying the population of a state by a “multiplier.” The multiplier is $1/\sqrt{n(n-1)}$. So the formula for calculating the multiplier for the second seat is $1/\sqrt{2(2-1)}$ or 0.70710678, the formula for calculating the multiplier for the third seat is $1/\sqrt{3(3-1)}$ or 0.40824829, and so on. The Census provides an official table of these multipliers, which I used for my calculations.²⁷

41. The next step is to multiply the multipliers by the population total for each of the 50 states (the District of Columbia is not included in these calculations). The resulting numbers are the priority values. Multipliers and priority values must be calculated for the largest number of seats that could be assigned to a state. In my analysis, I calculated the priority values for each state for seats 2 through 60. The next step is to rank and number the resulting priority values starting with seat 51 until all 435 seats have been assigned. The final step is to tally the number of seats for each state to arrive at the total number of seats in the House of Representatives apportioned to each state.

42. I conducted these steps for 1,000 simulations of the population projections and undocumented populations in each state. Table 7 shows the results.²⁸ Column (1) shows the rounded, baseline projections for the number of seats that each state is likely to receive in 2020 if there is a full population enumeration. Column (2) shows the rounded projections for the number of seats that each state is likely to receive in 2020 if undocumented immigrants are excluded from the apportionment base. Column (3) shows the rounded, average change in

²⁷ See https://www.census.gov/population/apportionment/about/computing.html.
²⁸ Table 12 in the Appendix A shows unrounded numbers for this table.
the number of congressional seats each state would gain or lose due to the exclusion of undocumented immigrants. Finally, column (4) shows the probability that each state would lose at least one seat.

Table 7: Estimates of Effect of Excluding Undocumented Immigrants on Congressional Apportionment

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Seats (1)</th>
<th>Seats after Exclusion (2)</th>
<th>Seat Delta (3)</th>
<th>Prob. Seat Loss (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>6</td>
<td>7</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Alaska</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Arizona</td>
<td>10</td>
<td>10</td>
<td>-0</td>
<td>0.3%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>California</td>
<td>52</td>
<td>51</td>
<td>-1</td>
<td>72.1%</td>
</tr>
<tr>
<td>Colorado</td>
<td>8</td>
<td>8</td>
<td>-0</td>
<td>0.3%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>5</td>
<td>5</td>
<td>-0</td>
<td>3.4%</td>
</tr>
<tr>
<td>Delaware</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Florida</td>
<td>29</td>
<td>28</td>
<td>-0</td>
<td>38.4%</td>
</tr>
<tr>
<td>Georgia</td>
<td>14</td>
<td>14</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Idaho</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Illinois</td>
<td>17</td>
<td>17</td>
<td>-0</td>
<td>10.1%</td>
</tr>
<tr>
<td>Indiana</td>
<td>9</td>
<td>9</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Iowa</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Kansas</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Maine</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Maryland</td>
<td>8</td>
<td>8</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>9</td>
<td>9</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Michigan</td>
<td>13</td>
<td>13</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>7</td>
<td>8</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Missouri</td>
<td>8</td>
<td>8</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Montana</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Nevada</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>12</td>
<td>11</td>
<td>-1</td>
<td>69.8%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>New York</td>
<td>26</td>
<td>25</td>
<td>-0</td>
<td>18.9%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>14</td>
<td>14</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Ohio</td>
<td>15</td>
<td>16</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Oregon</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>17</td>
<td>17</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>9</td>
<td>9</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Texas</td>
<td>39</td>
<td>38</td>
<td>-1</td>
<td>98.3%</td>
</tr>
<tr>
<td>Utah</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Vermont</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Virginia</td>
<td>11</td>
<td>11</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Washington</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>8</td>
<td>8</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
</tbody>
</table>

43. My analysis indicates that there is a 98% chance that Texas would lose a Congressional seat if undocumented immigrants are excluded from the apportionment base. It loses a seat in
nearly every single one of my simulations. In addition, my analysis indicates that there is a 72% chance that California would lose a Congressional seat. On average, it loses .83 seats across my simulations (i.e., in most simulations it loses 1 seat, in some it loses 2 seats, and in some it loses zero seats). My analysis also indicates that there is a 70% chance that New Jersey would lose a Congressional seat if undocumented immigrants are excluded from the apportionment base. There are smaller chances that several other states could lose seats, including Connecticut, Florida, Illinois, and New York.29

44. The states that lose seats in Congress would likely see decreases in their share of federal outlays due to their reduction in voting power in Congress. A number of economics and political science studies have found that distributive spending is allocated in part based on the number of seats that a geographic area has in Congress (e.g., Ansolabehere, Gerber, and Snyder 2002; Cascio and Washington 2014; Elis, Malhotra, and Meredith 2009). For instance, Elis, Malhotra, and Meredith (2009) find that a 10% increase in a state’s share of the U.S. House of Representatives equates to a 0.7% increase in a state’s share of the federal budget. This implies that an extra congressional seat can gain a state as much as $100 per capita in additional federal funding (360).

VI. Robustness Checks

45. It is always helpful to evaluate the robustness of any analysis to alternative modeling assumptions. In this section, I undertake four different robustness checks. First, I evaluate the impact of using alternative sources of information on the number of undocumented immigrants in each state on my analysis. Second, I evaluate the impact of alternative population forecasting methodologies. Third, I evaluate whether my conclusions would differ

29 Note the rounded numbers in Table 7 imply that Florida and New York would lose seats. The unrounded numbers in the Appendix (Table 12), however, show that there is a less 50% chance that they would lose a seat.
if former Census Director John H. Thompson is correct that the exclusion of undocumented immigrants from the apportionment base would cause an undercount of immigrant populations. I used the foreign-born population in the United States to evaluate the impact of an undercount of immigrants. Fourth, I compare my results to the conclusions of various organizations’ reports on the impact of excluding undocumented immigrants on apportionment.

46. Overall, the analysis in this section shows that my conclusions are robust to a wide variety of alternative data sources and modeling strategies. They are also consistent with the findings of other organizations and analysts. All of these alternative data sources, methodologies, and third-party reports indicate that Texas would lose a congressional seat if undocumented immigrants are excluded from the apportionment base. They nearly all indicate that California would lose a seat. They also indicate that some mix of Florida, New Jersey, and New York could lose seats.

A. Robustness to Alternative Estimates of the Number of Undocumented Immigrants

47. Due to the substantial uncertainties in Pew’s estimates of the number of undocumented people in each state, I conducted a canvass of alternative sources of estimates for the undocumented population. I identified several alternative sources of data:

∞ Additional Scenario 1: The Migration Policy Institution (MPI) has developed estimates of the number of undocumented people in each state based on the U.S. Census Bureau’s 2012-16 American Community Survey data. They estimate there are about 11,300,000 undocumented immigrants in the United States. Their national estimate is very similar to

Pew’s estimate. However, their estimates differ more in some states. For instance, MPI estimates that there are about 50% more undocumented immigrants in California than Pew estimates. They do not provide measures of uncertainty for their estimates so I assume that each state has a standard error that is 10% of the state’s point estimate.

Additional Scenario 2: The Center for Migration Studies (CMS) has developed estimates of the number of undocumented people in each state in 2018. Their methodology is described in two articles that were published in the Journal of Migration and Security (Warren 2014, 2019). They estimate there are about 10,543,500 undocumented immigrants in the United States, which is nearly identical to Pew’s national estimate. They do not provide measures of uncertainty for their estimates so I assume that each state has a standard error that is 10% of the state’s point estimate.

Additional Scenario 3: Third, I examine a scenario where the national estimates of the number of undocumented immigrants are somewhat too high. To do this, I simply decrease all of my main estimates using Pew’s data of the number of undocumented immigrants in each state by 20% to examine the effects on apportionment if the Pew, MPI, and CMS estimates of the total number of undocumented immigrants in the United States are all too high.

Additional Scenario 4: Fourth, I examine a scenario where the national estimates of the number of undocumented immigrants are much too high. To do this, I decrease all of my main estimates using Pew’s data on the number of undocumented immigrants in each state by 40%.

31 MPI’s national estimate is about 8% higher than Pew’s estimate.
32 Their estimates are available at http://data.cmsny.org/state.html.
33 CMS’s national estimate is about 0.5% higher than Pew’s estimate.
∞ **Additional Scenario 5:** Finally, I examine a scenario where the national estimates of the number of undocumented immigrants are much too low. To do this, I increase all of my main estimates using Pew’s data on the number of undocumented immigrants in each state by 50%.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Scenario#1 MPI</th>
<th>Scenario#2 CMS</th>
<th>Scenario#3 Pew (80%)</th>
<th>Scenario#4 Pew (60%)</th>
<th>Scenario#5 Pew (150%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>72%</td>
<td>100%</td>
<td>93%</td>
<td>49%</td>
<td>36%</td>
<td>92%</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>0%</td>
<td>26%</td>
<td>39%</td>
<td>48%</td>
<td>60%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td>80%</td>
<td>23%</td>
<td>57%</td>
<td>36%</td>
<td>91%</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td>52%</td>
<td>19%</td>
<td>17%</td>
<td>28%</td>
<td>24%</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>96%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>99.5%</td>
</tr>
</tbody>
</table>

48. Table 8 compares my main findings (the “Main Analysis” column) to analyses based on alternative estimates of the number of undocumented immigrants. It shows each of the states that at least one scenario (including my main analysis) finds has a 33% chance or more of losing a seat if undocumented immigrants are excluded from the apportionment base. For each of these states, it shows the probability that my analysis indicates the state would lose a seat and the probability it would lose a seat under the various alternative scenarios.

49. Overall, all of these analyses yield substantively similar results as my main analysis. In each scenario, Texas has more than 95% chance of losing a congressional seat if undocumented immigrants are excluded from the apportionment base. Moreover, in all of the additional scenarios but one, California has about a 50% chance or more of losing a congressional seat. There is also a significant chance that Florida, New Jersey, and New York could lose a seat in most of the scenarios.
B. Robustness to Alternative Modeling Approaches

50. As I discussed above, there are a number of alternative approaches we could use to project the 2020 populations and estimates of undocumented immigrants in each state. In this section, I discuss alternative forecasting methodologies for each of these:

- **Additional Scenario 6:** For the population forecasts of each state in 2020, I use a forecasting methodology based on the deltas in the two most recent years. In Table 1, I found that this approach was roughly equivalent to the state space model. The state space model is preferable because it is more flexible and provides a measure of uncertainty.

- **Additional Scenario 7:** For the forecasts of the number of undocumented immigrants in each state in 2020 based on Pew’s data, I use a methodology based on a linear time trends over the four most recent years. In Table 4, I found that this approach performed nearly as well as the state space model. The state space model is preferable because it is more flexible and requires fewer assumptions about future time trends.

51. Both of these alternative-modeling strategies produce similar results as my main results (Table 9). In each scenario, Texas is nearly certain to lose a seat. California and New Jersey are likely to lose seats in each scenario. Florida and New York also have significant chances of losing a seat in each scenario.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Scenario#6 Alternative Population Forecasts</th>
<th>Scenario#7 Alternative Forecasts of Undoc. Imm.'s</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>72%</td>
<td>84%</td>
<td>75%</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>45%</td>
<td>96%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td>73%</td>
<td>51%</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td>58%</td>
<td>30%</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>99.5%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 9: Comparison of My Findings with Alternative Modeling Strategies. The table shows the probability that various states would lose seats in each scenario.
C. Robustness to a Possible Census Undercount

52. The testimony of the former U.S. Census Bureau Director, John H. Thompson, to Congress on July 29, 2020 raises the possibility that the president’s memorandum could lead to nonresponse to the Census by hard-to-count populations, including noncitizens and immigrants.\(^{34}\) This, in turn, could lead the Census to undercount foreign-born people. It is possible that planned reductions in door-to-door canvassing due to COVID-19 could lead to a further undercount of foreign-born people.\(^{35}\)

53. In this section, I examine whether an undercount of foreign-born people would affect my findings about the effects of excluding undocumented immigrants from the apportionment base. I use my estimates from New York Immigration Coalition et al v. United States Department of Commerce, No. 18-CV-2921-JMF (S.D. NY) of the number of foreign-born people in each state. I then assess the consequences of a scenario with a 10% undercount of foreign-born people using the same methodology that I use in my main analyses. I am adopting my declaration provided in that matter by reference and include a copy in Appendix B.

Table 10: Comparison of My Findings with Analyses that Assume 10% Undercount of Foreign-born People. The table shows the probability that various states would lose seats in each scenario.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Scenario#8 Undercount</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>72%</td>
<td>67%</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>0%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td>93%</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td>0%</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>76%</td>
</tr>
</tbody>
</table>


54. Table 10 compares my main findings to the results of this undercount scenario. It shows each state that my analysis indicates has a significant chance of losing a seat if undocumented immigrants are excluded from the apportionment base. Once again, in this scenario Texas is likely to lose a congressional seat if undocumented immigrants are excluded from the apportionment base. California and New Jersey are also likely to lose congressional seats.

D. Comparison with Other Organizations’ Analyses

55. There have been a number of studies and reports by various organizations estimating how excluding undocumented immigrants would affect apportionment. These include:

- The Pew Research Center\(^{36}\)
- The Center for Immigration Studies (CIS)\(^{37}\)
- The Center for Politics at the University of Virginia (CfP)\(^{38}\)
- A peer reviewed academic study published in 2019 (Baumle and Poston Jr 2019).

Table 11: Comparison of My Findings with Other Studies. The table shows whether each study finds various states would lose a seat.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis (1)</th>
<th>Pew (2)</th>
<th>CIS (3)</th>
<th>CfP (4)</th>
<th>Academic Study (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>0.3%</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>California</td>
<td>72%</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td></td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

56. Table 11 compares my main findings to the results of these studies. It shows each state that at least one study finds would lose a seat if undocumented immigrants are excluded from the apportionment base. For each of these states, it shows the probability that my analysis


indicates the state would lose a seat and an X for each of the other studies that shows it would lose a seat.

57. Overall, each of these four other studies reaches substantively similar conclusions as the ones in this Declaration. They all conclude that California and Texas would lose congressional seats if undocumented immigrants are excluded from the apportionment base. They also find a mix of other states that might lose seats, including Arizona, Florida, New Jersey, and New York.

VII. Conclusion

58. Based on the analyses in this Declaration, I conclude that failing to count undocumented immigrants for apportionment is likely to have effects on the population counts of each state, and the apportionment of representatives across states for the U.S. House. Texas is nearly certain to lose a congressional seat. California and New Jersey are very likely to each lose a congressional seat. Other states, such as Florida and New York could lose seats as well. This would affect political representation in Congress. For instance, it is likely to affect the distribution of federal funds to each state, and the general power that each state holds in Congress.
I reserve the right to amend or supplement my opinions if additional information or materials become available. I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct to the best of my knowledge.

Executed on August 7, 2020 in Bethesda, Maryland.

[Signature]

Christopher Warshaw
References


## Appendix A

1. **Estimates of Overseas Federal Personnel**


<table>
<thead>
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<th>State</th>
<th>Overseas Personnel</th>
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<tr>
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<td>11,000</td>
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<td>74,900</td>
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<tr>
<td>Wyoming</td>
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</table>
2. **Estimates of Undocumented Immigrants**

Table 5: Estimates of Undocumented Immigrants in each State in 2020. Standard errors, which represent the uncertainty in each estimate, are shown in parentheses.

<table>
<thead>
<tr>
<th>State</th>
<th>Undocumented Immigrants</th>
</tr>
</thead>
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<td>71,900 (26,800)</td>
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<tr>
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<td>8,400 (3,500)</td>
</tr>
<tr>
<td>Arizona</td>
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<td>Arkansas</td>
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<td>Florida</td>
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<td>Georgia</td>
<td>375,700 (140,000)</td>
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<td>Missouri</td>
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<td>Washington</td>
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<td>Wisconsin</td>
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<tr>
<td>Wyoming</td>
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3. Unrounded Main Results for Congressional Apportionment

Table 12: Unrounded Estimates of Excluding Undocumented Immigrants on Congressional Apportionment

<table>
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<tr>
<th>State</th>
<th>Baseline Seats (1)</th>
<th>Seats after Exclusion (2)</th>
<th>Seat Delta (3)</th>
<th>Prob. Seat Loss (4)</th>
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<td>Louisiana</td>
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<td>Maryland</td>
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<td>Wyoming</td>
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<td>0.00</td>
<td>0%</td>
</tr>
</tbody>
</table>
Appendix B
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NEW YORK IMMIGRATION
COALITION, et. al,

 Plaintiff,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et. al,

 Defendant.

Civil Action No. 18-CV-2921-JMF
Hon. Jesse M. Furman

DECLARATION OF DR. CHRISTOPHER WARSHAW

I. Qualifications

1. I have been asked by counsel representing the plaintiffs in New York Immigration Coalition v. U.S. Dept of Commerce and State of New York v. U.S. Dept of Commerce to analyze relevant data and provide my expert opinions. More specifically, I have been asked: to forecast the populations of every state, county, and city in the United States in 2020; given the assumption that various demographic groups are likely to be undercounted due to the inclusion of a citizenship question on the Census, to estimate the proportion of the population that belongs to those groups; to estimate the proportion of the population in every state, county, and city in the United States that belongs to those demographic groups assumed to be likely to be undercounted in 2020 due to the inclusion of a citizenship question on the Census; to analyze the likely effects of an undercount caused by the citizenship question affecting those same demographic groups on the apportionment of representatives across states for the U.S. House of Representatives; and to examine the likely consequences of an undercount caused by the citizenship question affecting those demographic groups on the
distribution of people in urban and rural counties. My expert report is PX-32 and the errata to that report is PX-323.

2. I have been an Assistant Professor of Political Science at George Washington University since August 2017. Prior to that, I was an Associate Professor at the Massachusetts Institute of Technology from July 2016 - July 2017, and an Assistant Professor at MIT from July 2012 - July 2016.

3. My Ph.D. is in Political Science, from Stanford University, where my graduate training included courses in political science and statistics. I also have a J.D. from Stanford Law School.

4. My academic research focuses on public opinion based on surveys and census data, as well as the study of representation, elections, and polarization in American Politics. I have also taught courses on statistical analysis. My curriculum vitae is PX-323. All publications that I have authored and published appear in my curriculum vitae. My work is published or forthcoming in peer-reviewed journals such as: American Political Science Review, the American Journal of Political Sciences, the Journal of Politics, Political Analysis, Political Science Research and Methods, the British Journal of Political Science, Political Behavior, the Election Law Journal, Nature Energy, Public Choice and edited volumes from Cambridge University Press and Oxford University.

6. The opinions in this declaration are my own, and do not represent the views of
George Washington University.

7. I offer these opinions with a strong degree of professional certainty based on the knowledge I
have amassed over my education, training and experience, and through a detailed review of
the relevant academic literature.

II. Projecting Future Populations

8. The first stage of my analysis is to develop baseline projections of the population of each
state, county, and city in the country in 2020. These projections are critical to determining the
likely effects of an undercount in the Census due to the inclusion of a citizenship question. In
order to develop these estimates, I use the Census’s official estimates of the population of
each state, county, and city from 2000-2017. The Census does not provide public estimates
of each geographic unit’s populations in future years.

   A. Data

9. The Census Bureau’s Population Estimates Program (PEP) produces estimates of the
population for the United States, states, counties, cities, towns, and other geographic areas.
These aggregate estimates are based on the demographic components of population change
(births, deaths, and migration) at each level of geography.¹

10. My population projections are based on these official population estimates for each state,

11. For the state populations from 2010-2017, I used the file ‘nst-est2017-01.xlsx’ which I
    obtained from https://www.census.gov/data/tables/2017/demo/popest/state-total.html. For the

¹I do not directly use the more detailed cohort-component method used by the Census for my population
projections because this information is unavailable for some geographic levels, particularly for the 2000-
2010 period. It is also unclear whether the additional complexities associated with this approach would
yield substantial gains in predictive accuracy.
populations from 2000-2009, I used the file ‘st-est00int-01.xls’ from https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-
state.html.

12. For the county populations from 2010-2017, I used the file ‘co-est2017-alldata.csv’ from https://www.census.gov/data/tables/2017/demo/popest/counties-total.html. For the populations from 2000-2009, I used the file ‘co-est00int-tot.csv’ from https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-counties.html.


14. For the city populations from 2010-2017, I used the data in Factfinder available from https://www.census.gov/data/tables/2017/demo/popest/total-cities-and-towns.html. For the populations from 2000-2009, I used the file ‘sub-est00int.csv’ from https://www.census.gov/data/datasets/time-series/demo/popest/intercensal-2000-2010-cities-
and-towns.html.

**B. Statistical Model for Population Projections**

15. There are a number of potential options for forecasting the likely population of a geographic unit (e.g., states) in 2020. One possible forecasting option would be to allow the forecasts to increase or decrease over time, where the amount of change over time (called the drift) is set to be the average change in the historical data. See Hyndman and Athanasopoulos 2018, at 48-49. Some related methods in this family of forecasting approaches are:
a. **Linear trend between 2010-2017:** One possibility is to project forward based on the linear trend in the population estimates since the last Census (e.g., Election Data Services 2017). This approach assumes that each geographic unit’s population follows the same linear rate of change in the future that it has followed over the past decade. This approach has the benefit of using many years of data, but it could yield biased estimates if the population trends have changed over this period. I estimate linear trends using a simple linear regression model in the software program R.

b. **Linear trend between 2014-2017:** Another possibility is to project forward based on the linear trend in the population estimates over the past 4 years. This approach assumes that each geographic unit’s population follows the same linear trend in the future that it has followed over this shorter time period. This approach has the benefit of being sensitive to more recent trends, but it could be noisier than estimates based on the longer time series. That is, it could be overly sensitive to short-term trends. I estimate linear trends using a simple linear regression model in R.

c. **Change between two most recent years (i.e., 2016 to 2017):** A third possibility is to focus on the change between each geographic unit’s populations in the two most recent years, and assume that future years will follow this recent trend. This approach has the benefit of being based on the most recent changes in populations, but it could also be overly sensitive to short-term idiosyncratic trends. I estimate these short-term trends using the software program R.
16. As Hyndman and Athanasopoulos discuss, “Sometimes one of these simple methods will be the best forecasting method available; but in many cases, these methods will serve as benchmarks rather than the method of choice. That is, any forecasting methods . . . will be compared to these simple methods to ensure that the new method is better than these simple alternatives. If not, the new method is not worth considering.” *Id.* at 50.

17. I consider one more complex approach against these benchmarks, a state space model with exponential smoothing: This approach uses an exponential smoothing model that weights levels and trends to an extent determined by the data. *See* Hyndman and Athanasopoulos. This model uses all of the available data, but it gives more weight to the most recent years. I estimate the exponential smoothing model using the ets function in the forecast package in R.  

C. **Validation of Population Projections**

18. The accuracy of forecasting models can only be determined by considering how well a given model performs on new data that were not used when fitting the original model. *Id.* at 62. In order to choose the best model for this analysis, I evaluated each model using two benchmarks that are similar to the challenge of forecasting the 2020 populations. First, I forecasted the Census 2010 population in each state based on 2000-2007 population estimates data. Second, I forecasted the 2017 population estimates in each state based on 2007-2014 population data. For each analysis, I used the following evaluation metrics. *Id.* at 64-65.

\[\text{Equation}\]

---

[2] For my state-level population projections, I used the default parameters for the ets function in R, which allowed the function to choose the exponential smoothing state space model that best fit the data in each state. The best model was usually an ‘MAN’ or ‘AAN’ model. For the population projections for cities and counties, I estimated an ‘MAN’ state space model using the ets function. The details of the state space model specification, however, do not affect any of my substantive conclusions. All of the state space models yield very similar results.
a. **The mean error across states:** This helps assess whether a given metric has a systematic bias in one direction or another.

b. **The mean absolute error across states:** This helps assess the accuracy of the forecasts.

c. **The mean absolute proportional error across states:** This metric also helps assess the accuracy of the forecasts. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

19. Table 1 shows the results. For the forecast of the 2010 population, the state space model performs the best, with the lowest error, the second lowest mean absolute error, and the lowest absolute proportional errors. The two linear trend models perform the worst on this forecasting exercise. For the forecast of the 2017 population, the state space model and the linear trend model using data from 2010-2017 perform the best. The state space model has slightly lower mean errors, and the two models have similar mean absolute errors and absolute proportional errors.

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Linear model (full period)</td>
<td>22,800</td>
<td>62,860</td>
<td>0.013</td>
<td>7,827</td>
<td>32,003</td>
<td>0.007</td>
</tr>
<tr>
<td>Linear model (4 years)</td>
<td>27,399</td>
<td>82,106</td>
<td>0.014</td>
<td>33,420</td>
<td>59,396</td>
<td>0.014</td>
</tr>
<tr>
<td>Delta in last two years</td>
<td>20,383</td>
<td>50,663</td>
<td>0.010</td>
<td>140,472</td>
<td>142,506</td>
<td>0.020</td>
</tr>
<tr>
<td>State space model</td>
<td>5,826</td>
<td>51,033</td>
<td>0.009</td>
<td>-2,509</td>
<td>33,378</td>
<td>0.008</td>
</tr>
</tbody>
</table>

20. Overall, the state space model performs the best across the two validation exercises. It has an average absolute proportional error of only .8% and an average absolute error of only about 40,000 people in each state. As a result, I use the state space model as my main forecasting model to generate population projections. However, the results of all the analyses that follow would be substantively similar using any of these population forecasting approaches.
D. Incorporating Uncertainty

21. All modeled estimates have uncertainty. My analyses use bootstrap simulations to incorporate two sources of uncertainty in all my models:

* The uncertainty in the population forecasts in every geographic unit
* Where available, uncertainty in the undercount estimates for each group

E. Baseline estimates of 2020 populations with no undercount

22. I used the official Census population estimates to project each geographic unit’s population in 2020. Table 2 shows the population projections for a selection of cities and counties involved in lawsuits regarding the citizenship question. Table 3 shows the population projections for each state. All of the analysis of apportionment that follows fully incorporates the uncertainties in the projections discussed above. But for simplicity, the tables themselves do not show the uncertainties.

Table 2: Population Projections in Select Counties and Cities

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, AZ</td>
<td>1,446,909</td>
<td>1,626,078</td>
<td>1,698,187</td>
</tr>
<tr>
<td>Los Angeles County, CA</td>
<td>9,818,605</td>
<td>10,163,507</td>
<td>10,256,275</td>
</tr>
<tr>
<td>Monterey County, CA</td>
<td>415,052</td>
<td>437,907</td>
<td>444,016</td>
</tr>
<tr>
<td>San Francisco, CA</td>
<td>805,193</td>
<td>884,363</td>
<td>909,143</td>
</tr>
<tr>
<td>Miami, FL</td>
<td>399,457</td>
<td>463,347</td>
<td>491,295</td>
</tr>
<tr>
<td>Chicago, IL</td>
<td>2,695,620</td>
<td>2,716,450</td>
<td>2,704,974</td>
</tr>
<tr>
<td>Price Georges County, MD</td>
<td>863,420</td>
<td>912,756</td>
<td>931,412</td>
</tr>
<tr>
<td>New York NY</td>
<td>8,174,959</td>
<td>8,622,698</td>
<td>8,645,147</td>
</tr>
<tr>
<td>Columbus, OH</td>
<td>788,877</td>
<td>879,170</td>
<td>925,408</td>
</tr>
<tr>
<td>Philadelphia, PA</td>
<td>1,526,006</td>
<td>1,580,863</td>
<td>1,598,072</td>
</tr>
<tr>
<td>Pittsburgh, PA</td>
<td>305,391</td>
<td>302,407</td>
<td>297,243</td>
</tr>
<tr>
<td>Central Falls, RI</td>
<td>19,393</td>
<td>19,359</td>
<td>19,250</td>
</tr>
<tr>
<td>Providence, RI</td>
<td>177,997</td>
<td>180,393</td>
<td>181,532</td>
</tr>
<tr>
<td>Cameron County, TX</td>
<td>406,219</td>
<td>423,725</td>
<td>429,603</td>
</tr>
<tr>
<td>El Paso County, TX</td>
<td>800,647</td>
<td>840,410</td>
<td>851,600</td>
</tr>
<tr>
<td>Hidalgo County, TX</td>
<td>774,770</td>
<td>860,661</td>
<td>892,083</td>
</tr>
<tr>
<td>Seattle, WA</td>
<td>608,664</td>
<td>724,745</td>
<td>780,550</td>
</tr>
</tbody>
</table>

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3 The projections shown here do not include the overseas military population, federal employees, and dependents. However, the apportionment projections in Table 5 do include these groups.
Table 3: State population projections

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>4,779,736</td>
<td>4,874,747</td>
<td>4,917,351</td>
</tr>
<tr>
<td>Alaska</td>
<td>710,231</td>
<td>739,795</td>
<td>739,473</td>
</tr>
<tr>
<td>Arizona</td>
<td>6,392,017</td>
<td>7,016,270</td>
<td>7,339,157</td>
</tr>
<tr>
<td>Arkansas</td>
<td>2,915,918</td>
<td>3,064,279</td>
<td>3,081,838</td>
</tr>
<tr>
<td>California</td>
<td>37,253,956</td>
<td>39,536,653</td>
<td>40,505,540</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,029,196</td>
<td>5,407,154</td>
<td>5,823,866</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,574,097</td>
<td>3,588,184</td>
<td>3,589,649</td>
</tr>
<tr>
<td>Delaware</td>
<td>897,934</td>
<td>961,939</td>
<td>989,662</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>601,723</td>
<td>693,972</td>
<td>722,881</td>
</tr>
<tr>
<td>Florida</td>
<td>18,801,310</td>
<td>20,984,400</td>
<td>21,967,862</td>
</tr>
<tr>
<td>Georgia</td>
<td>9,687,653</td>
<td>10,429,379</td>
<td>10,776,655</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,360,301</td>
<td>1,427,538</td>
<td>1,429,641</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,567,582</td>
<td>1,716,943</td>
<td>1,827,695</td>
</tr>
<tr>
<td>Illinois</td>
<td>12,830,632</td>
<td>12,802,023</td>
<td>12,701,647</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,483,802</td>
<td>6,666,818</td>
<td>6,761,903</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,046,355</td>
<td>3,145,711</td>
<td>3,182,994</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,853,118</td>
<td>2,913,123</td>
<td>2,925,781</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,339,367</td>
<td>4,454,189</td>
<td>4,508,391</td>
</tr>
<tr>
<td>Maine</td>
<td>1,328,361</td>
<td>1,335,907</td>
<td>1,349,155</td>
</tr>
<tr>
<td>Maryland</td>
<td>5,773,552</td>
<td>6,052,177</td>
<td>6,187,649</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,547,629</td>
<td>6,859,819</td>
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</tr>
<tr>
<td>Michigan</td>
<td>9,883,640</td>
<td>9,962,311</td>
<td>9,962,308</td>
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<tr>
<td>Minnesota</td>
<td>5,303,925</td>
<td>5,576,606</td>
<td>5,690,791</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,967,297</td>
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<td>2,984,630</td>
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<tr>
<td>Missouri</td>
<td>5,988,927</td>
<td>6,113,532</td>
<td>6,180,600</td>
</tr>
<tr>
<td>Montana</td>
<td>989,415</td>
<td>1,050,493</td>
<td>1,079,083</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,826,341</td>
<td>1,920,076</td>
<td>1,957,570</td>
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<tr>
<td>Nevada</td>
<td>2,700,551</td>
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<td>New Hampshire</td>
<td>1,316,470</td>
<td>1,342,795</td>
<td>1,366,068</td>
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<tr>
<td>New Jersey</td>
<td>8,791,894</td>
<td>9,005,644</td>
<td>9,106,936</td>
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<tr>
<td>New Mexico</td>
<td>2,059,179</td>
<td>2,088,070</td>
<td>2,095,989</td>
</tr>
<tr>
<td>New York</td>
<td>19,378,102</td>
<td>19,849,399</td>
<td>19,885,662</td>
</tr>
<tr>
<td>North Carolina</td>
<td>9,535,483</td>
<td>10,273,419</td>
<td>10,623,613</td>
</tr>
<tr>
<td>North Dakota</td>
<td>672,591</td>
<td>755,393</td>
<td>752,711</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,536,504</td>
<td>11,658,609</td>
<td>11,713,096</td>
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<tr>
<td>Oklahoma</td>
<td>3,751,351</td>
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<tr>
<td>Oregon</td>
<td>3,831,074</td>
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</tr>
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<td>Pennsylvania</td>
<td>12,702,379</td>
<td>12,805,537</td>
<td>12,838,064</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,052,567</td>
<td>1,059,639</td>
<td>1,059,639</td>
</tr>
<tr>
<td>South Carolina</td>
<td>4,625,364</td>
<td>5,024,369</td>
<td>5,213,894</td>
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<td>South Dakota</td>
<td>814,180</td>
<td>869,666</td>
<td>891,229</td>
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<tr>
<td>Tennessee</td>
<td>6,346,105</td>
<td>6,715,984</td>
<td>6,915,723</td>
</tr>
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<td>Texas</td>
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<td>Utah</td>
<td>2,763,885</td>
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<td>Vermont</td>
<td>625,741</td>
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<td>622,506</td>
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<td>Virginia</td>
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</tr>
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<td>Washington</td>
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<td>7,785,568</td>
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<td>5,858,478</td>
</tr>
<tr>
<td>Wyoming</td>
<td>563,626</td>
<td>579,315</td>
<td>565,592</td>
</tr>
</tbody>
</table>
III. Estimating Proportion of People Likely to be Undercounted Due to Citizenship Question

23. I was not asked to and I did not attempt to calculate the specific undercount that the addition of the citizenship question might cause. However, I evaluated a range of potential undercounts of individuals who live in households with at least one non-citizen, Hispanics or foreign-born member to demonstrate the potential effects that the addition of the citizenship question might have. Theory indicates that the addition of a citizenship question could lead to unit non-response, which occurs when a household does not respond to the Census, thereby depressing response rates among non-citizens and immigrant communities. Indeed, the Census acknowledges that it is “a reasonable inference that a question on citizenship would lead to some decline in overall self-response because it would make the 2020 Census modestly more burdensome in the direct sense, and potentially much more burdensome in the indirect sense that it would lead to a larger decline in self-response for noncitizen households.” (Abowd 2018, Section B2, p. AR 001281)

24. In my analysis, I use this information to look at three potential undercount scenarios:

   a. First, I used a 5.8% undercount estimate based on the results of the Census Bureau’s internal study of the effect of a citizenship question on self-response rates. For these analyses, I assumed that respondents that do not self-respond would not be enumerated.

   b. Second, I was asked by legal counsel to examine a potential 10% undercount for the analysis of state-level apportionment as an outer bound for the potential effects of the citizenship question on population enumerations and apportionment. This higher number reflects the Census’s finding that the differences between citizen and noncitizen
response rates and data quality are likely to be “amplified” compared to historical levels (Abowd 2018, Section B4, p. AR 001282). The Chief Scientist at the Census has acknowledged that the 5.8% estimate of the effect of the citizenship question on self-response rates is “a conservative estimate of the differential impact of the citizenship question on the self-response rates of noncitizens compared to citizens” (Abowd, J. Dep., Aug. 15, 2018, p. 202).

c. Third, I was asked by legal counsel to examine a potential 2% undercount as a lower bound for the potential effects of the citizenship question on population enumerations. My report shows the results for cities and counties, and the calculations for a 2% undercount in states are PX-324. I was not asked to and I did not do any analysis of the impact of the Census Bureau’s Non-Response Follow-Up (“NRFU”) on non-response rates, but note that the 2% scenario could be viewed as taking into account some NRFU success after an initial larger nonresponse rate.

25. The recent Census Bureau studies discussed above focus largely on the effects of a citizenship question on self-response rates in non-citizen households. As a result, the first set of analyses I conducted for each of these undercount scenarios focuses on people in households with a non-citizen in them. Beyond the effects on non-citizen households, there are also strong theoretical reasons to believe that citizen Hispanics would also be less likely to respond to the Census if a citizenship question is included. Citizen Hispanics in immigrant communities could fear deportation due to their Census responses.4 Moreover, a large

4Title 13, U.S.C. prohibits the use of Census data for enforcement purposes, but respondents may still have this concern (Brown et al. 2018).
fraction of citizen Hispanics are likely to know non-citizens or even people that have been deported. The Census’s internal analysis has shown that citizenship-related questions are likely to be more sensitive for Hispanics (Brown et al. 2018, p. 10). Indeed, the Census has found clear evidence there are likely to be differential impacts on self-response rates among Hispanics from the addition of a citizenship question. Hispanics have a greater breakoff rate (i.e., item non-response) on the citizenship question on the American Community Survey (ACS) than other demographic groups.\footnote{See Abowd (2018, Section b3) and Brown et al. (2018, 7).} There is also evidence of growing unit nonresponse rates among Hispanics on the ACS (Brown et al. 2018, p. 12). For these reasons, I analyzed the effect of all three undercount scenarios (2%, 5.8% and 10%) on both people in non-citizen households and citizen Hispanics.

A. Undercount Estimate Based on Original Survey Experiment

26. An empirical approach to determine the potential undercount caused by a citizenship question is through a randomized control trial (RCT). The Census Bureau suggests that an appropriate RCT could compare self-response rates between households “randomly chosen to have [ ] a citizenship question (the treated group), and a randomly chosen set of control households [that] receive a [ ] Census questionnaire without citizenship” (Brown et al. 2018, p. 39)

27. We were unable to conduct a real-world RCT. A similar approach, however, is to conduct an experiment that mimics an RCT on a nationally representative survey of Americans. As part of this case, the State of New York and other plaintiffs funded a nationally representative survey that included an experiment along these lines to examine whether the inclusion of a
citizenship question would reduce the likelihood that people would complete the Census.\textsuperscript{6} This survey was designed by Dr. Matt Barreto and conducted by Pacific Market Research.\textsuperscript{7}

1. Design of Survey

28. This survey included a probability sample of 6,309 people, including over-samples of Hispanics, Californians, and people in several cities and counties (San Jose, CA, Cameron County, TX, and Hidalgo County, TX).\textsuperscript{8} It was conducted via phone by Pacific Research Group to both landlines and cell phones using live interviews and random digit dialing. The survey asked a number of questions about the Census and assessed reactions to the inclusion of a citizenship question. The survey did not include a question about the citizenship of respondents. But it did include a question about whether respondents were born in the United States or a foreign country.

29. In my analysis, I focus on an experiment embedded in the survey that mimics the RCT approach suggested by Brown et al. (2018). This enables us to estimate the causal effect of the citizenship question on the likelihood that various demographic subgroups will complete the Census.

30. In the experiment on our survey, the control group received a vignette stating that the government had decided not to include a citizenship question on the census, while the treatment group received a vignette stating that the government had decided to include a citizenship question on the census. Then the survey asked whether respondents would ‘participate and fill out the 2020 Census form, or not?’

\textsuperscript{6} As part of my work as an expert in this matter, I reviewed Professor Barreto’s expert report that describes the survey methodology and his analysis of the results. However, I ran all of the analyses of the survey used in this report myself. I did not directly use any of Professor Barreto’s findings for my report.

\textsuperscript{7} Data and statistical code to replicate my analysis of this survey is available in my replication materials.

\textsuperscript{8} The survey includes sampling weights that incorporate these over-samples and make the results representative at the national level.
Control Group: Now that you’ve heard a little bit about the 2020 Census let me ask you one final question about how likely you are to participate. If the government decides in 2020 to NOT include a question about citizenship status, and instead only asks you to report the race, ethnic background, gender of people living in your household, and the government provides assurances that your information will be kept confidential and ONLY used for purposes of counting the total population and nothing more, would you participate and fill out the 2020 Census form, or not?

Treatment Group: Now that you’ve heard a little bit about the 2020 Census let me ask you one final question about how likely you are to participate. If the government decides in 2020 to include a question about citizenship status, and asks you to report the race, ethnic background, gender and citizenship status of people living in your household, and the government provides assurances that your information will be kept confidential and ONLY used for purposes of counting the total population and nothing more, would you participate and fill out the 2020 Census form, or not?

31. This experimental design is a strong one for assessing the causal effect of the citizenship question on the likelihood that people will complete the Census. However, it does have limitations. First, the experiment on the survey imperfectly captures the actual experience of completing the Census. Second, many respondents are probably already aware of the potential inclusion of the citizenship question on the Census, which could lead to Stable Unit Treatment Value Assumption (SUTVA) violations. These SUTVA violations could attenuate the effects we detect in the experiment by artificially reducing the differences between the treatment and control groups. Overall, I think these limitations mean the survey-based
analysis is conservative in its estimates of the citizenship question on self-response rates on the Census.

2. Results of Survey

32. My primary analyses focus on two immigrant communities that theory indicates are particularly likely to be impacted by the citizenship question. First, I analyze the impact on Latinos. This analysis is helpful because there is little publicly available Census analysis of the potential effects of the citizenship question on this group. Second, I analyze the impact on non-Latino people that are not born in the United States.

33. I ran three sets of analyses that are shown in Table 4. My primary analysis of the effect of the citizenship question on each group is a weighted regression that evaluates the treatment effect of the citizenship question. In other words, it evaluates whether people in the treatment group, that were told the Census would include a citizenship question, are less likely to indicate they would respond to the Census than people in the control group that were told it would not include a citizenship question.

34. As robustness checks, I also ran two additional models. The middle column of Table 4 for each group is a weighted regression model that includes control variables for other factors that might affect respondents’ willingness to complete the Census, including their age, race, and state of residence. The third column of Table 4 for each group is an unweighted regression model that includes this same set of control variables for other factors that might affect respondents’ willingness to complete the Census. All of my main analyses in the results below are based on linear probability models. However, logistic regression models yield similar results.

---

9 Note that I use the terms Hispanic and Latino interchangeably throughout this declaration.
10 I include in this group both people that explicitly stated they were born in a foreign country and the small number of people that refused to answer the nativity question on the survey.
35. Overall, Table 4 shows that the citizenship question makes both Latinos and Foreign-born non-Latinos less likely to respond to the Census. The weighted regression model in column (1) indicates that Latinos are about 5.9% less likely to complete the Census if it includes a citizenship question. The results are similar in the other two models shown in columns (2) and (3). For foreign-born, non-Latinos, the weighted regression in column (4) indicates that they are about 11.3% less likely to complete the Census if it includes a citizenship question. The results are substantively similar, though more statistically significant, in the other two models shown in columns (5) and (6).

<table>
<thead>
<tr>
<th>Citizenship Question</th>
<th>Latinos (1)</th>
<th>Latinos (2)</th>
<th>Latinos (3)</th>
<th>Foreign-born (not Latino) (4)</th>
<th>Foreign-born (not Latino) (5)</th>
<th>Foreign-born (not Latino) (6)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>-0.059**</td>
<td>-0.070**</td>
<td>-0.062***</td>
<td>-0.113</td>
<td>-0.164**</td>
<td>-0.096**</td>
</tr>
<tr>
<td></td>
<td>(0.029)</td>
<td>(0.028)</td>
<td>(0.016)</td>
<td>(0.072)</td>
<td>(0.066)</td>
<td>(0.039)</td>
</tr>
</tbody>
</table>

Survey Weights Controls  X  X  X  X  X  X

Observations            2,362  2,362  2,362  488  488  488

R²                      0.043  0.021

Adjusted R²              0.117  0.022

Log Likelihood           -2,851.497  -2,763.581  -782.779  -714.807

Note: *p<0.1; **p<0.05; ***p<0.01

IV. Baseline Estimates of Proportion of Population in Immigrant Communities Vulnerable to Undercount

36. In order to analyze the effects of an undercount of individuals that live in households with at least one non-citizen and Hispanic on total population enumerations, I used the American Community Survey (ACS) to generate baseline estimates of the proportion of the 2020 population in each state, county, and large city in the following groups that are vulnerable to an undercount:
* Non-citizen households (based on whether any member of a household in the ACS self-reports that they are a noncitizen)\(^\text{11}\)
* All Hispanics and citizen Hispanics
* Foreign-born, non-Hispanics

37. To forecast the population margins of each group within each state (e.g., percent Hispanic), I used the individual-level data in the American Community Survey (ACS) from 2007-2016 to forecast the 2020 population distributions using the same approach that I used to forecast state populations. Individual-level data in the ACS is not readily available below the state-level (e.g., for counties and cities). As a result, I used population tables published by the Census based on the five-year ACS samples (2012-2016) to estimate the demographic distributions within counties and cities.\(^\text{12}\) I did not attempt to estimate how these substate population distributions are likely to change between 2016 and 2020. Thus, my estimates of the percentage of county and city population that are members of immigrant communities are probably low due to the general growth of these populations.

A. State-level Effects of Undercount - Effect of Undercount on State Population Enumerations

38. I analyzed the effects of each undercount scenario on the enumerated population of each state in 2020. The results are shown in Table 5. Column (1) shows the baseline apportionment population projections for each state. Column (2) shows the average change in the enumerated population if 5.8% of people in non-citizen households are not counted due to

\(^{11}\) It is important to note that the Census has found that the ACS might be drastically undercounting the number of households with noncitizens. The ACS implies that about 10% of people live in households with a noncitizen in them. However, Census Bureau found that many people may be misreporting their citizenship status on the ACS. Based on administrative records, they estimate that 28.6 percent of all households could potentially contain at least one noncitizen. So my estimate of the percentage of people that reside in households with a noncitizen based on the ACS is likely conservative.

\(^{12}\) For the selection of cities and counties in Tables 2, 7, and 8, I converted the number of non-citizens to the number of people in households with a non-citizen using the ratio of these groups in the individual-level 5-year ACS sample (2012-16) for people in the PUMAs that overlapped each city and county. This analysis is necessarily approximate since PUMAs in the ACS micro-data contain multiple cities and counties.
the citizenship question. Column (3) shows the average change in the enumerated population if 5.8% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (4) shows the average change in the enumerated population if 10% of people in non-citizen households are not counted due to the citizenship question. Column (5) shows the average change in the enumerated population if 10% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (6) shows the average change in the enumerated population in each state based on the results of the survey experiment. Specifically, this scenario assumes that 5.9% of Hispanics and 11.3% of foreign-born, non-Latinos are not counted in the enumerated population.

39. For the analysis of apportionment, I also incorporated estimates of the overseas military population and federal employees, and their dependents living with them. Specifically, I used the 2010 population figures for the overseas military population and federal employees, and their dependents living with them, for each state, and divided this number by half to approximately reflect the reduction in the nation’s military deployments over the past decade. See https://www.census.gov/data/tables/2010/dec/2010-apportionment-data.html, for 2010 population figures. See also Pew Foundation study, http://www.pewresearch.org/fact-tank/2017/08/22/ u-s-active-duty-military-presence-overseas-is-at-its-smallest-in-decades/, for more information on the reduction in the number of overseas military personnel over the past decade.
40. Overall, Table 5 indicates that each state would be affected by an undercount on the Census. The largest impacts would be in states with large numbers of Hispanics, non-Citizens, and foreign-born residents. For example, California would be undercounted by 1.7-5.0% in these scenarios; Florida would be undercounted by 1-3.4%; New Jersey would be undercounted by
1.2-3.3%, New York would be undercounted by 1.2-3.2%; and Texas would be undercounted by 1.3-4.6%.

41. Figure 1 shows a map of the results from the survey experiment (column 6 in Table 5). This map graphically shows that heavily Latino states on the southern border have the largest impacts from an undercount. States in the northeast, such as New York, New Jersey, and Massachusetts, with significant foreign-born populations also have significant impacts.

![Figure 1: Effects on State Populations](image)

42. I used the population projections and estimated effects of the various undercount scenarios on the enumerated population of each state to examine the likely effect of the citizenship question on the apportionment of seats in the House of Representatives. Article 1, Section 2, of the United States Constitution states: “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.”

43. Since the first census in 1790, five methods of apportionment have been used. The government currently uses a method called the Method of Equal Proportions, which was
adopted by Congress in 1941 following the census of 1940. This method first assigns each state one seat. Then, additional seats in the House of Representatives are signed to a “priority” value. The priority value for each seat is determined by multiplying the population of a state by a “multiplier.” The multiplier is $1/\sqrt{n(n-1)}$. So the formula for calculating the multiplier for the second seat is $1/\sqrt{2(2-1)}$ or 0.70710678, the formula for calculating the multiplier for the third seat is $1/\sqrt{3(3-1)}$ or 0.40824829, and so on. The Census provides an official table of these multipliers, which I used for my calculations.\footnote{See https://www.census.gov/population/apportionment/about/computing.html}

44. The next step is to multiply the multipliers by the population total for each of the 50 states (the District of Columbia is not included in these calculations). The resulting numbers are the priority values. Multipliers and priority values must be calculated for the largest number of seats that could be assigned to a state. In my analysis, I calculated the priority values for each state for seats 2 through 60. The next step is to rank and number the resulting priority values starting with seat 51 until all 435 seats have been assigned. The final step is to tally the number of seats for each state to arrive at the total number of seats in the House of Representatives apportioned to each state.

45. I conducted these steps for 500 simulations of the population projections and undercount scenarios in each state. Table 6 shows the results. Column (1) shows the baseline projections for the number of seats that each state is likely to receive in 2020 if there is a full population enumeration. Column (2) shows the average change in the number of congressional seats if 5.8% of people in non-citizen households are not counted due to the citizenship question. Column (3) shows the average change in seats if 5.8% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (4) shows the average
change in seats if 10% of people in non-citizen households are not counted due to the citizenship question. Column (5) shows the average change if 10% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (6) shows the average change in seats in each state based on the results of the survey experiment. Specifically, this scenario assumes that 5.9% of Hispanics and 11.3% of foreign-born, non-Latinos are not counted in the enumerated populations. Also, each column includes 95% confidence intervals for the seat projections in parentheses. This means that there is a 95% chance that the true number of seats gained or lost in each scenario will be in this range.

46. First, we can examine Columns (2) and (3) of Table 6, which show the effects of a 5.8% undercount of people in non-citizens households and Hispanics. In these scenarios, California is extremely likely to lose a seat. Additionally, if there is an undercount of 5.8% of both people in non-citizen households and Hispanics, there is more than a 51% chance that Texas will lose a seat. There is also a risk that Arizona, Florida, Illinois, and New York could lose seats in some simulations.

47. Columns (4) and (5) of Table 6 show the effects of a 10% undercount of non-citizen households and Hispanics. If only people in non-citizen households are undercounted, California and Texas would be more likely than not to lose a seat. Arizona, Florida, Illinois, and New York would also be at risk of losing seats. If both non-citizens and Hispanics are undercounted, Arizona, California, Florida, and Texas would be likely to lose seats. Illinois and New York would also be at risk of losing a seat.
Table 6: Effect of Undercount on Congressional Apportionment

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Seats</th>
<th>5.8% Undercount Noncitizens Hispanic</th>
<th>10% Undercount Noncitizens Hispanic</th>
<th>Survey Experiment Foreign-born Hispanic</th>
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<tbody>
<tr>
<td>Alabama</td>
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<td>0 (0.1)</td>
<td>1 (0.1)</td>
<td>1 (0.1)</td>
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<td>0 (0.0)</td>
<td>0 (0.0)</td>
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<td>0 (-1.0)</td>
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<td>1 (0.1)</td>
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<td>0 (0.0)</td>
</tr>
</tbody>
</table>

48. Column (6) shows the effects of the undercount of Hispanics and foreign-born residents found in the survey experiment. In this scenario, California, Florida, and Texas would most likely all lose seats. Arizona, Illinois, and New York could lose a seat as well.
49. The states that lose seats in Congress would likely see decreases in their share of outlays of federal funding due to their reduction in voting power in Congress. See Elis, Malhotra, and Meredith 2009 (PX-325). The Elis article attached here is just an example. It is a well-established finding in political science and political economy that the loss of political power as a result of the loss of representation leads to the loss of funding. This finding is based on a body of research showing that counties in areas of states that were underrepresented in state legislatures or Congress due to malapportionment received substantially lower shares of distributive spending. In the wake of the Baker v. Carr family of Supreme Court cases that required one-person, one-vote, counties that were underrepresented due to malapportionment saw both their representation in legislatures and their share of spending increase substantially when the equal populace district requirement was implemented. See Ansolabehere, Gerber, and Snyder 2002 (PX-326). Additionally, it is also based on another body of research comparing states that barely gain or lose Representatives in Congress. See PX-325. The census thresholds sometimes are quite close where a state could gain or lose seats. So this research compares those states that are just above and below the population thresholds to gain or lose a seat, and it has found that the states that just barely gain a seat receive more money than the states that barely lose a seat.

B. City and County Effects of Undercount

50. I also examined the effects of the various undercount scenarios for cities and counties. Irrespective of state-level impacts on apportionment, the enumeration of subnational areas is crucially important for a number of purposes. It affects the distribution of federal and state funds that are tied to population formulas. In addition, it affects the allocation of legislative seats within states since legislative districts are required to be equipopulous.
51. This allocation of voting power within states, in turn, affects distributive spending programs influenced by the legislature. See PX-326. Areas with greater population enumerations, and thus more voting power, are likely to receive more funding. This article is just another example of this well-established finding in political science. There is a large body of political science research concluding that vote dilution due to malapportionment leads to a reduction in voting power and less distributive spending.

52. It is reasonable to assume that undercounts like those addressed in my report will more likely than not impact intrastate redistricting because there is no reason to think that a state legislature would correct an undercount on the Census. I think it’s a reasonable assumption that state governments would not consciously try to remedy an undercount.

53. Table 7 shows the impact on the counties and cities that are involved in the lawsuits regarding the citizenship question. The left column shows the baseline 2020 population projection. It also shows the absolute change in population and percentage change in the geographic unit’s population due to three undercount scenarios. First, I examine a 2% undercount scenario. Second, I examine a 5.8% undercount scenario. For each of these scenarios, I examine undercounts among people in non-citizen households and among non-citizens households + Hispanics. Finally, I examine a scenario based on the results of the survey experiment.

54. Table 7 shows the effects on a selection of cities and counties involved in the lawsuits regarding the citizenship question. All of these local governments would most likely face smaller population enumerations due to an undercount from the addition of a citizenship question. Some of the largest effects would be in Miami, FL, New York, NY, Central Falls,
RI, and Providence RI. In the survey experiment scenario (right-hand column), each of these cities could see a reduction of around 4% or more in their enumerated populations.

Table 7: Effect on Population Counts in Select Counties and Cities

<table>
<thead>
<tr>
<th>County</th>
<th>2020 Population</th>
<th>% Change</th>
<th>% Change</th>
<th>% Change</th>
<th>% Change</th>
<th>% Change</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, AZ</td>
<td>1,250,197</td>
<td>-5.8%</td>
<td>-6.0%</td>
<td>-5.8%</td>
<td>-5.8%</td>
<td>-5.8%</td>
<td>-5.8%</td>
</tr>
<tr>
<td>Los Angeles County, CA</td>
<td>10,292,975</td>
<td>-0.7%</td>
<td>-0.8%</td>
<td>-0.7%</td>
<td>-0.7%</td>
<td>-0.7%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Monterey County, CA</td>
<td>444,288</td>
<td>-0.5%</td>
<td>-0.6%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>San Francisco, CA</td>
<td>899,148</td>
<td>-0.5%</td>
<td>-0.6%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>San Jose, CA</td>
<td>1,045,953</td>
<td>-0.7%</td>
<td>-0.8%</td>
<td>-0.7%</td>
<td>-0.7%</td>
<td>-0.7%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Washington, DC</td>
<td>722,881</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Miami, FL</td>
<td>491,205</td>
<td>-1.1%</td>
<td>-1.2%</td>
<td>-1.1%</td>
<td>-1.1%</td>
<td>-1.1%</td>
<td>-1.1%</td>
</tr>
<tr>
<td>Chicago, IL</td>
<td>2,374,074</td>
<td>-0.5%</td>
<td>-0.6%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Prince George County, MD</td>
<td>591,412</td>
<td>-0.5%</td>
<td>-0.6%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>New York, NY</td>
<td>8,645,147</td>
<td>-0.6%</td>
<td>-0.7%</td>
<td>-0.6%</td>
<td>-0.6%</td>
<td>-0.6%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Columbus, OH</td>
<td>935,408</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Philadelphia, PA</td>
<td>1,309,072</td>
<td>-0.2%</td>
<td>-0.3%</td>
<td>-0.2%</td>
<td>-0.2%</td>
<td>-0.2%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Pittsburgh, PA</td>
<td>597,040</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Central Falls, RI</td>
<td>19,256</td>
<td>1.0%</td>
<td>1.1%</td>
<td>1.0%</td>
<td>1.0%</td>
<td>1.0%</td>
<td>1.0%</td>
</tr>
<tr>
<td>Providence, RI</td>
<td>151,052</td>
<td>-0.7%</td>
<td>-0.8%</td>
<td>-0.7%</td>
<td>-0.7%</td>
<td>-0.7%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Cameron County, TX</td>
<td>429,603</td>
<td>-0.6%</td>
<td>-0.7%</td>
<td>-0.6%</td>
<td>-0.6%</td>
<td>-0.6%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>El Paso County, TX</td>
<td>811,660</td>
<td>-0.7%</td>
<td>-0.8%</td>
<td>-0.7%</td>
<td>-0.7%</td>
<td>-0.7%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Hidalgo County, TX</td>
<td>859,083</td>
<td>-0.6%</td>
<td>-0.7%</td>
<td>-0.6%</td>
<td>-0.6%</td>
<td>-0.6%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Seattle, WA</td>
<td>780,050</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.3%</td>
</tr>
</tbody>
</table>

55. The three Texas counties would also face particularly negative impacts. Each of these heavily Latino counties could have a reduction in their enumerated populations of over 5%.

56. Figure 2 shows the reduction in the enumerated population for every county in the country based on the survey experiment (last column of Table 7). It shows that the largest effects are in counties on the southern border, the California coast, and in the region around New York City. The counties and cities that are plaintiffs in this suit are labeled on the graph. All of these geographic units are in the most heavily impacted areas of the country.
Figure 2: Effects on County Populations

57. Table 8 shows the change in each area's share of its state population due to the undercount.

This statistic is important for estimating the potential effects of the undercount on state-level formula grants, as well as on the relative voting power of each geographic area in congressional and state legislative elections. Geographic areas that see a reduction in their share of the state population are likely to get less representation in Congress and their state legislature. This reduction in voting power is likely to lead to less distributive spending. See PX-326. As stated before, this article is just an example. There is a large body of political science research that finds localities have their vote diluted because they are malapportioned. This implies that if the enumerated populations used for redistricting are smaller than their actual populations, then this reduction in voting power is very likely to lead to less distributive spending.
Table 8: Effect on Relative Representation in Select Counties and Cities

<table>
<thead>
<tr>
<th></th>
<th>2% Undercount</th>
<th>5.8% Undercount</th>
<th>Survey Experiment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Noncitizens</td>
<td>Noncitizens+</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hispanics</td>
<td></td>
</tr>
<tr>
<td>Phoenix, AZ</td>
<td>-0.4%</td>
<td>-0.4%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Los Angeles County, CA</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Monterey County, CA</td>
<td>-0.4%</td>
<td>-0.4%</td>
<td>-1%</td>
</tr>
<tr>
<td>San Francisco, CA</td>
<td>0%</td>
<td>0.2%</td>
<td>0.1%</td>
</tr>
<tr>
<td>San Jose, CA</td>
<td>-0.2%</td>
<td>-0.1%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Miami, FL</td>
<td>-0.9%</td>
<td>-1.1%</td>
<td>-2.1%</td>
</tr>
<tr>
<td>Chicago, IL</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Prince Georges County, MD</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>New York, NY</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.8%</td>
</tr>
<tr>
<td>Columbus, OH</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Philadelphia, PA</td>
<td>-0.2%</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Pittsburgh, PA</td>
<td>-0.2%</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Central Falls, RI</td>
<td>-0.9%</td>
<td>-1.3%</td>
<td>-2.3%</td>
</tr>
<tr>
<td>Providence, RI</td>
<td>-0.6%</td>
<td>-0.7%</td>
<td>-1.4%</td>
</tr>
<tr>
<td>Cameron County, TX</td>
<td>-0.6%</td>
<td>-1.1%</td>
<td>-1.3%</td>
</tr>
<tr>
<td>El Paso County, TX</td>
<td>-0.5%</td>
<td>-1%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Hidalgo County, TX</td>
<td>-0.7%</td>
<td>-1.2%</td>
<td>-1.7%</td>
</tr>
<tr>
<td>Seattle, WA</td>
<td>-0.2%</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
</tbody>
</table>

58. Table 8 shows the relative change in each area’s population using three undercount scenarios. First, I examine a 2% undercount scenario. Second, I examine a 5.8% undercount assumption. For each of these scenarios, I examine undercounts among people in non-citizen households and among non-citizens households + Hispanics. Finally, I examine a scenario based on the results of the survey I discussed in depth above.

59. Under nearly every scenario, each of the cities and counties would face declines in their share of their respective state populations due to an undercount from the citizenship question. Once again, some of the largest effects would be in Miami, FL, New York, NY, Central Falls, RI, Providence RI, and the three Texas counties. Each of these areas would have a reduction in their ‘relative populations’ (i.e., share of the state population) of several percentage points based on the survey experiment.
V. Aggregate Effects on Share of Population in Different Types of Counties

60. I examined the macro effects of an undercount due to the addition of a citizenship question on the distribution of the enumerated population across urban and rural areas. For simplicity, I use the survey estimates on foreign-born people and Hispanics. But the results are broadly similar for other undercount scenarios.\textsuperscript{14} The best available definition of urban and rural areas is based on a classification system developed by the National Center for Health Statistics (NCHS).\textsuperscript{15} This classification system is often used to study the associations between the urbanization level of residence and health and to monitor the health of urban and rural residents. NCHS has developed a six-level urban-rural classification scheme for U.S. counties and county-equivalent entities. The most urban category consists of “central” counties of large metropolitan areas and the most rural category consists of nonmetropolitan “noncore” counties. Figure 3 shows a map of the NCHS classification scheme.

\textsuperscript{14} For confidentiality reasons, it is not possible to match the ACS micro-data to smaller cities and counties. So, for this analysis, I calculated the ratio of people in non-citizen households to individual non-citizens for each state in the 2016 ACS. I then multiplied these ratios by the estimates of the number of non-citizens in each city and county to estimate the number of people in households with a non-citizen.

\textsuperscript{15} See https://www.cdc.gov/nchs/data_access/urban_rural.htm
Figure 3: 2013 Urban-Rural Classification Scheme for Counties

61. Figure 3 shows that an undercount due to a citizenship question would have the most substantial impact in large metropolitan counties with major cities. Based on the survey experiment, these counties would have a reduction in their enumerated population of 2.9%.\textsuperscript{16} This group of counties would also have a reduction in their share of the national population of 1.1%. This reduction in urban areas’ relative population would likely lead to dilution in their voting power and a reduction in their representation in Congress and state legislatures. At the other end of the continuum, noncore rural counties would only have a reduction in their enumerated population of .5%. Moreover, they would actually see a sizable 1.4% increase in their share of the national population. This would lead to an increase in their representation in the legislature. Thus, the undercount caused by a citizenship question on the

\textsuperscript{16} The patterns are broadly similar in the other scenarios.
Census would lead to a redistribution of political power in America. It would reduce the representation of urban counties, and increase the voting power of rural counties.

Table 9: Effect on Distribution of Enumerated Population Across Urban and Rural Counties

<table>
<thead>
<tr>
<th>County</th>
<th>2020 Population Projection</th>
<th>Percentage Change Due to Undercount</th>
<th>Percentage Change in Relative Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large central metro</td>
<td>103,025,259</td>
<td>-2.9%</td>
<td>-1.1%</td>
</tr>
<tr>
<td>Large fringe metro</td>
<td>83,761,694</td>
<td>-1.8%</td>
<td>.1%</td>
</tr>
<tr>
<td>Median metro</td>
<td>69,737,033</td>
<td>-1.5%</td>
<td>.3%</td>
</tr>
<tr>
<td>Small metro</td>
<td>30,116,705</td>
<td>-1%</td>
<td>.9%</td>
</tr>
<tr>
<td>Micropolitan</td>
<td>27,375,961.605</td>
<td>-.8%</td>
<td>1.1%</td>
</tr>
<tr>
<td>Noncore</td>
<td>18,760,860</td>
<td>-.5%</td>
<td>1.4%</td>
</tr>
</tbody>
</table>

VI. Conclusion

62. I have reached the following conclusions:

a. The undercount caused by the inclusion of a citizenship question on the Census is likely to have effects on the population counts of each state, and the apportionment of representatives across states for the U.S House. There is a very high probability that California will lose a congressional seat, and it is more likely than not that Texas will lose a congressional seat. There is also a substantial risk that Arizona, Florida, Illinois, and New York could lose a seat.

b. The citizenship question is also likely to have effects on the population counts of large counties and cities within each state. This will affect the distribution of voting power within states, and lead to the dilution of the voting power of New York, NY, Miami, FL, Providence, RI, and other large cities with substantial immigrant populations.
c. Overall, the citizenship question will lead to a large-scale shift in the distribution of political power in the United States. It would dilute the voting power of urban counties, and increase the voting power of rural counties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: **October 26**, 2018

Washington, DC

[Signature]

Christopher Warshaw
## Appendix

Table A1: Effect of 2% Undercount on State Population Enumerations in 2020

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Apportionment Pop. Projection</th>
<th>Noncitizens</th>
<th>Noncitizens+ Hispanic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>4,928,974</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Alaska</td>
<td>745,119</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Arizona</td>
<td>7,349,498</td>
<td>-0.3%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>3,056,993</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>California</td>
<td>40,549,557</td>
<td>-0.6%</td>
<td>-1%</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,831,253</td>
<td>-0.2%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,593,415</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Delaware</td>
<td>991,133</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Florida</td>
<td>22,017,594</td>
<td>-0.3%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Georgia</td>
<td>10,796,611</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,432,921</td>
<td>-0.3%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,830,654</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Illinois</td>
<td>12,718,521</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,770,793</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,186,710</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,931,128</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,514,011</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>4,694,542</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Maine</td>
<td>1,351,512</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Maryland</td>
<td>6,195,838</td>
<td>-0.3%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,972,768</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Michigan</td>
<td>9,976,301</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>5,696,268</td>
<td>-0.2%</td>
<td>-0.2%</td>
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<tr>
<td>Mississippi</td>
<td>2,990,101</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Missouri</td>
<td>6,191,875</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Montana</td>
<td>1,081,584</td>
<td>0%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,960,312</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Nevada</td>
<td>3,178,894</td>
<td>-0.4%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,368,556</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>9,114,740</td>
<td>-0.4%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2,100,036</td>
<td>-0.3%</td>
<td>-1.1%</td>
</tr>
<tr>
<td>New York</td>
<td>19,907,138</td>
<td>-0.4%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>10,638,762</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>754,368</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,729,092</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,981,432</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Oregon</td>
<td>4,278,356</td>
<td>-0.2%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>12,854,327</td>
<td>-0.1%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,060,979</td>
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<td>-0.5%</td>
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<td>South Carolina</td>
<td>5,224,199</td>
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<td>-0.2%</td>
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<td>South Dakota</td>
<td>894,019</td>
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<td>-0.2%</td>
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<td>Tennessee</td>
<td>6,930,386</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Texas</td>
<td>29,654,648</td>
<td>-0.4%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Utah</td>
<td>3,277,814</td>
<td>-0.2%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>Vermont</td>
<td>624,804</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,651,354</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Washington</td>
<td>7,799,983</td>
<td>-0.3%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,781,304</td>
<td>0%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,864,100</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>567,929</td>
<td>-0.1%</td>
<td>-0.3%</td>
</tr>
</tbody>
</table>
Christopher S. Warshaw

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2115G Street, N.W.
Monroe Hall 440
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George Washington University, Washington, DC
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Massachusetts Institute of Technology, Cambridge, MA
Associate Professor of Political Science (without tenure), 2016-2017
Assistant Professor of Political Science, 2012-2016

Education

Stanford University, Ph.D., Political Science, 2012
Fields: American Politics, Comparative Politics, and Political Methodology (Statistics)

Stanford Law School, Juris Doctorate, 2011
Williams College, B.A., magna cum laude, 2002

Research Interests

American Politics, Representation, Elections, Public Opinion, State & Local Politics, Environmental Politics and Policy, Statistical Methodology

Research

Publications

Peer Reviewed Articles

22. "The Impact of Partisan Gerrymandering on Political Parties." Forthcoming. Legislative Studies Quarterly. (with Nicholas Stephanopoulos)


Editor Reviewed Articles in Journals and Law Reviews


2. "Spatial variation in messaging effects." 2018 Nature Climate Change News & Views. April, 2018


Book Chapters


Policy Reports


Unpublished Work

Book Project

Advance contract with University of Chicago Press. (with Devin Caughey)

Articles Under Review

"The Effect of Local COVID-19 Fatalities on Americans’ Political Preferences." (with Lynn Vavreck and Ryan Baxter-King)

Works in Progress

"Electoral Accountability for Ideological Extremism in American Elections" (with Devin Caughey)
"Gerrymandering in Local Governments" (with Laura Royden)
"Moderates" (with Anthony Fowler, Seth Hill, Jeff Lewis, Chris Tausanovitch, Lynn Vavreck)
"Partisan Selection in California City Councils" (with Justin de Benedictis-Kessner and Dan Jones)
"The Effect of Television Advertising in United States Elections" (with John Sides and Lynn Vavreck)
"When Mass Opinion Goes to the Ballot Box: A National Assessment of State Level Issue Opinion and Ballot Initiative Results" (with Jonathan Robinson and John Sides)
"Inequalities in Participation, Voting, and Representation in Local Governments" (with Justin de Benedictis-Kessner and John Sides)
"Sexism and the Election of Female Candidates in American Elections" (with Alex Kurtz and Brian Schaffner)
"The Ideology of State Party Platforms" (with Justin Phillips and Gerald Gamm)

Non-Academic Writing


"The Supreme Court is deciding a gerrymandering case. Here's the social science that the Justices need to know." Washington Post Monkey Cage. June 1, 2019

"New research shows just how badly a citizenship question would hurt the 2020 Census." Washington Post Monkey Cage. April 22, 2019 (with Matt Barreto, Matthew A. Baum, Bryce J. Dietrich, Rebecca Goldstein, and Maya Sen)

"G.O.P. Senators Might Not Realize It, but Not One State Supports the Health Bill." New York Times June 14, 2017. (with David Broockman)

Invited Talks

20192020 Princeton, UC Berkeley, University of Maryland
20182019 Stanford; Northeast Political Methodology Meeting at NYU; University of Maryland
20172018 USC PIPE Symposium on Studying Subnational Policy Making; BYU; University of Chicago Conference on Political Polarization
20162017 University of Virginia; UCLA
20152016 Washington University in St. Louis; Texas A&M; Arizona State University Conference on Campaigns, Elections and Representation
20142015 Yale; Columbia; Duke
20132014 Princeton; Boston University; Rochester University
20122013 MIT American Politics Conference; Columbia Representation Conference; Princeton Media & Politics Conference; Annual Meeting of the Society for Political Methodology
Grants

Russell Sage Foundation, 2019-2021 ($119,475)
GW UFF, 2019-2020 ($14,433)
MIT Elections Lab, 2019-2020 ($14,000)
Jeptha H. and Emily V. Wade Award, 2014-2016 ($59,686)
MIT Energy Institute (MITEI) Seed Grant, 2014-2016 ($137,147)
MIT SHA Status Research Fund, 2012-2014 ($8,734)

Software


Awards and Honors

OVPR Early Career Scholar at George Washington University, 2019
APSA award for best journal article on State, Politics & Policy in 2016
Award for best paper on State, Politics & Policy at the 2014 American Political Science Conference.
Graduate Fellowship, Dept. of Political Science, Stanford University, 2006-2012
David A. Wells Prize in Political Economy for Best Undergraduate Economics Thesis, Williams College, 2002
Phi Beta Kappa, Williams College, 2002

Teaching Experience

Instructor:
Measurement Models (Graduate-level) (GW), 2020
Political Representation (Graduate-level) (GW), 2019
Elections (GW), 2018-2019
Multi-level and Panel Models (Graduate-level) (GW), 2017, 2018, 2019
Public Opinion (GW), 2017
American Political Institutions (Graduate-level) (MIT), 2014, 2016
Public Opinion and Elections (MIT), 2016
Energy Policy (MIT), 2013
Democracy in America (MIT), 2013-2014
Constitutional Law & Judicial Politics (MIT), 2013-2015
Making Public Policy (MIT), 2012-2014

Teaching Assistant:
Introduction to American Law (Stanford University), 2010
Judicial Politics and Constitutional Law (Stanford University), 2009
Political Economy of Energy Policy (Stanford University), 2008
Introduction to International Relations (Stanford University), 2008
Introduction to Public Policy (Stanford University), 2007
Introduction to Econometrics (Williams College), 2002

Graduate Advising

George Washington University:
Alex Beck (Dissertation committee chair)
Colin Emrich (Dissertation committee member)
Jared Heern (Dissertation committee member)

Massachusetts Institute of Technology:
Leah Stokes (Graduated in 2015, Dissertation committee member)
Krista Loose (2016, Dissertation committee member)
Tom O’Grady (2017, Dissertation committee member)
Justin de Benedictis-Kessner (2017, Dissertation committee member)
Alex Copulsky (2017, Masters thesis committee member)
James Dunham (2018, Dissertation committee member)
Parrish Bergquist (2018, Dissertation committee member)
Meg Goldberg (2019, Dissertation committee member)

University Service

George Washington University:
Coordinator, Graduate Political Science Admissions Committee, 2019-2020
Coordinator, American Politics Workshop, 2018-2020
Member, Methods Exam Committee, 2017-2020
Member, Graduate Political Science Admissions Committee, 2018-2019
Massachusetts Institute of Technology:
  Member, Energy Education Task Force, 2012-2017
  Parking and Transit Committee, 2013-2017
  Member, Graduate Political Science Admissions Committee, 2013-2015
  Faculty Fellow, Burchard Scholars, 2013-2015

Stanford University (as graduate student):
  President, Stanford Environmental Law Society, 2009-2010
  Executive Board Member, Stanford Environmental Law Society, 2008-2010
  Member, University Committee on Graduate Studies, 2007-2009
  Member, University Library Committee, 2007-2008
  President, Political Science Graduate Students Association, 2007-2008

Professional Service


Member, Program Committee, Midwest Political Science Association Conference, 2020

Lead Organizer, Local Political Economy APSA Pre-Conference at George Washington University, 2019

Member, Planning Committee, Cooperative Congressional Election Study (CCES), 2018

Member, Best Paper Committee, State Politics Section of the American Political Science Association, 2018

Editorial Board, Journal of Politics, 2017-18

Executive Committee, Urban Politics Section of the American Political Science Association, 2015-2017


Member, Best Paper Committee, Urban Politics Section of the American Political Science Association, 2015

Consulting

Consultant, Abell Foundation Report on Potential Institutional Reforms for Baltimore's City Elections


Effects of Undercount on Census due to Citizenship Question (2018)

Community Service


Last updated: August 2, 2020
STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

NEW YORK IMMIGRATION COALITION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

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


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).


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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.


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.


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.*


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 Shaw 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 Shaw 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 Shaw 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

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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.

NEW YORK IMMIGRATION COALITION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION
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Fed. R. Civ. P. 56(a) ............................................................................................ 8
Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525 (Feb. 8, 2018).................................................................21, 32


Legislative Materials

67 Cong. Rec. 7078 (Apr. 7, 1926).................................................................29

71 Cong. Rec. (Mar. 2 1929) ........................................................................29

71 Cong. Rec. 1821 (May 23, 1929).................................................................19, 31

71 Cong. Rec. 1858 (1929)...........................................................................37

71 Cong. Rec. 1910 (May 25, 1929).................................................................19

71 Cong. Rec. 1958 (May 27, 1929).................................................................19

71 Cong. Rec. 2065 (1929)...........................................................................31

71 Cong. Rec. 2451 (June 6, 1929).................................................................19


Census Act of 1790, S. 101, 1st Cong. § 5, (1790)..........................................19

Cong. Globe, 39th Cong., 1st Sess. 10 (1865)................................................15

Cong. Globe, 39th Cong., 1st Sess. 2767 (1866)..........................................16, 17

Cong. Globe, 39th Cong., 1st Sess. 705 (1866)............................................17

Cong. Rec. H4372 (Apr. 11, 1940).................................................................20

H.R. Rep. No. 1787 (1940)...........................................................................19

Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 31 (Mar. 14, 2019)...............................................................................21
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Other Authorities

1 The Records of the Federal Convention of 1787 (Max Farrand ed., 1911) .....................14

Cambridge Dictionary,
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The Founders’ Constitution 102-03 (P. Kurland & R. Lerner eds. 1987) .........................25

Full Transcript: Trump’s 2020 State of the Union Address, N.Y. Times (Feb. 5, 2020) ............................................................................................................7

Joseph T. Sneed III, Footprints on the Rocks of the Mountain: An Account of the
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Julie Hirschfeld Davis, Trump Calls Some Unauthorized Immigrants ‘Animals’ in
Rant, N.Y. Times (May 16, 2018) .................................................................................. 7

Nick Miroff, Trump suspends Global Entry, traveler programs for New York
residents over ‘sanctuary’ policies, Wash. Post (last updated Feb 6, 2020) .......................7

Remarks by President Trump at Signing of H.R. 3401 (July 1, 2019),
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Remarks by President Trump Before Marine One Departure (July 5, 2019),
https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/ ...........................................................................6

Remarks by President Trump on Citizenship and the Census (July 11, 2019),
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Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count (Aug. 3, 2020),

U.S. Census Bureau, 2020 Census: Nonresponse Followup, (June 19, 2020),
INTRODUCTION

This lawsuit challenges Defendants’ flagrantly unconstitutional and unlawful decision to exclude undocumented immigrants from the total-population base that is used to apportion congressional seats among the States. This decision violates the unambiguous mandate in Article I and the Fourteenth Amendment that all “persons in each State” be included “according to their respective [n]umbers” in the apportionment base. U.S. Const. amend. XIV, § 2; id. art. I, § 2, cl. 3. Both this Court and the Supreme Court have already determined that this language requires the federal government “to count every single person residing in the United States, whether citizen or noncitizen, whether living here with legal status or without.” New York v. U.S. Dep’t of Commerce, 351 F. Supp. 3d 502, 514 (S.D.N.Y. 2019), aff’d 139 S. Ct. 2551 (2019); accord Evenwel v. Abbott, 136 S. Ct. 1120, 1129 (2016). The inclusion of all immigrants was expressly discussed and endorsed in the debates over the Fourteenth Amendment. And every decennial census since the Fourteenth Amendment’s adoption has counted all residents without regard to their citizenship or immigration status.

The sheer clarity of this constitutional command entitles Plaintiffs to summary judgment on their constitutional claims against Defendants’ exclusionary policy. Defendants have no discretion or authority to disregard the Constitution’s plain text and extensive history, to flout prior rulings from this Court and the Supreme Court, or to break with more than two hundred years of settled practice.

Plaintiffs are also entitled to summary judgment because Defendants’ exclusion of undocumented immigrants from the apportionment base is an ultra vires violation of the statutory provisions that Congress enacted to implement the Constitution’s clear requirements. Congress has mandated that the decennial enumeration count all persons, regardless of immigration status, and that the President’s apportionment report to Congress must be based
solely on this enumeration of all persons. See 13 U.S.C. § 141(a), (b); 2 U.S.C. § 2a. Defendants’ exclusionary policy will necessarily conflict with these statutory requirements.

Finally, in the alternative, Plaintiffs are entitled to a preliminary injunction on their constitutional and statutory claims. Such relief is essential because Plaintiffs and their residents or constituents are suffering immediate and irreparable injury from Defendants’ sudden announcement of their exclusionary policy. Most immediately, Defendants’ actions are deterring immigrant households from responding to the ongoing enumeration for the 2020 census by sowing confusion, mistrust, and fear among immigrant households about the consequences of responding to the census. That deterrent effect is heightened by the plainly xenophobic and discriminatory purpose animating Defendants’ exclusionary policy—the latest in a long string of open attacks by this administration on immigrant communities and the cities and States where they reside. And Defendants have only exacerbated these immediate harms to the ongoing enumeration and underscored the need for immediate relief with their recent announcement that they are unilaterally curtailing census follow-up operations by a full month, from October 31 to September 30.

Under these unusual and pressing circumstances, Plaintiffs are entitled to expedited summary judgment on their constitutional and statutory claims, or a preliminary injunction to avert immediate harm.

**BACKGROUND**

I. **Constitutional and statutory framework.**

The Constitution requires that seats in the House of Representatives “shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2; see id. art. I, § 2, cl. 3. The number of Representatives apportioned to each State, along with the two Senators
given to each State, determines the allocation among the States of electors in the Electoral
College. *Id.* art. II, § 1, cl. 2; *see also* 3 U.S.C. § 3. To apportion Representatives among the
States, and in turn to allocate electors among the States, the Constitution requires a decennial
“actual Enumeration” of all persons living here—the resulting numbers from which must
constitute the apportionment base. U.S. Const. art. I, § 2, cl. 3.

The Constitution provides that the decennial enumeration shall be made “in such manner
as [Congress] shall direct by law.” *Id.* In the Census Act, Congress has assigned the
responsibility of conducting the enumeration to the Secretary of Commerce, who may delegate
authority for establishing census procedures to the Census Bureau. 13 U.S.C. §§ 2, 4, 141.

The Census Act sets specific deadlines for conducting the enumeration and
corresponding apportionment of Representatives. The Act requires that the decennial census be
taken on April 1, 2020, the “decennial census date.” *Id.* § 141(a). Within nine months of the
decennial census date, *i.e.*, by January 1, 2021, the Secretary of Commerce must report to the
President “[t]he tabulation of total population by States” that is “required for the apportionment
of Representatives in Congress among the several States.” *Id.* § 141(b). Between January 3 and
January 10, 2021, the President must transmit to Congress “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” using the method of equal proportions, with each State receiving at least one
Member. 2 U.S.C. § 2a(a). Within fifteen days of receiving the President’s statement, the Clerk
of the House of Representatives must transmit “to the executive of each State a certificate of the
number of Representatives to which such State is entitled.” *Id.* § 2a(b).
II. The Presidential Memorandum.

On July 21, 2020, President Trump issued a memorandum declaring that “[f]or the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude” undocumented immigrants from the congressional apportionment base “to the maximum extent feasible and consistent with the discretion delegated to the executive branch.” 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).\(^1\) The Memorandum asserts 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,” and that “States adopting policies . . . that hobble Federal efforts to enforce the immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives.” Id.

The Memorandum makes clear that the President both understands and intends that excluding undocumented immigrants from the apportionment base will reallocate political power between the States, and specifically that it will weaken political influence for States with larger undocumented immigrant populations. See id. Referring to one State whose residents include more than two million undocumented immigrants,\(^2\) the Memorandum notes that “[i]ncluding 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.

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\(^1\) All docket references are to 20-CV-5770 (JMF) unless otherwise specified.

\(^2\) This State is California, but Texas is similarly situated. See Pls.’ Rule 56.1 Stmt. ¶¶ 3-4. The Governmental Plaintiffs include two local jurisdictions in California and three counties in Texas; and the NGO Plaintiffs have members residing in those States, see id. ¶¶ 23-51.
The Memorandum accordingly directs the Secretary of Commerce, “[i]n preparing his report to the President under section 141(b) of title 13,” to “take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable,” to exclude undocumented immigrants from the final determination regarding the “whole number of persons in each State” that the President transmits to Congress pursuant to 2 U.S.C. § 2(a). Memorandum, 85 Fed. Reg. at 44,679-80.

III. Events precipitating the Presidential Memorandum.

The Presidential Memorandum was not issued in a vacuum, but against the backdrop of prior litigation about the census. In *New York v. Department of Commerce*, this Court held that Secretary of Commerce Wilbur Ross’s decision to add a citizenship question to the 2020 census violated the Administrative Procedure Act and enjoined the addition of the question, 351 F. Supp. 3d—a decision affirmed in part by the Supreme Court on the ground that the reason the Secretary provided for adding the citizenship question was pretextual. *Dep’t of Commerce v. New York*, 139 S. Ct. 2551 (2019). After trial, new evidence emerged about the reason for adding the question.

In August 2015, Republican redistricting strategist Thomas Hofeller authored a study advising that a citizenship question on the census was necessary to gather data to exclude noncitizens from the redistricting population base, a result “advantageous to Republicans and Non-Hispanic Whites.”3 He then helped ghostwrite a letter to the Commerce Department requesting a citizenship question that was funneled through several intermediaries before

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3 Pls.’ Mot. for Order to Show Cause, 18-cv-2921 (JMF), ECF No. 595-1 at 63 (May 30, 2019) (citing exhibits).
becoming part of the Secretary’s effort to add a citizenship question. Less than a week after the Supreme Court’s decision, Defendant Trump confirmed that efforts to add the citizenship question was intended to curtail the growing political power of immigrant communities of color. He first stated that the citizenship question was “very important [] to find out if someone is a citizen as opposed to an illegal.” A few days later, Defendant Trump said: “Number one . . . you need it for Congress, for districting. You need it for appropriations. Where are the funds going? How many people are there?” The following week, he noted that “[s]ome states may want to draw state and local legislative districts based upon the voter-eligible population.”

In announcing the Presidential Memorandum, Defendant Trump expressly linked the Presidential Memorandum to the citizenship question effort, proclaiming he was fulfilling his promise that he would “not back down in [his] effort to determine the citizenship status of the United States population.” Defendant Trump has also linked the Memorandum to a broader campaign against so-called sanctuary cities and States—jurisdictions that elect in some circumstances to limit their cooperation with federal immigration enforcement.

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5 Remarks by President Trump at Signing of H.R. 3401 (July 1, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-3401/.


8 Statement from the President Regarding Apportionment (July 21, 2020), https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/

9 Defendant Trump has sought by executive order to bar “sanctuary jurisdictions” from receiving
Memorandum states that one of its objectives is to punish States for enacting policies that the federal government disfavors. Memorandum, 85 Fed. Reg. at 44,680.

The Presidential Memorandum is part of a broader pattern of Defendant Trump’s “expressed animus against non-white, non-European immigrants.” Ramos v. Nielsen, 336 F. Supp. 3d 1075, 1098 (N.D. Cal. 2018); see also id. at 1100 (citing such statements). To take just one example, he asked during a meeting concerning “immigrants from Haiti, El Salvador, and African countries,” why the United States was “‘having all these people from shithole countries come here?’” and “suggested that the United States should instead bring more people from countries such as [mostly white] Norway.” Id. He also asked: “‘Why do we need more Haitians?’ and insisted they be removed from an immigration deal.” Saget v. Trump, 345 F. Supp. 3d 287, 303 (E.D.N.Y. 2018). In 2018, he referred to certain immigrants as “‘animals.’”

ARGUMENT

I. Standard of review.

Summary judgment is warranted when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

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To obtain a preliminary injunction, Plaintiffs must establish that they are likely to suffer irreparable harm absent preliminary relief; they are likely to succeed on the merits; the balance of the equities tips in their favor; and an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

II. **Plaintiffs include jurisdictions and residents of jurisdictions that would lose representation if undocumented immigrants were excluded from the population base used for congressional apportionment.**

Plaintiffs have standing to bring this challenge because—among other injuries—the exclusion of undocumented immigrants from the apportionment base will cause Plaintiffs or the jurisdictions in which Plaintiffs operate to lose seats in the House of Representatives. Such a loss “undoubtedly satisfies the injury-in-fact requirement of Article III standing.” *New York*, 351 F. Supp. 3d at 607 (quotation marks omitted); *see also Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 330 (1999) (holding that the plaintiffs demonstrated standing for purposes of summary judgment by submitting an expert affidavit showing that “it is a virtual certainty that Indiana will lose a seat . . . under the Department’s Plan”).

The Memorandum expressly states that the policy of excluding undocumented immigrants from the apportionment base is intended to, and is certain to cause, California to lose at least one seat in the House of Representatives. And it is certain to have the same effect on Texas. The Memorandum states that “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.” Memorandum, 85 Fed. Reg. at 44,680. According to the Department of Homeland Security, as of 2015, California had 2.9 million undocumented residents and Texas had 1.9 million undocumented residents in 2015. Pls.’ 56.1 Stmt. ¶ 4. According to the Census Bureau’s

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most recent estimates, as of July 1, 2019, the total population of California was 39,512,223 and the total population of Texas was 28,995,881. Pls.’ 56.1 Stmt. ¶¶ 12, 14. These estimates from the Census Bureau and DHS indicate that undocumented immigrants constitute approximately 7.3% of the population of California and approximately 6.6% of the population of Texas. 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. Pls.’ 56.1 Stmt. ¶ 5. Based on these facts alone, there can be no dispute that the exclusion of undocumented immigrants will cause California and Texas to lose at least one seat in the House.

Additionally, Plaintiff’s expert, Dr. Christopher Warshaw, confirms that the Memorandum will “almost certainly” cause certain States to lose seats in Congress. Warshaw Decl. ¶ 11 (Ex. 58). Dr. Warshaw modeled the effects of excluding undocumented immigrants from the population count used to calculate congressional reapportionment after the 2020 census. Pls.’ 56.1 Stmt. ¶ 20; Warshaw Decl. ¶ 11 (Ex. 56). According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment base, there is a 98.3% probability that Texas will lose a seat in the House of Representatives, and a 72.1% probability for California. Pls.’ 56.1 Stmt. ¶¶ 21–22; Warshaw Decl. ¶ 47 tbl. 8 (Ex. 58).

The Governmental Plaintiff’s include jurisdictions in California (the City and County of San Francisco, and Monterey County) and Texas (Cameron, El Paso, and Hidalgo Counties). See Governmental Plaintiff’s Am. Compl. ¶¶ 42, 44–46, 48 (ECF No. 34). The NGO Plaintiff’s include organizations with members residing in both States. Pls.’ 56.1 Stmt. ¶¶ 33–34 (ADC); id. ¶¶ 40–41 (FIEL Houston, Inc.); id. ¶¶, 46–47 (Ahri). Residents of these Plaintiff counties

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11 Citations in this Memorandum to “Ex. ___” are to the exhibits to the accompanying Declaration of Matthew Colangelo dated August 7, 2020.
and the Texas- and California-based members of Plaintiff organizations will suffer a loss of political power if Texas or California lose a congressional seat. Indeed, ADC has members in all 50 states—\textit{any} change to apportionment is certain harm a member of ADC. \textit{Pls.’ 56.1 Stmt. ¶ 34.\textsuperscript{12}}

These injuries are traceable to Defendants’ recent actions and redressable by a favorable ruling from this Court. There is no question that the exclusion of undocumented immigrants from the apportionment base will \textit{directly} affect the apportionment. Indeed, the Presidential Memorandum itself both acknowledges and intends this effect on apportionment, see Memorandum, 85 Fed. Reg. at 44,680. Moreover, this Court previously found—and the Supreme Court agreed—that the predictable effects of defendants’ actions on the accuracy of the ongoing enumeration are sufficient to establish traceability. \textit{New York}, 351 F. Supp. 3d at 619–25. And all of these injuries will plainly be redressed by a favorable ruling that requires Defendants to do what the Constitution mandates: “counting the whole number of persons in each State.” U.S. Const. amend. XIV, § 2.

III. Defendants’ decision to exclude undocumented immigrants from the apportionment base violates Article I and the Fourteenth Amendment.

A. The Constitution explicitly requires the population base for apportionment to include the whole number of persons in each State.

Defendants’ blanket exclusion of undocumented immigrants from the apportionment base, without regard to their physical residence here, flagrantly violates the Constitution. The Constitution’s plain language requires that all “persons” physically living “in each State” be

\textsuperscript{12} Plaintiffs’ representational harms alone suffice to establish injury-in-fact for standing purposes. To the extent Defendants oppose summary judgment on standing grounds, Plaintiffs intend to present additional evidence establishing the other injuries alleged in their complaints. \textit{See Governmental Plaintiffs’ Am. Compl. ¶¶ 117–36 (ECF No. 34); NGO Plaintiffs’ First Am. Compl. ¶¶ 19–83 (ECF No. 62).}
included in the apportionment count—regardless of their citizenship or immigration status. U.S. Const. amend. XIV, § 2; id. art. I, § 2, cl. 3 (requiring apportionment “according to [the States’] respective Numbers”). The Framers of the Fourteenth Amendment specifically chose to refer to “persons” rather than “citizens” in the Fourteenth Amendment’s text to ensure that noncitizens residing in this country are included in apportioning House seats. The Supreme Court confirmed four years ago that the Constitution requires congressional apportionment based on each State’s total population, including undocumented immigrants. See Evenwel. 136 S. Ct. at 1123. And settled practice for more than two hundred years has adhered to this rule.

Defendants have turned this constitutional and historical consensus on its head. They have treated as dispositive a factor that has always been considered immaterial for apportionment (immigration status). And they have treated as immaterial a factor that has consistently determined the apportionment base since the first census in 1790 (physical residence). Defendants cannot fundamentally alter the constitutional order by decreeing that millions of undocumented immigrants who indisputably live in this country are not “persons.”

1. The Constitution’s text unambiguously mandates counting all persons, including undocumented immigrants, in the apportionment base.

The constitutional mandate to base apportionment on all persons living in the United States, without regard to their immigration status, is clear. Section 2 of the Fourteenth Amendment requires that U.S. House seats “shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2 (emphasis added). And Article I requires that the “respective Numbers” of each State be determined by an “actual Enumeration” of the total population. Id. art. I, § 2, cl. 3.
The Supreme Court has held that the term “person” in the Fourteenth Amendment includes undocumented immigrants. *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The Court explained that, “[w]hatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sentence of that term.” *Id.* Because undocumented immigrants “are clearly ‘persons,’” the plain text of the Fourteenth Amendment is “not ambiguous” in mandating that undocumented immigrants living in this country must be included for apportionment. *Fed’n for Am. Immigration Reform (FAIR) v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C. 1980) (three-judge court). This Court has recognized as much: “[b]y its terms, . . . the Constitution mandates that every ten years the federal government endeavor to count every single person residing in the United States, whether citizen or noncitizen, whether living here with legal status or without,” and “[t]he population count derived from that effort is used . . . to apportion Representatives among the states.” *New York*, 351 F. Supp. 3d at 514 (emphases added).

By contrast, the Constitution uses distinct language when referring to a subset of persons. For example, the Constitution repeatedly uses the term “citizens” rather than “persons” to describe the subset of persons living here who hold citizenship. *See, e.g.*, U.S. Const. art. 1, § 2, cl. 2 (“No Person shall be a Representative who shall not have . . . been seven Years a Citizen of the United States”). The same distinction appears in Section 2 of the Fourteenth Amendment, which requires the apportionment base to include “the whole number of persons in each State,” but then provides that a State that denies the right to vote to “citizens of the United States” will have its basis of representation reduced. U.S. Const. amend. XIV, § 2 (emphasis added).

Similarly, the Constitution originally contained two express exclusions from the apportionment base, neither of which turned on immigration status. First, the original Apportionment Clause excluded all “Indians not taxed,” U.S. Const. art. I, § 2, cl. 3, an
exception that became irrelevant after the Indian Citizenship Act of 1924, Pub. L. No. 68-175, 43 Stat. 253. Second, it infamously counted slaves as only three-fifths of a person for apportionment, U.S. Const. art. I, § 2, cl. 3, an exception overturned by the Fourteenth Amendment. “By making express provision for Indians and slaves, the Framers demonstrated their awareness that” the otherwise “all-inclusive” language delineating the population base for apportionment does not permit the exclusion of any other residents. FAIR, 486 F. Supp. at 576.

2. The Constitution’s broad terms reflected a conscious intent to include all persons, including all immigrants, in the apportionment base.

The choice to base apportionment on total population, regardless of citizenship or immigration status, was no accident. Both the original Framers and the Framers of the Fourteenth Amendment chose to “allocate[e] House seats to States” with “total population as the congressional apportionment base,” a mandate based on their fundamental “theory of the Constitution.” Evenwel, 136 S. Ct. at 1128–29.

“At the time of the founding, the Framers confronted the question” of how to allocate seats in the new government to the States. Id. at 1127. “The Framers’ solution, now known as the Great Compromise, was to provide each State the same number of seats in the Senate, and to allocate House seats based on States’ total population,” that is, “‘according to their respective Numbers.’” Id. (quoting U.S. Const. art. I, § 2, cl. 3) (emphasis in original). In selecting all residents as the basis for apportionment, the Framers specifically considered and rejected other proposals, such as allocating House “representation based on wealth or property.” The Records of the Federal Convention of 1787 (“Farrand’s Records”), at 542 (Max Farrand ed., 1911) (Pierce Butler). As James Madison explained, “[i]t is a fundamental principle of the proposed Constitution that as the aggregate number of representatives allotted to the several
States, is to be … founded on the aggregate number of inhabitants.” The Federalist No. 54 (James Madison) (emphasis added).

The Framers made clear that basing apportionment on total population guaranteed every person representation in the House, regardless of their legal status, thus ensuring that the House will “be the most exact transcript of the whole Society,” 1 Farrand’s Records, supra, at 142 (James Wilson), and provide representation to “every individual of the community at large,” id. at 473 (Alexander Hamilton). Thus, as the Supreme Court has explained, “the basis of representation in the House was to include all inhabitants,” Evenwel, 136 S. Ct. at 1127, including women, children, indentured servants, and many other individuals who did not have the right to vote or full legal status. See Garza v. County of Los Angeles, 918 F.2d 763, 774 (9th Cir. 1990); see also Wesberry v. Sanders, 376 U.S. 1, 13 (“[W]hen the delegates agreed that the House should represent ‘people’ they intended that in allocating Congressmen the number assigned to each State should be determined solely by the number of the State’s inhabitants.”).

When drafting the Fourteenth Amendment, Congress reconsidered the proper basis for apportioning House seats and reaffirmed that apportionment must be based on all persons living in each State—including noncitizens. “Concerned that Southern states would not willingly enfranchise freed slaves, and aware that ‘a slave’s freedom could swell his state’s population for purposes of representation in the House,’” the Fourteenth Amendment’s Framers “considered at length the possibility of allocating House seats to states on the basis of voter population” or citizen population. Id. (quoting Joseph T. Sneed III, Footprints on the Rocks of the Mountain: An Account of the Enactment of the Fourteenth Amendment 28 (1997)). For example, on December 5, 1865, Thaddeus Stevens proposed apportioning Representatives among the States “according to their respective legal voters,” specifying that “for this purpose none may be named
as legal voters who are not either natural-born citizens or naturalized foreigners.” Cong. Globe, 39th Cong., 1st Sess. 10 (1865).

Later, on January 16, 1866, the Joint Committee of Fifteen on Reconstruction that drafted the Fourteenth Amendment initially voted to adopt a proposal that would have required apportioning House seats based on “the whole number of citizens of the United States in each state.” Benjamin B. Kendrick, The Journal of the Joint Committee of Fifteen on Reconstruction, 39th Congress, 1865-1867, 49–52 (Ex. 52). After further deliberations, however, Representative Conkling “moved to amend the proposed article by striking out the words ‘citizens of the United States in each state,’ and inserting in lieu thereof the words, ‘persons in each State, including Indians not taxed.” Id. at 52. The Joint Committee adopted Conkling’s amendment by a vote of 11-3. Id.

Representative Conkling explained that basing apportionment on “persons” rather than “citizens” was essential to passage of the Fourteenth Amendment:

It has been insisted that “citizens of the United States” and not “persons” should be the basis of representation and apportionment. These words were in the amendment as I originally drew it and introduced it, but my own judgment was that it should be “persons,” and to this the committee assented.

There are several answers to the argument in favor of “citizens” rather than “persons.” The present Constitution is, and always was opposed to this suggestion. ‘Persons,’ and not ‘citizens,’ have always constituted the basis.

Again, it would narrow the basis for taxation and cause considerable inequalities in this response, because the number of aliens in some States is very large, and growing larger now, when emigrants reach our shores at the rate of more than a State a year.

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13 Where indicated, Plaintiffs have filed certain of the original sources cited in this discussion as Exhibits to these papers. Plaintiffs can provide the Court with copies of other legislative or historical materials if it would assist the Court’s review.
Again, many of the large States now hold their representation in part by reason of their aliens, and the Legislatures and people of these States are to pass upon the amendment. It must be acceptable to them.


The Framers of the Fourteenth Amendment further made clear that the Amendment requires including all immigrants in the apportionment base. As Representative John Bingham explained, the “whole immigrant population should be numbered with the people and counted as part of them” because “[u]nder the Constitution as it now is and as it always has been, the entire immigrant population of this country is included in the basis of representation.” Id. at 432 (emphases added); see also id. at 2944 (Sen. Williams) (“Representation is now based upon population,” including “foreigners not naturalized.”). Proponents of maintaining the total-population apportionment base repeatedly declared their refusal to “throw[] out of the basis at least two and a half millions of unnaturalized foreignborn men and women.” Id. at 1256 (Sen. Henry Wilson); see also, e.g., id. at 2987 (proposal to apportion based on voting population was “blow which strikes the two million one hundred thousand unnaturalized foreigners who are now counted in the basis of representation from that basis’’); id. at 411 (Rep. Burton Cook) (representation based on voters improperly “takes from the basis of representation all unnaturalized foreigners”).

The Framers believed that excluding residents from the apportionment base, including immigrants, would fatally undermine a cornerstone of the Constitution—“equal representation for equal numbers of people.” Wesberry, 376 U.S. at 18. A basic “idea of the Constitution” has always been, and continues to be, that “the whole population is represented; that although all do not vote, yet all are heard.” Cong. Globe, 39th Cong., 1st Sess. 705 (1866) (Sen. William Fessenden). No matter a person’s legal status, the Framers emphasized, “[a]ll the people, or all the members of a State or community, are equally entitled to protection; they are all subject to its
laws; they must all share its burdens, and they are all interested in its legislation and

government.” *Id.* at 2962 (1866) (Sen. Luke Poland). As Senator Jacob Howard explained when

introducing the amendment’s final language on the Senate Floor:

Its basis of representation is numbers . . . that is, the whole population. The
commitee adopted numbers as the most just and satisfactory basis, and this is the
principle upon which the Constitution itself was originally framed, that the basis
of representation should depend upon numbers; and such . . . is the safest and
most secure principle upon which the Government can rest. Numbers, not voters;
numbers, not property; this is the theory of the Constitution.


Defendants’ actions to exclude an entire category of persons living in this country from

apportionment break this foundational promise and flout the explicit intent of the Framers of the

Fourteenth Amendment.

3. The Supreme Court has determined that the Constitution requires

counting all persons, including undocumented immigrants, for

apportionment.

Just four years ago, the Supreme Court confirmed that the Fourteenth Amendment

requires including all immigrants in apportioning House seats. In *Evenwel*, the plaintiff’s argued

that Texas was required to exclude noncitizens—many of whom are undocumented—in

equalizing population for legislative districts within the State. The Supreme Court rejected this

claim on the ground that, with respect to *inter*-state apportionment, Section 2 of the Fourteenth

Amendment “retained total population as the congressional apportionment base.” *Evenwel*, 136

S. Ct. at 1128. The Court emphasized: “[i]t cannot be that the Fourteenth Amendment calls for

the apportionment of congressional districts based on total population, but simultaneously

prohibits States from apportioning their own legislative districts on the same basis.” *Id.* at 1128–

29. The concurring Justices agreed that “House seats are apportioned based on total population.”
Id. at 1148 (Alito, J., concurring in the judgment); see also id. at 1138 (Thomas, J., concurring in the judgment) (similar).

Thus, all nine Justices in Evenwel agreed that apportionment of House seats among the States must be based on total population, including noncitizens. And that constitutional determination was central to the Court’s rejection of the plaintiffs’ claim there. The Presidential Memorandum thus defies the Supreme Court’s decision of just four years ago.

4. **Centuries of established practice further confirm that the apportionment base must include undocumented immigrants.**

*Evenwel* is consistent with not only the Constitution’s clear text and extensive history, but also more than two hundred years of unbroken practice that has always included all persons residing in each State, regardless of their citizenship or immigration status, in the apportionment base. *See Evenwel*, 136 S. Ct. at 1133 (relying on “settled practice”). Judicial “interpretation of the Constitution” may be “guided by a Government practice that has been open, widespread, and unchallenged since the early days of the Republic.” *Dep’t of Commerce*, 139 S. Ct. at 2567 (internal quotation marks and citations omitted). And the Supreme Court has emphasized “the importance of historical practice in” understanding the Enumeration Clause specifically. *Wisconsin v. City of New York*, 517 U.S. 1, 21 (1996).

Since the first census in 1790, “[t]he Census Bureau has always attempted to count every person residing in a state on Census day, and the population base for purposes of apportionment has always included all persons, including aliens both lawfully and unlawfully within our borders.” *FAIR*, 486 F. Supp. at 576; see, e.g., Census Act of 1790, S. 101, 1st Cong. § 5, (1790). Both Congress and the Executive Branch have long made clear that this unbroken historical practice is constitutionally required.
Congress has repeatedly rejected statutory proposals to exclude all noncitizens or undocumented immigrants from the apportionment base on the ground that the Constitution forbids any such exclusion. For example, in 1929, Congress rejected proposals to amend the Census Act to exclude noncitizens from apportionment after members of the House and Senate repeatedly declared that “the plain mandate of the Constitution” requires counting all persons, including all noncitizens, for apportionment. 71 Cong. Rec. 1910 (May 25, 1929) (Sen. Bratton); see, e.g., id. at 1958 (May 27, 1929) (Sen. Reed), 2451-52 (June 6, 1929) (Rep. Griffith). The Senate’s legislative counsel provided a legal opinion confirming that all immigrants living here must be included given the Constitution’s “‘natural and obvious’ meaning,” “the history of the fourteenth amendment, the evidence of the records of the Constitutional Convention, and the uniform past congressional construction of the term by Congress in its apportionment legislation.” Id. at 1822 (May 23, 1929).

In 1940, in enacting a bill to amend the 1929 Act, see Pub. L. No. 76-481, Congress again rejected a proposal to exclude noncitizens from apportionment. See H.R. Rep. No. 1787, at 1 (1940) (Ex. 55) (committee report showing proposed exclusion of noncitizens). As Representative Emanuel Celler explained in opposing the proposal:

For 150 years we have included aliens in the count. We cannot, by mere resolution of this body or the adjoining body, change that constitutional requirement. If you strike out aliens you have parted with a principle of government upon which the fathers agreed some 150 years ago...When we use the word “persons” we include all peoples.

Cong. Rec. H4372 (Apr. 11, 1940); 86 Cong. Rec. at 4384-86 (voting 209-23 to strike exclusion).

And in 1980, a bill to exclude undocumented immigrants from the apportionment base failed after New York Senator Jacob Javits explained that there is no plausible way to construe the Constitution’s words as meaning “anything other than as described in Federalist papers, the

The Executive Branch has likewise consistently maintained that the Constitution requires counting all persons, regardless of immigration status, in the apportionment base. For example, in FAIR v. Klutznick, the Department of Justice, on behalf of the President, Secretary of Commerce, and Director of the Census Bureau, urged a district court to reject claims demanding exclusion of undocumented immigrants from the apportionment base. Defs.’ Mem. of Points & Authorities in Support of Mot. to Dismiss or for Summary Judgment, No. 79-3269 (D.D.C.), reprinted in 1980 Census, supra, at 125-156. The government explained that “the plain language of the Constitution, as well as the intent of its framers, establishes that all inhabitants, including illegal aliens, must be enumerated for the purpose of apportioning Representatives.” Id. at 131. Similarly, the Department of Justice’s Office of Legislative Affairs has opined that the Constitution “require[s] that inhabitants of States who are illegal aliens be included in the census count.” Letter from Assistant Attorney Gen. Carol T. Crawford to Honorable Jeff Bingaman (Sept. 22, 1989), in 135 Cong. Rec. S22,521 (daily ed. Sept. 29, 1989).

Defendants have acknowledged that the decennial enumeration that necessarily determines the apportionment base must count all persons living in the United States, without any exclusions. For example, on March 14, 2019, Secretary Ross testified under oath during a congressional committee hearing that “[t]he constitutional mandate, sir, for the census is to try to count every person residing in the U.S. at their place of residence on the dates when the census is conducted.” Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 31 (Mar. 14, 2019) (emphasis added); see id. (“We intend to try to count every person taking all necessary
actions to do so.” (emphasis added)). During a congressional committee hearing in February 2020, Census Bureau Director Dillingham testified that the Bureau will “count everyone, wherever they are living,” including undocumented immigrants. *Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 12 (Feb. 12, 2020) (emphasis added).

In multiple filings in this Court, many of the Defendants here repeatedly admitted that the Constitution requires enumerating every person residing in the United States, no matter their immigration status, for inclusion in the apportionment base. *See, e.g., New York v. Dep’t of Commerce, Defs.’ Post-Trial Proposed Findings of Fact and Conclusions of Law 1, 18-CV-2921 (JMF) (S.D.N.Y. Nov. 21, 2018), ECF No. 546 (“Constitution requires the federal government to conduct a Decennial Census counting the total number of ‘persons’—with no reference to citizenship status—residing in each state.” (internal citations omitted)).*

And, under a final rule adopted for the 2020 census, the Census Bureau has already decided to count undocumented immigrants for apportionment purposes. *See Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525, 5533 (Feb. 8, 2018).*

Defendants’ attempt to reverse course at the last minute after the actual enumeration is already underway, and to exclude undocumented immigrants from the apportionment base for the first time in our country’s history, reflects a radical break from the consistent understanding and practice of the federal government for more than two centuries. There is simply no textual or historical support for this abrupt break in one of our country’s foundational principles.

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14 *See also, e.g., New York v. Dep’t of Commerce, Memo. of Law in Support of Defs.’ Mot. to Dismiss 25, 18-CV-2921 (JMF) (S.D.N.Y. May 25, 2018), ECF No. 155 (“Constitution supplies a simple judicial standard for determining the constitutionality of [Census Bureau] practices—the Secretary must perform a person-by-person headcount” (emphasis added)).*
5. Defendants do not have any “discretion” to exclude undocumented immigrants from the apportionment base.

Contrary to the President’s Memorandum, the Executive Branch does not have “discretion” to categorically exclude undocumented immigrants from the “whole number of persons in each State” based solely on their immigration status, without any regard to their physical residence here. 85 Fed. Reg. at 44,679.

The Memorandum reasons that apportionment should be based only on the number of “inhabitants” of each State, and that the President purportedly has discretion to deem undocumented immigrants who reside here as not “inhabitants.” Id. But even if being an “inhabitant” were the relevant criterion, millions of undocumented immigrants who live in this country are indisputably inhabitants because they live here, many for years or even decades. An “inhabitant” is “a person . . . that lives in a particular place.” Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/inhabitant. The President has no discretion to declare that undocumented residents of this country are not “inhabitants.”

The text of the Constitution and an unbroken line of history also foreclose any discretion here. The Supreme Court has held that “[u]sual residence” is “the gloss given the constitutional phrase ‘in each State’” in Section 2 of the Fourteenth Amendment—meaning all persons whose “usual residence” is in the United States “must be included in the enumeration of the population and the apportionment of House seats.” Franklin v. Massachusetts, 505 U.S. 788, 805 (1992). And “usual residence” has always been the criterion for enumeration and apportionment since “the first enumeration Act.” Id. Conversely, the Framers specifically considered and rejected the notion that a person’s legal status—including voter, citizenship, or immigration status—could ever override their physical residence in the United States and result in their exclusion from the apportionment base. See 85 Fed. Reg, at 44,680. Defendants lack any authority to
exclude undocumented immigrants who maintain their usual residence in the United States from the apportionment.

The Memorandum’s conclusory attempts to support its invocation of “discretion” rely on inapposite examples. For example, the Memorandum asserts that noncitizens who are only temporarily in the United States for a vacation or a business trip are not included in the decennial enumeration used for apportionment even though they may be “physically present.” 85 Fed. Reg. at 44,679. But temporary visitors are not included in the apportionment base precisely because the United States is not their “usual residence.” See 83 Fed. Reg. at 5533. By contrast, the millions of undocumented immigrants whom Defendants seek to exclude from apportionment are not merely “physically present” as a fleeting matter but rather are residents here—many for years or even decades. The policy of excluding temporary visitors provides no support for Defendants’ attempt to exclude actual residents of this country who happen to be undocumented immigrants.

Defendants also point to the Secretary of Commerce’s decision, “at various times, to include” in the apportionment federal military and civil personnel who are not physically present in this country but are temporarily serving overseas. 85 Fed. Reg. at 44,679. But the policy of including overseas federal personnel takes as a given the principle that all persons living in the United States must be counted for apportionment purposes, and simply extends that principle to persons who can be deemed to maintain a “usual residence” in the country—because they have “retained their ties to the States”—even though they have been “temporarily stationed abroad” by the government. Franklin, 505 U.S. at 806 (emphasis added). In no sense does this inclusionary policy to include persons who are not currently physically present in their home
States authorize Defendants to exclude persons who indisputably reside here and thus are part of the “whole number of persons in each State.” U.S. Const. amend. XIV.

B. **Apportioning Representatives based on numbers other than the actual enumeration from the decennial census is also unconstitutional.**

The Presidential Memorandum violates the Constitution for a second, independent reason: it requires the use of data other than the “actual Enumeration” of the population ascertained by the decennial census to apportion Representatives. The actual enumeration in the 2020 census indisputably will include undocumented immigrants, and the Constitution requires Defendants to rely solely on this “actual Enumeration” for congressional apportionment. The subtraction of undocumented immigrants to create an apportionment base that is different from the population included in the actual enumeration violates this constitutional requirement.

Article 1, Section 2 mandates that House seats be allocated based on the “numbers” determined by the “actual Enumeration” of the decennial census. U.S. Const. art 1, § 2. While the Executive Branch may maintain some discretion over the manner of conducting the census, see *Franklin*, 505 U.S. at 799; *Utah v. Evans*, 536 U.S. 452 (2002), once the decennial census determines the “actual Enumeration,” Defendants must use those numbers—and only those numbers—to apportion House seats. As the Supreme Court has explained, “the Constitution provides that the results of the census shall be used to apportion the Members of the House of Representatives among the States.” *Wisconsin*, 517 U.S. at 5 (emphasis added). And “[t]he decennial census is the only census that is used for apportionment purposes.” *Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 341 (1999) (quotation marks omitted) (emphasis added).

The Framers required that apportionment be based solely on the numbers from the actual enumeration to provide a fixed rule “that would limit political chicanery.” *Utah*, 536 U.S. at 500.
(Thomas, J., concurring in part and dissenting in part). The Framers’ “principal concern was that the Constitution establish a standard resistant to manipulation.” *Id.* at 503. George Mason described having a “permanent and precise standard as essential to fair representation,” because absent such a standard, “those who have power in their hands will not give it up while they can retain it.” *Id.* at 502 (quoting The Founders’ Constitution 102-03 (P. Kurland & R. Lerner eds. 1987)). Roger Sherman agreed that “the rule of revising the Representation ought to be fixt by the Constitution.” *Id.* (quoting The Founders’ Constitution 104). And Alexander Hamilton, writing about the Enumeration Clause’s apportionment of direct taxes among the States, explained that “*an actual Census or enumeration of the people must furnish the rule,*” so as to “shut[] the door to partiality or oppression.” The Federalist No. 36 at 220 (emphasis added).

For the 2020 census, the actual Enumeration will continue to include undocumented immigrants. Defendant Dillingham recently confirmed in congressional testimony that the Memorandum “does not change the Census Bureau’s plans for field data collection across the nation,” and that the Bureau will “continue full steam ahead with . . . counting every person,” including undocumented immigrants. Prepared Statement of Dr. Steven Dillingham Before the House Oversight and Reform Committee (July 29, 2020). Dillingham reaffirmed that the Census Bureau will continue to adhere to its Residence Rule for the 2020 census, see *id.*, which requires enumerating undocumented immigrants “at the U.S. residence where they live and sleep most of the time.” 83 Fed. Reg. at 5533. And Defendants confirmed to this Court in this case that “[t]he Census Bureau is conducting a complete enumeration of the total population and

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15 [https://docs.house.gov/meetings GO/GO00/20200729/110948/HHRG-116-GO00-Wstate-DillinghamS-20200729.pdf](https://docs.house.gov/meetings GO/GO00/20200729/110948/HHRG-116-GO00-Wstate-DillinghamS-20200729.pdf).

The Presidential Memorandum, however, directs the use of population totals excluding undocumented immigrants for apportionment—which are different from the actual Enumeration. To implement the Memorandum, Defendants would need to take the actual Enumeration numbers and subtract some estimate of the undocumented immigrants who live in each State, using administrative data or statistical models from sources other than the decennial actual Enumeration. See 85 Fed. Reg. at 44,679-80. Defendants would then use the resulting figures—rather than the actual Enumeration numbers—as the apportionment base. See id. Defendants’ recent submission to this Court confirmed that, under the Memorandum, “an apportionment number . . . will be chosen by the President after the census is complete.” Joint Letter 5, *New York v. Trump*, 20-CV-5770 (JMF), ECF No. 37 (S.D.N.Y. filed Aug. 3, 2020). In other words, the President will “choose” a “number” for the apportionment base that differs from the “complete enumeration of the total population.” Id. at 9.

The Constitution prohibits Defendants from apportioning seats in this manner. The President does not have “discretion” to add to, subtract from, or otherwise alter the numbers of persons actually enumerated through the decennial census to “choose” a separate apportionment base of his own liking. As the Census Bureau has recognized for decades, there is unbroken

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16 If Defendants assert, contrary to Dillingham’s congressional testimony, the Residence Rule, and Defendants’ recent submission, that the “actual Enumeration” is the numbers derived after subtracting undocumented immigrants from the 2020 census count, that also would violate the Enumeration Clause. The Enumeration Clause prohibits Defendants from subtracting enumerated people out of the actual Enumeration numbers, and it certainly prohibits Defendants from doing so based on statistical estimates that rely on sampling and administrative data from outside agencies. See, e.g., *U.S. House of Representatives*, 525 U.S. at 346-47 (Scalia, J., concurring in part) (“an ‘enumeration’ requires an actual counting”).
“historical precedent of using the actual Enumeration for purposes of apportionment” rather than any other population count. *U.S. House of Representatives*, 525 U.S. at 340. The Constitution’s fixed “rule” bars the President from using an apportionment base that differs from the actual Enumeration numbers. The Federalist No. 36 at 220.

Indeed, Defendants’ scheme to deviate from the actual Enumeration numbers in shaping political power for the next decade represents precisely the type of “political chicanery” and “manipulation” that the Framers prevented by adopting the Enumeration Clause. *Utah*, 536 U.S. at 500, 503 (Thomas, J., concurring in part and dissenting in part). The Memorandum makes no secret that Defendants seek to exclude undocumented immigrants from the apportionment base for political reasons. The Memorandum explicitly seeks to prevent certain States from being “rewarded with greater representation in the House of Representatives,” and even singles out a particular state—California—whose political power Defendants wish to reduce. 85 Fed. Reg. at 44,680. The Framers foresaw that leaders could seek to manipulate congressional apportionment for their own political benefit, and they guarded against such abuse by mandating that apportionment be determined by the actual Enumeration of the population ascertained through a decennial census, and nothing else.

**IV. The Memorandum is ultra vires under the statutory scheme Congress enacted to implement the required decennial census and reapportionment of House seats.**

The President’s Memorandum also violates statutory provisions Congress enacted to implement those constitutional requirements. See 13 U.S.C. § 141(a), (b); 2 U.S.C. § 2a. The Memorandum is *ultra vires* under these statutes in at least three ways.

**A. The Memorandum violates the statutory requirements to count the total population, and to report and use that total for apportionment purposes.**

Congress enacted a statutory scheme directing that the whole population of the States—including undocumented immigrants who reside here—must be counted in the decennial census
and then used to apportion representatives. 13 U.S.C. § 141; 2 U.S.C. § 2a. As Congress explained in enacting predecessors to these two provisions in a single statute, 17 “the functions served by them interlock,” because “there is but one basic constitutional function served by the census. It is to provide an enumeration of the people for the purpose of redistributing congressional representatives proportioned thereto.” S. Rep. No. 71-2, at 2 (1929) (Ex. 53).

As codified at 13 U.S.C. § 141(a), the Census Act instructs that the Secretary of Commerce “shall . . . take a decennial census of population . . . .” Subsection (b) then specifies that “[t]he tabulation of total population by States under subsection (a) . . . as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.” Id. § 141(b); see also Act of June 18, 1929, § 2, 46 Stat. 21, 21 (requiring same tabulation). These provisions together require that there be a “census of population” under subsection (a), that this census include a “tabulation of total population by States as required for” apportionment, and that this tabulation then be provided in a report to the President.

In turn, 2 U.S.C. § 2a(a) directs the President to provide Congress an apportionment report that is based solely on the census’s tabulation of population and application of a mathematical apportionment method to that result. As the statute provides, “the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent 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 . . . .” 2 U.S.C. § 2a (emphases added); see also Act

17 See Act of June 18, 1929, §§ 2, 22.
of June 18, 1929, § 2, 46 Stat. 21, 21; Pub. L. No. 77-291, § 1 (amending provision of 1929 Act to require use of “equal proportions” method). The “method of equal proportions” is a method of apportionment based on each State’s population designed to minimize disparities in “population per Representative” among States. 71 Cong. Rec. at 4965 (Mar. 2 1929) (“Memorandum on the Method of Equal Proportions” by Professor Edward Huntington noting unanimous adoption of method by Advisory Committee of the Census); 67 Cong. Rec. at 7078 (Apr. 7, 1926) (Advisory Committee report describing method as providing “an apportionment in which the ratios between the representation and the population of the Several States are as nearly alike as possible”). The Department of Justice has recognized that the method of equal proportions relies on each State’s population. Br. for Appellants, Dep’t of Commerce v. Montana, 503 U.S. 442 (1992), 1992 WL 672939, at *9-*11 (“Under all of the methods, the formula for establishing each State’s priorities has as its numerator the population of the State.”).

By requiring the exclusion of undocumented immigrants from the statutory phrases “total population” and “whole number of persons in each State,” the Memorandum directs the President and the Secretary of Commerce to perform unlawful, ultra vires actions.

The Commerce Secretary is not empowered to provide the President with information “as required for the apportionment” other than a “tabulation of total population.” 13 U.S.C. § 141(b) (emphasis added). And the President is not empowered to exclude undocumented immigrants from “the whole number of persons in each State” or from the apportionment numbers in his apportionment report to Congress. 2 U.S.C. § 2a(a). The reason is simple: undocumented immigrants are persons. As a matter of plain language, the word “person” in § 2a makes no distinction based on citizenship or immigration status. See also supra Part III.A. (same discussion in context of Fourteenth Amendment). At no point has Congress had trouble
distinguishing among persons, citizens, and noncitizens when it wishes to do so—and it certainly had no such trouble in 1929 when §§ 141 and 2a were initially enacted. See, e.g., Pub. L. No. 71-962, § 6(b) (prohibiting “alien” from “being admitted to citizenship” without being “a person of good moral character” as shown by, inter alia, testimony of two “citizens of the United States”). Similarly, the single exception reflected in § 2a’s text—“Indians not taxed”—suggests no other exclusions were intended. See Greene v. United States, 79 F.3d 1348, 1355 (2d Cir. 1996) (“mention of one impliedly excludes others”).

Congress is also “presumed to legislate with familiarity of the legal backdrop for its legislation.” Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela, 863 F.3d 96, 114 (2d Cir. 2017). That backdrop speaks volumes. Congress adopted the “whole number of persons” statutory language in 1929 (and again in 1941) against (1) its own unbroken legislative practice to count noncitizens, including undocumented immigrants, for apportionment purposes; and (2) Supreme Court precedent holding that “person” in the Fourteenth Amendment includes undocumented immigrants. See supra Part III.A. This further shows that the statute requires including such individuals in apportionment. When “Congress used the materially same language [in a statute] it presumptively was aware of the longstanding judicial interpretation of the phrase and intended for it to retain its established meaning.” See Lamar, Archer & Cofrin, LLP v. Appling, 138 S. Ct. 1752, 1762 (2018) (unanimous court on this point); see also New York v. U.S. Dep’t of Homeland Sec., __ F.3d __, 2020 WL 4457951, at *21 (2d Cir. Aug. 4, 2020) (Congress “ratified the settled meaning” of a term in immigration law “[i]n light of the judicial, administrative, and legislative treatments” of that term from 1882 to 1996).

18 For the vast majority of the nation’s history, Congress apportioned seats in the House by statute enacted shortly after the decennial census. See Br. for Appellants, Dep’t of Commerce v. Montana, 503 U.S. 442 (1992), 1992 WL 672929, at *4–*15.
The Memorandum also contradicts Congress’s unambiguous rejection of proposals to exclude noncitizens from the apportionment base. As discussed above, in enacting the 1929 Act in which 2 U.S.C. § 2a originated, both the Senate and House considered and rejected amendments to exclude noncitizens from the “whole number of persons in each State” for apportionment purposes. See supra Part III.A.4. These votes show that Congress understood that the ordinary meaning of the phrase “persons in each state” included noncitizens: “at the time of the [Fourteenth Amendment’s adoption] and since, an alien was and has been a ‘person.’” 71 Cong. Rec. at 1821 (May 23, 1929). They also show that Congress understood that its own historical legislative practice had “been uniformly in favor of inclusion of aliens,” id. at 1822, such that enactment of the “whole number of persons” language would continue that unbroken practice.

The Census Bureau’s longstanding interpretation of its statutory obligations further confirms that undocumented immigrants residing in the United States are part of the enumerated population used to apportion House seats. “Congress is presumed to be aware of an administrative . . . interpretation of a statute.” Lorillard v. Pons, 434 U.S. 575, 580 (1978); see also New York, ___ F.3d ___, 2020 WL 4457951, at *21. On February 8, 2018, after notice-and-comment rulemaking, the Census Bureau promulgated its “Residence Rule” for the 2020 census, which is used to “determine where people are counted during each decennial census” in order “to apportion the seats in the U.S. House of Representatives among the States.” Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018). Its

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19 See 71 Cong. Rec. 2065 (vote on amendment by Sen. Sackett fails, 29-48) (1929); id. at 2360-63 (House adopts alienage exclusion as amendment to section 22 on June 4, 1929); id. at 2448-2445 (Rep. Tilson of Connecticut offers substitute for section 22 of the bill without alienage exclusion, House by vote of 202-129 sustains ruling of the chair against point of order against Tilson amendment, House adopts Tilson amendment 212-102, and House passes bill).
purpose is “to ensure that the concept of usual residence is interpreted and applied, consistent with the intent of the Census Act of 1790, which was authored by a Congress that included many of the framers of the U.S. Constitution and directed that people were to be counted at their usual residence.” *Id.* at 5526.

Under the Residence Rule, “[c]itizens of foreign countries living in the United States” must be “[c]ounted at the U.S. residence where they live and sleep most of the time.” *Id.* at 5533. The Census Bureau elaborated that the “Census Bureau is committed to counting every person in the 2020 Census,” including citizens of foreign countries living in the United States. *Id.* at 5526. And it considered comments “express[ing] concern about the impact of including undocumented people in the population counts for redistricting because these people cannot vote,” id. at 5530, but declined to make any changes to its residence criteria and indicated that it “will retain the proposed residence situation guidance for foreign citizens in the United States.” *Id.*

The Memorandum attempts to manufacture ambiguity on whether undocumented immigrants “inhabit” a State such that they constitute a “person[] in each State” for constitutional purposes. 85 Fed. Reg. at 44,679. But there is no such ambiguity: the phrase “whole number of persons in each State,” as used in 2 U.S.C. § 2a, has always been understood to include people who reside in a particular State regardless of alienage or immigration status. *See supra* Part III.A. Congress has repeatedly rejected measures to exclude aliens from § 2a—measures that would have made little sense if § 2a already excluded categories of aliens. Moreover, it would be inconsistent with § 2a—under which the President has a ministerial role to report the census’s count of total population and mandated to use a method designed to minimize per-district population disparities—to grant him discretion to exclude whole classes of persons.
B. The Memorandum violates the Census Act by producing apportionment figures that are not based solely on the decennial census.

The Memorandum’s reliance on non-census data to determine the number of undocumented immigrants to be removed from the apportionment base violates the requirement under 2 U.S.C. § 2a to use census data only.

Section 2a is clear that both the “whole number of persons” and the apportionment data must be ascertained from the decennial census. The provision specifies that this number must be “ascertained under the . . . decennial census of the population.” In Franklin v. Massachusetts, 505 U.S. 788 (1992), the Supreme Court affirmed that “Section 2a . . . expressly require[s] the President to use . . . the data from the ‘decennial census.’” Id. at 797.

The broader statutory scheme makes clear that the apportionment data reported by the President must come from the census alone. The Census Act specifies that “[t]he tabulation of total population by States” is “required for the apportionment of Representatives in Congress among the several States.” 13 U.S.C. § 141(b). As the Senate Report for the 1929 bill explained, “[t]he census would be taken in November, 1929. One year later, with these figures in

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20 The President’s statement must “show[] the whole number of persons in each State . . . as ascertained under the seventeenth and each subsequent decennial census of the population.” 2 U.S.C. § 2a. Apportionment must be based on “the method of equal proportions,” relying on that data. Id.

21 Franklin held that certain elements of 2 U.S.C. § 2a(a) are non-ministerial, but the Court appeared to limit those to circumstances in which the Secretary of Commerce has exercised policy judgment. See 505 U.S. at 799 (“§ 2a does not curtail the President’s authority to direct the Secretary in making policy judgments that result in ‘the decennial census’; he is not expressly required to adhere to the policy decisions reflected in the Secretary’s report.”). Whatever those non-ministerial duties may be, Franklin is equally clear that use of the census data and the calculation of apportionment figures are ministerial. Id. at 797 (“Section 2a does not expressly require the President to use the data in the Secretary’s report, but, rather, the data from the “decennial census.”); id. at 799 (the President’s apportionment calculation is of a “ministerial nature”).
hand, the President would report the census figures, together with a table showing how, under these figures, the House would be apportioned.” S. Rep. 71-2 at 4 (emphases added) (Ex. 53).

The President’s use of the census’s count of the whole number of persons in each State, and application of the chosen mathematical method (equal proportions), are not discretionary matters. “The Department of Commerce counts the people (as it always has done),” and “the President reports upon a problem in mathematics which is standard, and for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer.” S. Rep. 71-2, at 4-5 (Ex. 53); see also H.R. Rep. 70-2010, at 7 (official providing report “is left with no discretionary power” and must use “without deviation, the population of each State” as reported in census) (Ex. 54). The Supreme Court has made equally clear that, under 2 U.S.C. § 2a, the President must use census data and that an apportionment based on that data is “admittedly ministerial.” Franklin, 505 U.S. at 797, 799.

The Supreme Court has further confirmed that the President’s apportionment report must be based on the population figures from the census, noting that the Apportionment and Census Acts “mandat[e] a population count that will be used to apportion representatives.” Dep’t of Commerce, 139 S. Ct. at 2568-69; see also U.S. House of Representatives, 525 U.S. at 321-22 (“Using this information [from the Census], the President must then “transmit to the Congress a statement showing the whole number of persons in each State . . . and the number of Representatives to which each State would be entitled.”).

The Department of Justice has also historically recognized that the apportionment must be based on the total population figures produced by the census. Reply Br. for the Federal Appellants at 15, Franklin v. Massachusetts (“[I]t is true that the method of equal proportions calls for application of a set mathematical formula to the state population totals produced by the
census”); Tr. of Oral Argument at 12, *Franklin*, 505 U.S. 788 (Deputy Solicitor General Roberts) ("The law directs [the President] to apply, of course, a particular mathematical formula to the population figures he receives . . ."); *id.* at 12 ("It would be unlawful [for the President] . . . just to say, these are the figures, they are right, but I am going to submit a different statement."); *id.* at 13 ("I think under the law he is supposed to base his calculation on the figures submitted by the Secretary.").

The President’s Memorandum violates these requirements. To exclude undocumented immigrants from the apportionment base, *see* 85 Fed. Reg. at 44,680, the President will necessarily have to rely on information that is not contained within the census, because the 2020 census questionnaire is not gathering information concerning citizenship or immigration status. *See, e.g.*, Order, *New York v. U.S. Dep’t of Commerce*, 18-CV-2921 (JMF) (S.D.N.Y. Aug. 7, 2019), ECF No. 653 (permanently enjoining the inclusion of a citizenship question on the 2020 decennial census questionnaire).

Further, the Memorandum itself concedes that it will rely on information other than that obtained by the census. The Memorandum distinguishes between the enumeration information gathered by the census under the governing Residence Rule, and the information the President will use to exclude undocumented immigrants from the census count of whole persons:

[T]he Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President’s discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary shall also include in that report information tabulated according to the methodology set forth in [the Residence Rule].

85 Fed. Reg. at 44,680 (emphasis added). The Memorandum additionally indicates that other "data on illegal aliens . . . relevant for the purpose of conducting the apportionment" may be available as a result of Executive Order 13,880, in which the President “instructed executive
departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country.” 85 Fed. Reg. at 44,680.

Simply put, the Memorandum violates statutory requirements by requiring the reporting to the President and the subsequent Presidential use of non-census data to calculate a whole number of persons in each State that is different from census results, and to apportion seats in Congress according to that latter figure.

C. The Memorandum violates 2 U.S.C. § 2a by producing apportionment figures that are not based solely on a ministerial calculation.

The President is required to report an apportionment calculation “by the method known as the method of equal proportions.” 2 U.S.C. § 2a. In Franklin, the Supreme Court made clear that the President’s apportionment calculation is of a “ministerial nature.” See Franklin, 505 U.S. at 799. Franklin noted that the Senate Report for the bill that presaged 2 U.S.C. § 2a, states that the President is to report “upon a problem in mathematics which is standard, and for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer.” Id. (quoting S. Rep. No. 2, 71st Cong., 1st Sess., at 4–5) (emphasis added).

The legislative history confirms the point. In 1920, for the first time, Congress failed to pass a reapportionment act. Montana, 503 U.S. at 451–52. Accordingly, in 1929, in passing the modern precursor to 13 U.S.C. § 141 and 2 U.S.C. § 2a, Congress ensured “an automatic reapportionment through the application of a mathematical formula to the census.” Franklin, 505 U.S. at 809 (Stevens, J., concurring in part and concurring in the judgment). “The automatic connection between the census and the reapportionment was the key innovation of the Act.” Id.
In 1941, the Act was modified to change the allocation formula to the current method of equal proportions. *See id.* at 809 n.5 (citing *Montana*, 503 U.S. at 451–52 & n.25).

Indeed, congressional debate makes clear that Congress intended to give the President no discretion in how reapportionment figures would be calculated. The sponsor of the bill, Senator Vandenburg, explained that the President had no discretion in such a calculation and that “as a matter of indisputable fact, th[e] function served by the President is as purely and completely a ministerial function as any function on earth could be.” *71 Cong. Rec. 1858* (1929); *see also supra* IV.B. (noting similar statements in committee reports).

As discussed *supra*, the Memorandum establishes a policy under which the President will perform additional calculations beyond those set forth by the method of equal proportions in order to derive an apportionment figure that excludes undocumented immigrants. *85 Fed. Reg.* at 44,680 (“[I]t is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”). But Congress designed a system with only “one mathematical answer” to the question of apportionment, *S. Rep. 71-2*, at 4–5 (Ex. 53). By altering Congress’s required apportionment computation to add calculations not specified by *2 U.S.C. § 2a*, the Memorandum causes the President to violate his ministerial duty to report apportionment figures under the “rigid specifications” provided by the method of equal proportions. *S. Rep. No. 71-2*, at 4–5 (Ex. 53). Such calculations therefore violate the “automatic connection between the census and the reapportionment” that Congress established. *Franklin*, 505 U.S. at 809 (Stevens, J., concurring in part and concurring in the judgment).
D. This Court has equitable authority to correct the Presidential Memorandum’s *ultra vires* mandates.

Because the Memorandum requires Defendants Trump and Ross to act beyond the plain scope of their statutory authority, the equitable jurisdiction of this Court is available to correct this *ultra vires* action and provide redress to Plaintiffs.

The Supreme Court has long recognized that federal courts have inherent equitable authority to grant relief to enjoin *ultra vires* action, such as that ordered by the Memorandum, even in the absence of an express statutory provision. The Court most recently reaffirmed this authority in *Armstrong v. Exceptional Child Center*, which explained that federal courts may grant injunctive relief absent a statutory cause of action “with respect to violations of federal law by federal officials.” 575 U.S. 320, 326-27 (2015). This inherent equitable authority, the Court noted in *Armstrong*, has been recognized for centuries “and reflects a long history of judicial review of illegal executive action, tracing back to England.” *Id.* at 327; see also generally *Am. Sch. of Magnetic Healing v. McAnulty*, 187 U.S. 94, 108, 110 (1902); *Carroll v. Safford*, 44 U.S. 441, 463 (1845).

The core purpose of inherent equitable authority is not just to provide redress for individuals whose statutory or constitutional rights are violated, but also to ensure the proper separation of powers and require “the executive to obey [Congress’s] statutory commands.” *Bowen v. Mich. Acad. of Family Physicians*, 476 U.S. 667, 681 (1986); see also *Leedom v. Kyne*, 358 U.S. 184, 191 (1958) (“This Court cannot lightly infer that Congress does not intend judicial protection of rights it confers against agency action taken in excess of delegated powers.”).

The modern doctrine of *ultra vires* review provides inherent, nonstatutory review for executive action in excess of statutory authority. *See, e.g., Mountain States Legal Found. v. Bush*, 306 F. 3d. 1122, 1136 (D.C. Cir. 2002) (“the Supreme Court has indicated generally that
review is available to ensure that the Proclamations are consistent with constitutional principles and that the President has not exceeded his statutory authority”); *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1327-28 (D.C. Cir. 1996) (“When an executive acts ultra vires, courts are normally available to reestablish the limits on his authority”). Such review exists independently from the Administrative Procedure Act (“APA”), and the APA does not restrict or “repeal the review of ultra vires actions.” *Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988); see also *Hawaii v. Trump*, 878 F.3d 662, 682 (9th Cir. 2017) (finding equitable cause of action “which exists outside of the APA”), *rev’d on other grounds*, 138 S. Ct. 2392 (2018); *Mittleman v. Postal Regulatory Comm’n*, 757 F.3d 300, 307 (D.C. Cir. 2014) (“the absence of a cause of action for judicial review under the APA does not necessarily foreclose all judicial review”); *Reich*, 74 F.3d at 1326-27 (engaging in ultra vires review where APA claim not pled).

Further, courts have consistently acknowledged that ultra vires review extends to review of actions taken by the President, not just subsidiary executive branch actors. See, e.g., *Hawaii*, 878 F.3d at 682-83 (finding equitable cause of action “allows courts to review ultra vires actions by the President that go beyond the scope of the President’s statutory authority”); *Mountain States Legal Found.*, 306 F.3d at 1136 (finding equitable review generally available to determine whether presidential executive memoranda exceed statutory authority); *Reich*, 74 F.3d at 1327-28 (finding, under equitable review, that presidential executive order violated National Labor Relations Act). Indeed, the Supreme Court has often reviewed whether presidential actions comply with congressional statutes without specifying or identifying a cause of action. See, e.g., *Sale v. Haitian Ctrs. Council*, 509 U.S. 155 (1993) (reviewing presidential actions relating to Haitian migrants for compliance with the INA without discussing cause of action); *Dames &
Moore v. Regan (453 U.S. 654 (1981)) (upholding executive orders, including their conformity with various statutes, without discussing causes of action).

*Ultra vires* review may be inappropriate in two circumstances, but neither exception applies here. First, inherent equitable authority is unwarranted where Congress has demonstrated an “intent to foreclose” equitable relief by providing alternate enforcement mechanisms and because the statute is judicially unadministrable. *See Armstrong*, 575 U.S. at 327-29. Here, there is no alternate mechanism for enforcing the statutory provisions at issue, and the statutory mandate and remedy—to include undocumented immigrants with all other people in the apportionment base—is eminently administrable.

Second, equitable review may be inappropriate “[w]here a statute . . . commits decisionmaking to the discretion of the President.” *Dalton v. Spector*, 511 U.S. 462, 477 (1994). But that is plainly not the case here, where Congress has mandated that the Secretary and the President perform specifically prescribed actions without any meaningful discretion. Indeed, the Supreme Court has held that by “mandating a population count that will be used to apportion representatives” under 13 U.S.C. § 141(b) and 2 U.S.C. § 2a, Congress did not commit unreviewable discretion the executive. *Dep’t of Commerce*, 139 S. Ct. at 2568-69.

It is beyond any question that the Memorandum requires action in excess of the authority granted by statute to the President and the Commerce Secretary. As such, this Court has ample power to grant the requested relief to ensure compliance with the law.

V. Alternatively, a preliminary injunction is warranted to prevent irreparable harm.

In the alternative, Plaintiffs are entitled to a preliminary injunction on their claims that the Memorandum violates the Constitution and federal law. Plaintiffs are likely to succeed on the merits of their claims that the decision to exclude undocumented immigrants from the apportionment base violates the Constitution and federal law, and that the Presidential
Memorandum violates Article I and Section 2 of the Fourteenth Amendment and violates the Census Act, for the reasons set out in Part III and Part IV above.

As this Court has recognized, “[a] showing of irreparable harm ‘is the single most important prerequisite for the issuance of a preliminary injunction.’” *XL Specialty Ins. Co. v. Level Glob. Inv’rs, L.P.*, 874 F. Supp. 2d 263, 270 (S.D.N.Y. 2012) (quoting *Feiveley Transport. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009)). Plaintiffs need only show a “threat of irreparable harm, not that irreparable harm already [has] occurred.” *Mullins v. City of New York*, 626 F.3d 47, 55 (2d Cir. 2010).

Plaintiffs will suffer irreparable and imminent harm because the Memorandum discourages immigrant households from responding to the 2020 census. The well-publicized Memorandum will produce a chilling effect on response rates by sowing confusion, mistrust, and fear among immigrant households about the consequences of responding to the census. The resulting decline in response rates will both degrade the quality of census data—thereby compromising the Governmental Plaintiffs’ policy and planning decisions that rely on that data—and result in an ultimate undercount of immigrant communities that will reduce the federal funds flowing to those communities. Plaintiffs will also suffer imminent, irreparable harm because the Memorandum will dilute the political power of Plaintiffs’ constituents.

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22 This Court may take judicial notice of the evidentiary record from the related case of *State of New York v. Department of Commerce*, 18-CV-2921 (JMF), under the “established . . . approach that permits courts in subsequent related cases to rely upon the evidence presented in earlier litigation . . . to reach their own, independent findings of fact in the cases before them.” *Haim v. Islamic Republic of Iran*, 784 F. Supp. 2d 1, 6 (D.D.C. 2011); see *Hake v. Citibank, N.A.*, No. 19-MC-125 (JGK), 2020 WL 1467132, at *5 (S.D.N.Y. Mar. 26, 2020) (“[T]he court could ‘take judicial notice of the evidentiary record in another similar case and, from that, make certain factual findings that obviate the need for Plaintiffs to re-present the same evidence.’”) (citation, brackets, and internal quotation marks omitted).
A. The Presidential Memorandum will deter immigrants and their households from responding to the 2020 census.

The Memorandum, and Defendants’ corresponding public statements, are already predictably deterring participation in the ongoing decennial census and undermining the Census Bureau’s efforts to count immigrants and their families. Just as adding a citizenship question to the decennial census would have made non-citizen and Hispanic households “unlikely to respond (or to give a complete response) to in-person NRFU enumerators,” New York, 351 F. Supp. 3d at 585, so too will the exclusion of undocumented immigrants from the apportionment base make immigrant households less willing to respond to the census or to NRFU enumerators. Barreto Decl. ¶ 85 (Ex. 56).

Defendants’ decision to exclude undocumented immigrants from the apportionment base sends a clear message that this community does not count and should be left out of the democratic process. Bird Decl. ¶ 9 (Ex. 9); Choi Decl. ¶¶ 16-18 (Ex. 14); Colon Decl. ¶ 11 (Ex. 16); Cullinane Decl. ¶ 7 (Ex. 17); Espinosa Decl. ¶ 11 (Ex. 18); Khalaf Decl. ¶¶ 12 (Ex. 26); Matos Decl. ¶ 11 (Ex. 30); Mostofi Decl. ¶ 8 (Ex. 34); Oshiro Decl. ¶¶ 12-13 (Ex. 36); Sarmiento Decl. ¶ 5 (Ex. 42); Seon Decl. ¶¶ 13-14 (Ex. 43); Soto Decl. ¶ 12 (Ex. 45); Torres Decl. ¶ 19 (Ex. 47). This message, and its import, is widely known across immigrant communities, particularly those that consume Spanish-language media. Barreto Decl. ¶ 14 (Ex. 56); Oshiro Decl. ¶ 12 (Ex. 36); Torres Decl. ¶ 18 (Ex. 47). The Memorandum undercuts Plaintiffs’ messaging that “everyone counts” and effectively discourages immigrant households from responding to the census at all. Alvarez Decl. ¶ 11 (Ex. 1); Baldwin Decl. ¶ 8 (Ex. 4); Bird Decl. ¶ 12 (Ex. 9); Broughton Decl. ¶ 6 (Ex. 10); Brower Decl. ¶ 11 (Ex. 11); Bysiewicz Decl. ¶ 8 (Ex. 12); Choi Decl. ¶¶ 16-18 (Ex. 14); Colon Decl. ¶ 7 (Ex. 16); Espinosa Decl. ¶¶ 7, 12-13 (Ex. 18); Matos Decl. ¶ 9, 12 (Ex. 30); Murray Decl. ¶ 5 (Ex. 35); Oshiro Decl. ¶¶ 12-13 (Ex. 36);
Sarmiento Decl. ¶ 5 (Ex. 42); Seon Decl. ¶¶ 9, 14 (Ex. 43); Sivongxay Decl. ¶ 12 (Ex. 44); Soto Decl. ¶ 6 (Ex. 45); Torres Decl. ¶¶ 12, 13, 19 (Ex. 47); Barreto Decl. ¶¶ 33, 54 (Ex. 56). As the Chief Demographer for New York City has explained, the Memorandum “discredits the essential message that everyone’s response matters and makes an already fearful group more apprehensive about the perceived risks associated with responding [to the census].” Salvo Decl. ¶ 10 (Ex. 41).

As Dr. Matthew A. Barreto, a Chicano/a Studies professor with decades of experience in public opinion research in the Latino community, writes, the Memorandum both reduces the benefits and raises the risks of Census participation for undocumented immigrants because “the July 21 PM states they won’t count, and there is now a risk of their information being linked to immigration records and facing immigration enforcement.” Barreto Decl. ¶ 62 (Ex. 56); see also Torres Decl. ¶ 20 (Ex. 47). Following the issuance of the Memorandum, immigrant community members living in Monterey County, for example, expressed that “[w]e don’t matter, why be counted if at the end of the day being counted doesn’t matter in terms of political power, which is where we need it most.” Soto Decl. ¶ 12 (Ex. 45). And immigrant community members in Virginia explained that “they don’t see a benefit in filling out the [census] form if they will not be counted.” Sarmiento Decl. ¶ 6 (Ex. 42).

Furthermore, the Memorandum sows fear that the Trump Administration is again seeking to identify the location and numbers of undocumented immigrants, ostensibly for exclusion from apportionment (a grave harm in its own right), but also potentially for immigration enforcement purposes. Alvarez Decl. ¶ 10 (Ex. 1); Bird Decl. ¶ 6 (Ex. 9); Cullinane Decl. ¶ 8 (Ex. 17); Espinosa Decl. ¶¶ 12-13 (Ex. 18); Matos Decl. ¶ 12 (Ex. 30); Mostofi Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 10, 14 (Ex. 36); Roche Decl. ¶ 6 (Ex. 38); Sarmiento Decl. ¶ 12 (Ex. 42); Sivongxay Decl. ¶ 13 (Ex. 44). As Dr. Barreto explains, the Memorandum is likely to “generate a chilling
effect and incentivize households with undocumented immigrants to provide no additional information to the Federal Government that they feel would implicate their immigration status,” particularly with respect to census questionnaire items “asking about nativity or ethnic/racial group.” Barreto Decl. ¶ 31 (Ex. 56). Since the Memorandum was issued, mixed-status families have questioned “whether they should participate in the Census as a result of their fears that the Government could probe into the undocumented individuals in [their] extended famil[ies].” Espinosa Decl. ¶ 13 (Ex. 18); see also Choi Decl. ¶ 19 (Ex. 14); Oshiro Decl. ¶ 10 (Ex. 36); Torres Decl. ¶ 20 (Ex. 47). As with the citizenship question, these fears will predictably reduce census response rates in these communities, particularly with respect to government-related NRFU efforts.

Plaintiffs have already begun to see signs that the Memorandum is deterring census response in their own communities. See Baldwin Decl. ¶¶ 8-9 (Ex. 4); Bird Decl. ¶ 12 (Ex. 9); Choi Decl. ¶ 27 (Ex. 14); Espinosa Decl. ¶¶ 10-13 (Ex. 18); Khalaf Decl. ¶¶ 11-12 (Ex. 26); Mostofi Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 11-14 (Ex. 36); Sarmiento Decl. ¶ 7 (Ex. 42); Seon Decl. ¶¶ 13-17 (Ex. 43); Sivongxay Decl. ¶ 13 (Ex. 44); Soto Decl. ¶ 12 (Ex. 45); Torres Decl. ¶¶ 2, 16 (Ex. 47); Aranda-Yanoc Decl. ¶ 7 (Ex. 51). Plaintiffs have also observed an appreciable increase in the number of questions from immigrant and Latinx constituents and media (particularly Spanish-language media) about the privacy and confidentiality of their census responses, Barreto Decl. ¶ 16 (Ex. 56); Baldwin Decl. ¶ 8 (Ex. 4); Banerji Decl. ¶ 5 (Ex. 5); Choi Decl. ¶ 19 (Ex. 14); Mostofi Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 10, 12, 14 (Ex. 36); Seon Decl. ¶ 16 (Ex. 43); Sivongxay Decl. ¶ 22 (Ex. 44); Torres Decl. ¶ 18 (Ex. 47); Aranda-Yanoc Decl. ¶ 7 (Ex. 51); as well as how the Administration would identify undocumented immigrant populations for exclusion from the apportionment count. Alvarez Decl. ¶ 10 (Ex. 1); Choi Decl.
¶ 18, 27 (Ex. 14); Cullinane Decl. ¶ 8 (Ex. 17); Espinosa Decl. ¶¶ 12-13 (Ex. 18); Oshiro Decl. ¶ 10 (Ex. 36); Seon Decl. ¶ 16 (Ex. 43). These concerns about privacy, confidentiality, and potential immigration consequences reflect further reluctance to respond to the census among an already hard-to-count population at a critical point in the enumeration—right before the start of NRFU operations.23

Because of the Memorandum’s chilling effect on immigrant communities, the NGO Plaintiffs will have to divert resources from mission critical programs—including education, housing, and pandemic-related assistance—to additional census outreach. See New York, 351 F. Supp. 3d at 616-17; Choi Decl. ¶¶ 20-26 (Ex. 14); Espinosa Decl. ¶¶ 14-17 (Ex. 18); Khalaf Decl. ¶¶ 14-15 (Ex. 26); Oshiro Decl. ¶¶ 15-16 (Ex. 36); Seon Decl. ¶¶ 17-18 (Ex. 43); Torres Decl. ¶ 23 (Ex. 47). Plaintiffs’ census outreach efforts have centered on publicizing the importance of counting every person, regardless of citizenship or immigration status, including for apportionment purposes. See Choi Decl. ¶ 12; Espinosa Decl. ¶ 7 (Ex. 18); Oshiro Decl. ¶ 7 (Ex. 36); Seon Decl. ¶ 9 (Ex. 43); Torres Decl. ¶ 12 (Ex. 47). The Memorandum directly contradicts these messages, which has resulted in members of the communities that the NGO Plaintiffs serve expressing reluctance to respond to the census. Choi Decl. ¶¶ 17, 27 (Ex. 14); Espinosa Decl. ¶¶ 13-14 (Ex. 18); Khalaf Decl. ¶¶ 12-15 (Ex. 26); Oshiro Decl. ¶¶ 10-14 (Ex. 36); Seon Decl. ¶¶ 12-15 (Ex. 43). The NGO Plaintiffs are diverting resources to increase or revise their outreach efforts to overcome the Memorandum’s damage because once the enumeration period closes the opportunity for Plaintiffs to ensure their communities are counted—and receive the political power and government funding to which they are entitled—is

irretrievably lost. *Cf. League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) ("[W]hen a plaintiff loses an opportunity to register a voter, the opportunity is gone forever").

Defendants’ recent decision to accelerate the conclusion of nonresponse followup operations heightens the urgency—and exacerbates these injuries—because it limits the timeframe in which this Court can grant meaningful relief to redress these harms. The Bureau announced earlier this year that it would collect census responses through October 30. Thompson Decl. ¶ 14 (Ex. 57). On August 3, Defendants abruptly reversed course, opting to end field operations even earlier—on September 30, just 54 days from the date of this filing. See Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count (Aug. 3, 2020), https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html. This change dramatically reduces the remaining time during which individuals can respond to the census and the time for Plaintiffs to conduct outreach efforts to ensure a complete count. Bird Decl. ¶¶ 10-11 (Ex. 9); Choi Decl. ¶ 24 (Ex. 14); Espinosa Decl. ¶¶ 15, 21 (Ex. 18); Oshiro Decl. ¶ 18 (Ex. 36); Seon Decl. ¶ 22 (Ex. 43); Torres Decl. ¶ 24 (Ex. 47); Thompson Decl. ¶ 16 (Ex. 57). Furthermore, many of the Governmental Plaintiffs’ jurisdictions have already observed low response rates in immigrant communities. Alvarez Decl. ¶ 9 (Ex. 1); Baldwin Decl. ¶ 7 (Ex. 4); Brower Decl. ¶ 10 (Ex. 11); Bysiewicz Decl. ¶ 10 (Ex. 12); Hardcastle Decl. ¶ 5 (Ex. 21); Mohamed Decl. ¶ 8 (Ex. 33); Murray Decl. ¶ 7 (Ex. 35); Salvo Decl. ¶ 4 (Ex. 41); Sivongxay Decl. ¶ 10 (Ex. 44). The compounding deterrent effect of the Memorandum on response rates and the short window of time remaining to encourage response requires emergency relief.
B. By depressing response rates, the Presidential Memorandum will irreparably degrade the quality of census data vital to public policymaking and cause Plaintiffs to lose federal funding.

The Memorandum’s harm to response rates will inflict irreparable injury on Plaintiffs by degrading the quality of the resulting Census Bureau data and reducing the funding streams guided by that data. First, the decline in self-response and the decreased NRFU effectiveness resulting from the Memorandum’s chilling effect on immigrant communities will degrade the quality of the data that the Governmental Plaintiffs rely upon to “allocate educational and public health resources efficiently and effectively,” New York, 351 F. Supp. 3d at 610-11, as well as other critical public resources. Salvo Decl. ¶ 8 (Ex. 41); Aragon Decl. ¶ 5 (Ex. 2); Arwady Decl. ¶ 4 (Ex. 3); Baldwin Decl. ¶ 28 (Ex. 4); Bayer Decl. ¶ 6 (Ex. 6); Bell Decl. ¶ 5 (Ex. 7); Bird Decl. ¶ 13 (Ex. 9); Brower Decl. ¶ 13 (Ex. 11); Bysiewicz Decl. ¶ 9 (Ex. 12); Cassidy Decl. ¶ 5 (Ex. 13); Cline Decl. ¶ 5 (Ex. 15); Freedman Decl. ¶ 5; ¶ 5 (Ex. 20); Hardcastle Decl. ¶ 6 (Ex. 21); Jimenez Decl. ¶¶ 3-4 (Ex. 24); Kaneff Decl. ¶¶ 5-6 (Ex. 25); Lundine Decl. ¶ 4 (Ex. 29); Medina Decl. ¶ 4 (Ex. 32); McCaw Decl. ¶ 7 (Ex. 31); Rapoza Decl. ¶ 7 (Ex. 37); Rodriguez Decl. ¶ 5 (Ex. 39); Rynerson Decl. ¶ 13; Sternesky Decl. ¶ 9 (Ex. 46); Wheeler Decl. ¶ 9 (Ex. 48); Wyatt Decl. ¶ 13 (Ex. 49); Wortman Decl. ¶ 5 (Ex. 50). Indeed, the decennial census is the “statistical backbone of our country”; census data allows the Government Plaintiffs to “guide[] policy decisions, assists in the direction of city resources generally, and informs responses to public health emergencies and disasters.” Salvo Decl. ¶ 13 (Ex. 41). The Governmental Plaintiffs rely upon the census to produce accurate characteristics data to make decisions about housing (Wyatt Decl. ¶¶ 3, 6-7, 11-12 (Ex. 49); Lopez Decl. ¶ 12 (Ex. 20); Sternesky Decl. ¶ 3 (Ex. 46)); school resources (Bird Decl. ¶¶ 14-15 (Ex. 9); Cassidy Decl. ¶ 3 (Ex. 13); Howell Decl. ¶ 2 (Ex. 23); Lane Decl. ¶ 5 (Ex. 27); Lopez Decl. ¶¶ 14-15 (Ex. 28); McCaw Decl. ¶ 6 (Ex. 31); Mohamed Decl. ¶ 6 (Ex. 33); Salvo Decl. ¶ 15 (Ex. 41)); public
health (Arwayed Decl. ¶ 6 (Ex. 3); Hammond Decl. ¶ 3 (Ex. 20); (Ex. 29); McCaw Decl. ¶ 6 (Ex. 31), Salvo Decl. ¶ 14 (Ex. 41)) and infrastructure and transportation (Aragon Decl. ¶ 5 (Ex. 2); Baldwin Decl. ¶ 16 (Ex. 4); Biagi Decl. ¶¶ 4-5 (Ex. 8); Brower Decl. ¶ 15 (Ex. 11); Lopez Decl. ¶ 13 (Ex. 28); Kaneff Decl. ¶ 3 (Ex. 25); McCaw Decl. ¶ 6 (Ex. 31); Mohamed Decl. ¶ 6 (Ex. 33); Salvo Decl. ¶ 17 (Ex. 41); Wheeler Decl. ¶ 4 (Ex. 48)), among other key decisions. A decline in the quality of that data will impair the Governmental Plaintiffs’ “ability to make and implement such policies.” New York, 351 F. Supp. 3d at 600.

Moreover, as with the citizenship question, reduced response rates among immigrant households due to the Memorandum will result in a net differential undercount of these households, as “each of NRFU’s steps will replicate or exacerbate the effects of the net differential decline in self-response rates among noncitizen households.” New York, 351 F. Supp. 3d at 583; Barreto Decl. ¶ 70 (Ex. 56) (“[T]he PM increases the likelihood that Latinos, immigrants, and noncitizens are less likely to self-respond to the 2020 census” and that “non-responding individuals are also unlikely to respond after household visits by census enumerators because of fear of government interaction.”); Thompson Decl. ¶ 13 (Ex. 57) (explaining that the Memorandum will impact the macro environment and undermine NRFU, “significantly increas[ing] the risk of larger total and differential undercounts”). This undercount will disproportionately deprive Plaintiffs and their constituents of federal funding for education and social services. New York, 351 F. Supp. 3d at 597-98; see also Aragon Decl. ¶ 6 (Ex. 2); Baldwin Decl. ¶ 15 (Ex. 4); Brower Decl. ¶ 25 (Ex. 11); Kaneff Decl. ¶ 4 (Ex. 22); Lopez Decl. ¶ 11 (Ex. 28).
C. ** Plaintiffs will be irreparably harmed by Defendants’ efforts to reallocate political power away from their jurisdictions. **

The Memorandum’s stated goal—to shift political power away from jurisdictions that are home to substantial numbers of undocumented immigrants, 85 Fed. Reg. at 44,680—effectively concedes that Plaintiffs will be irreparably harmed by Defendants’ actions. “The Supreme Court has squarely held that the loss of a seat or seats in the House of Representatives” imposes direct harms “because of the dilution of political power that results from such an apportionment loss.” * New York, 351 F. Supp. 3d at 595, 607; see also Carey v. Klutznick, 637 F.2d 834, 836-38 (2d Cir. 1980) (finding irreparable harm based on the “deprivation of [the plaintiffs’] right to a fair apportionment” based on the likelihood that New York would lose a congressional seat). The likely loss of political power as a result of the exclusion of undocumented immigrants in the apportionment count constitutes a “concrete,” “actual or imminent” injury that is “not ‘conjectural’ or ‘hypothetical.’” *U.S. House of Representatives*, 525 U.S. at 332 (quoting * Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)).

There is no dispute that an apportionment excluding undocumented immigrants will result in the loss of congressional seats in states in which at least some of the Plaintiffs are located—this is the express purpose of the Memorandum. Dr. Christopher Warshaw confirms that the Memorandum will “almost certainly” cause states with large undocumented immigrant populations to lose congressional seats—its intended impact. * Warshaw Decl. § 11 (Ex. 58); see * U.S. House of Representatives*, 525 U.S. at 330 (affirming summary judgment based on expert testimony concerning the loss of congressional seats in apportionment). Dr. Warshaw found that if undocumented immigrants are excluded from the apportionment count, Texas—home to three of the Governmental Plaintiffs’ jurisdictions and numerous members of the NGO Plaintiffs—has a 98.3% chance of losing a congressional seat. * Warshaw Decl. § 43, Tbl. 7 (Ex. 58). Dr.
Warshaw further found that New Jersey and California are highly likely to lose seats under the Memorandum, and Florida, Illinois, New York and Arizona are also at risk of losing seats. *Id.*

These harms require immediate relief, as “time is of the essence,” and “[d]elayed review would cause hardship to Plaintiffs.” *New York*, 351 F. Supp. 3d at 502. The President must report to the Clerk of the House the apportionment population counts for each state within one week of the opening of the next session of Congress, and the Clerk of the House must inform each state governor within fifteen days of receiving the apportionment population counts. 2 U.S.C § 2a(a). Where an invalid apportionment base count threatens to yield a misallocation of congressional seats, “the possibility of irreparable harm . . . is likely, if not certain.” *U.S. House of Representatives v. U.S. Dep’t of Commerce*, 11 F. Supp. 2d 76, 88 (D.D.C. 1998). Waiting until Defendants actually alter the apportionment in January 2021 by excluding undocumented immigrants will only create confusion and disruption.

**D. The balance of equities and public interest favor a preliminary injunction.**

In deciding a motion for a preliminary injunction against the federal government, the inquiries into the “balance of equities” and whether “an injunction is in the public interest” merge. *See Make the Road N.Y. v. Cuccinelli*, 419 F. Supp. 3d 647, 665 (S.D.N.Y. 2019) (citations omitted). In this merged inquiry, the court must “‘balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief,’” as well as “‘the public consequences in employing the extraordinary remedy of injunction.’” *Id.* (quoting Winter, 555 U.S. at 24). Here, the balance of the equities and public interest tip sharply in Plaintiffs’ favor.

The public interest in a complete and accurate census is paramount. “The integrity of the census is a matter of national importance. As noted, the population count has massive and lasting consequences. And it occurs only once a decade, with no possibility of a do-over if it turns out to
be flawed.” *New York*, 351 F. Supp. 3d at 517. Defendants’ actions drive immigrants away from responding to the census and, in so doing, degrade the accuracy and integrity of the resulting headcount. This harm is cumulative and irreparable; each day the Memorandum remains in effect, it will continue to drive down response rates and undermine the “statistical backbone” of the country. *Salvo Decl. ¶ 13 (Ex. 41).* Likewise, Plaintiffs and the public have an interest in ensuring that the apportionment count and resulting distribution of political power accurately reflects the population at large.

By contrast, Defendants will suffer no injury at all if the Memorandum is enjoined pending a final decision on the merits. As discussed *supra*, the Memorandum’s exclusion of undocumented immigrants from the apportionment count violates the Constitution and the Census Act, and “the Government does not have an interest in the enforcement of an unconstitutional law.” *New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (quoting *ACLU v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003)). Moreover, the current crisis is one of Defendants’ own making, if not their own design. Despite issuing an Executive Order calling for the collection of citizenship data for redistricting purposes more than a year ago,\(^{24}\) President Trump waited to announce the Memorandum until the middle of the counting period, just as the census was poised to begin critical NRFU operations. Nearly simultaneously, Defendants chose to end the response period a month earlier than scheduled, further limiting the Bureau’s ability ensure an accurate headcount. The Memorandum is part of a pattern of conduct by Defendants that is directed at undermining the enumeration, particularly with respect to the counting of immigrants and communities of color. Among other remedial value, a preliminary

injunction will serve the “strong interest in ensuring that the census proceeds in an orderly, transparent, and fair manner—and, relatedly, that it is conducted in a manner that bolsters public confidence in the integrity of the process and helps strengthen this mainstay of our democracy.” New York, 339 F. Supp. 3d at 150-51 (quotation marks omitted). In particular, a preliminary injunction will help restore some measure of trust in the census that Defendants have repeatedly attempted to erode among immigrants and give Plaintiffs an opportunity to conduct outreach in an atmosphere less polluted by Defendants’ misinformation and attempts to intimidate and marginalize immigrants. Barreto Decl. ¶¶ 66-69 (Ex. 56); Espinosa Decl. ¶ 15 (Ex. 18); Choi Decl. ¶ 24-25 (Ex. 14); Seon Decl. ¶ 22 (Ex. 43); Torres Decl. ¶ 24 (Ex. 47).

CONCLUSION

For the foregoing reasons, the Court should grant partial summary judgment in favor of Plaintiffs, or alternatively a preliminary injunction.

DATED: August 7, 2020

Respectfully submitted,

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Exhibit 56
Expert declaration of Matthew A. Barreto, Ph.D.

1. **Background and Qualifications**

1. I am currently a Professor of Political Science and Chicana/o Studies at the University of California, Los Angeles. I am the co-founder and faculty director of the Latino Politics and Policy Initiative (LPPI) in the Luskin School of Public Affairs, a national research center that studies policy issues that impact the Latino and immigrant community.

2. Before I joined UCLA in 2015, I was a professor at the University of Washington for more than nine years, where I was promoted to Associate Professor with tenure, and then Full Professor with tenure. At the University of Washington, I was an affiliated faculty member of the Center for Statistics and the Social Sciences, and an adjunct Professor of Law at the UW School of Law. I am also the co-founder of the research firm Latino Decisions.


4. I earned a Ph.D. in Political Science at the University of California, Irvine in 2005, with an emphasis on racial and ethnic politics in the United States, political behavior, and public opinion.

5. I have published multiple peer-reviewed academic research papers on Latino participation in the U.S. Census, immigrant public opinion and immigrant political engagement (among other topics).

6. In 2018 I provided expert reports and testimony in three federal lawsuits challenging the Department of Commerce’s inclusion of a citizenship status question on the 2020 Census, which included an extensive literature review and evaluation of how immigrants react to changes to the U.S. Census. In all three federal trials, the courts recognized my expertise in studying immigrant political and civic participation, and cited my literature review in ruling in favor of the plaintiffs.

August 7, 2020
7. I have conducted research nationwide and in New York, California, Indiana, Wisconsin, Pennsylvania, Alabama, Texas, North Dakota, and North Carolina in connection with litigation assessing, among other things, how the public responds to, and is affected by, changes in the law. Courts have accepted my research studies as viable and methodologically accurate instruments to understand how the public responds to changes in state law. In particular, my previous research has focused on understanding sub-group analysis to evaluate differential impacts by race and ethnicity. Recently in North Carolina, a federal court relied on my research in issuing an injunction against the state’s voter ID law. In addition, the United States District Court for the District of North Dakota stated in Brakebill v. Jaeger (No. 1:16-cv-008) that “the Court gives the findings of the Barreto/Sanchez Survey, and the other studies and data presented by the Plaintiffs, considerable weight.” Prior to this, in 2014 in Veasey v. Perry (No. 13-CV-00193), the United States District Court for the Southern District of Texas, and in findings affirmed by the Fifth Circuit Court of Appeals, found that my survey was statistically sound and relied upon my survey findings to evaluate the impact of Texas’s voter ID law. Likewise, in Frank v. Walker (No. 2:11-cv-01128), a survey I administered and included as part of my expert report was given full weight by the United States District Court for the Eastern District of Wisconsin in a voter ID case in Wisconsin.

8. In Fish v. Kobach (No. 16-2105-JAR-JPO), the plaintiffs retained me as an expert witness to evaluate the methodology of the defendant’s survey, and the United States District Court for Kansas found me to be an expert on best practices of survey research and credible and qualified to discuss survey methodology.

9. I have also regularly presented my expert review and summary of social science literature as part of expert witness reports and declarations, which have been accepted as valid and relied upon by the courts. Review of published social science literature is a well-established method among political scientists and social scientists in general for drawing valid conclusions regarding the general consensus in the field. Literature reviews are an essential component of all academic research and a requirement for publishing peer-reviewed academic research because they
establish the baseline set of knowledge and expectations within the field. As noted above, in litigation challenging the addition of a citizenship question to the 2020 decennial census, three federal courts in New York, California, and Maryland relied upon my literature review as providing credible and valid evidence to help the courts form their opinions.

10. Earlier in 2020, in *New York v. Immigration and Customs Enforcement*, I provided an in-depth literature review examining how immigrant communities respond to increased immigration enforcement, surveillance and monitoring of undocumented immigrants.

11. My full professional qualifications and activities are set forth in my curriculum vitae, a true and correct copy of which I have attached hereto as Appendix A.

II. Scope of Work

12. Plaintiffs in this action retained me to evaluate whether the Presidential Memorandum (PM) issued by President Donald Trump on July 21, 2020 to exclude undocumented immigrants from the apportionment base in 2020 would have a negative impact on the Census participation rates of immigrant communities, including undocumented immigrants, legal permanent residents, and naturalized U.S. citizens. To conduct my evaluation, I reviewed two sources of information. First, I compiled an analysis of news coverage of the PM to assess the reach of the announcement. Second, I conducted a comprehensive literature review on survey methodology, response rates, sensitive questions and methodology, and census procedures addressing missing data and imputation.

13. I worked on this project with Mr. Marcel Roman, a Ph.D. student in the department of Political Science at UCLA and Mr. Chris Galeano, a J.D. student in the UCLA School of Law. Mr. Roman and Mr. Galeano both helped me compile sources for the literature review and news coverage of the aforementioned PM.
III. Executive Summary

14. Based on my review of the news coverage of the PM, the extant literature published in the social sciences, and my own extensive experience with immigrant civic engagement, I conclude that the July 21 PM will reduce participation in the 2020 census, and ultimately will reduce the accuracy of the 2020 census. The PM generates the perception of real and immediate threat for undocumented immigrants that will erode their trust in the census, which will lead to increased non-response in immigrant communities. Calling attention to the citizenship or immigration status of immigrants in a negative light causes immigrants to reduce their civic engagement. The new PM sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count, eroding trust that was restored after the threat of a citizenship question on the Census was removed. The strength of that negative signal is visible in coverage of the PM in Spanish-language media, which is a trusted source of news within Latino and immigrant communities. Signals of a threat to the status of undocumented immigrants generate a well-documented “chilling effect” on public participation for immigrants, i.e., the perception of threat will erode trust that leads to a reduction in immigrant engagement with government programs and officials. However, subsequent official action to counteract such threats--either court orders or changes in agency policy--have positive effects on trust and engagement. The perception of immigration status-related threat generated by the PM will make undocumented and mixed-status households less likely to engage with the Census—particularly with enumerators conducting in-person Non-Response Follow-Up (NRFU). The reduction in response rates among undocumented immigrant and mixed-status households will result the Census Bureau using proxy-response and imputation techniques that are error-prone and tend to undercount immigrant households.

15. My review of news accounts following President Trump’s July 21 PM finds there was widespread coverage, particularly within Spanish-language news media. Whether through television, print, or online outlets, the message relayed by the media was that the PM singled out immigrants through a process that invoked citizenship status, or a lack thereof, as part of the 2020
Census, in an effort to exclude them from the apportionment process. Spanish-language news journalists reported that as a result of the PM there was confusion, fear, and anxiety in immigrant communities about fully participating in the 2020 Census. According to a journalist for Telemundo⁴ who spoke with many people familiar with the PM, “activists have already reported that this attempt may have scared many people off from responding to the Census, which is particularly detrimental to states with high immigrant populations such as California, Texas, and New York.” This sentiment was widely reported across Spanish-language news in the days and weeks following the July 21 PM.

16. Extensive research studies show Spanish-language media acts as a catalyst for engaging, informing and mobilizing Latino and immigrant communities. Spanish-language journalists and news anchors act as a medium for the feelings and concerns prevalent within Latino immigrant communities, specifically those who are undocumented. Spanish-language media plays a central role in mobilizing and educating the immigrant community on immigration issues in particular. The high levels of trust in Spanish-language media amongst immigrants plays a key role when listening and learning about the issues that matter most to them, in particular those related to immigration policy. Research studies have documented that many immigrants take direct cues related to civic engagement and participation from what they hear, read, and watch on Spanish-language media.

17. Undocumented immigrants are deeply intertwined into the fabric of American communities. Research and statistical reports have repeatedly found that undocumented immigrants see themselves as part of American society and indeed have longstanding ties in the cities and towns in which they permanently live. A clear majority of undocumented immigrants have lived in the United States for over five years and have families, hold jobs, own houses, and are part of their community. A survey of Latino undocumented immigrants² found that 89% had

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lived in the U.S. over five years, that 74% have children living with them in the U.S. and 85%
have a family member in the U.S. who is a U.S. citizen, and indeed that 87% of undocumented
immigrants themselves said they hoped to one day become U.S. citizens if legislation were passed
to provide that opportunity.

18. Following the June 2019 ruling by the U.S. Supreme Court blocking the inclusion of a
citizenship question, Census partners known as Trusted Voices conducted extensive outreach to
undocumented immigrants to assure them that the federal government would not be monitoring
their citizenship status as it relates to the 2020 Census. The new PM sends a signal of government
monitoring citizenship status as it relates to the 2020 Census population count, significantly
eroding trust.

19. The published literature is quite clear: a critical component to ensure an accurate
response rate on any survey, including the census, is trust between the public and the survey
administrator. The prior published studies conclude that response rates will fall without a high
degree of trust. The new PM erodes the trust that many community-based organizations with
experience serving immigrants had built up over the past year.

20. Trust is particularly important in communities with undocumented populations as many
prior reports and publications by the Census Bureau have made clear. The Census Bureau has
identified vulnerable population subgroups concerned about the potential misuse of personal
information provided to the Census as at-risk for low participation rates and for undercounts. From
this perspective, the new PM lowers trust and makes it much harder to stimulate participation in
the census from vulnerable populations such as immigrant\(^3\) and minority communities, if such
communities do not trust the Census.

21. Far-ranging social science research documents a phenomenon called “the chilling
effect” in which immigrant communities withdraw and avoid interactions with government
officials or agencies if they believe there could be a risk of adverse consequences for their own

\(^3\) Here we mean persons who are foreign-born and emigrated to the United States.
immigration status or the status of others in the community. Specifically, some studies have found that Census participation rates drop in immigrant communities when federal immigration enforcement is perceived to be connected to the Census. In fact, the Census Bureau has published studies pointing to fears over the federal government learning their about citizenship status as a major obstacle in some immigrant communities.

22. Social science research since the 1990s, but especially so in more recent years, is near consensus in finding evidence of the “chilling effect,” i.e., strong patterns of avoidance, withdrawal, and exclusion during times of increased immigration enforcement. This research is often community-focused and highlights how increased attention to immigration status or immigration monitoring by authorities, results in noticeable withdrawal in that specific context. Immigrants, and often their children and others in their close network, will purposely avoid or withdraw from an environment where they fear potential immigration enforcement. The fear associated with detention, separation from their children or family, and possible deportation is so paralyzing that many immigrants – when faced with possible immigration enforcement – avoid even necessary public services such as police protection, health services, going to work, sending their children to school, or attending court to defend their rights. The takeaway is clear – increased negative attention to citizenship status issues decreases trust in those specific agencies or actors and leads to immigrant withdrawal.

23. If trust is low, attempts to re-interview or re-contact households will be far less successful either. Census respondents must believe that there is no jeopardy or threat of disclosure to ensure their participation in a survey, regardless of how many attempts one might make to prompt their participation.

24. Already, a prior study from 2018 about perceptions of the 2020 Census found that levels of trust in immigrant and minority communities in the United States were low as a result of concerns over citizenship. The extensive media attention to the citizenship question resulted in high levels of fears among immigrants. When asked about the protection of their and their family members’ sensitive information, including citizenship status, immigrant respondents were
statistically less likely to trust that the Trump administration will protect their information and not share it with other federal agencies (just 35% were trusting). Among Latino respondents overall, just 31% trust the Trump administration to protect their personal information, which is statistically lower than among non-Latinos. While the June 2019 SCOTUS decision may have alleviated these fears by striking the citizenship question, the July 2020 PM effectively re-confirms those immigrant fears because it sends a signal to immigrant communities that the Trump administration will be monitoring their citizenship status so they may subtract these participants from the 2020 base population count for the apportionment base. In essence, Trump has returned the immigrant community to a condition of wariness similar to when the citizenship question was to appear on the census. They believe their participation is either no longer safe, or not required due to the PM of July 2020 to specifically single out undocumented immigrants.

25. The survey also found that large percentages of immigrants and minorities are concerned specifically that their personal information reported on the census will be shared with Immigration and Customs Enforcement (ICE). Overall, 41% of immigrants surveyed stated they are concerned about this, along with 40% of Latinos.

26. When households do not initially self-respond to the census, the Census relies on nonresponse follow up (NRFU) to re-contact households to encourage them to respond. In simulated re-contact, my research has demonstrated that a majority of non-responders to the 2020 census will not switch and become participants when asked again to do so. In particular, research has found that NRFU is less successful when immigrant communities have fears about information concerning their citizenship status being collected or revealed.

27. Larger households will be the most difficult to successfully convert from non-participation to participation if there are fears about citizenship status data being collected or monitored, further undermining an accurate count. Existing research has found that among immigrants who would take the census upon NRFU recontact, their average household size is 2.91 compared to an average household size of 3.94 for immigrants who would not participate upon recontact, leaving them, and their larger households uncounted.
28. One of the ways Census Bureau officials try to account for people who refuse to respond to the census is to mathematically account for non-responders through statistical methods such as “substitution” or “imputation.” Both of these methods use information on responding households to estimate population information on non-responding households. However, when there are fears about citizenship status are introduced, non-responding households are statistically different than responding households on a variety of critical demographics, which violates an important assumption of substitution or imputation. For these methods to serve as viable alternatives, missing units and reported units should be roughly equivalent. However, the existing research reveals that when fears over citizenship status emerge, non-responding households are more likely to be larger in size, be foreign-born, and have different age and educational outcomes than responding households. This will make substitution and imputation inaccurate and unreliable, and makes it highly likely that there will be a net undercount of households refusing to respond to the census due to the citizenship question.

IV. Literature Review and Research Findings

A. The July 21 Presidential Memorandum Received Wide Coverage in Spanish News Media and Created Confusion and Fear About the 2020 Census

29. On July 21, 2020 President Trump issued a Presidential Memorandum declaring that undocumented immigrants will be excluded from the decennial census for apportionment purposes.\(^4\) Specifically, following the completion of the 2020 Census, the PM requires that individuals without lawful immigration status be excluded from the apportionment base for the purpose of the reapportionment of the U.S. House of Representatives. The PM refers to last year’s Executive Order 13880,\(^5\) which instructed executive departments and agencies to share


information with the Department of Commerce . . . to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country.” This order signals to hard-to-count populations, such as undocumented immigrants and mixed status families, that the federal administration is compiling citizenship related data on them, and that they are to be excluded from the 2020 Census.⁶ While there are technicalities that an undocumented immigrant may fill out the Census form, and then be deducted later, this nuance is lost on a community that has been under constant attack and threat from President Trump and his administration. A memorandum issued by the President stating that undocumented immigrants will be identified in specific communities and then excluded from the official Census population count sends a clear message of exclusion.

30. In particular, the PM reverses recent progress that has been made by community-based organizations following the June 2019 Supreme Court ruling which blocked the citizenship question from being added to the 2020 Census. In an effort to mitigate the challenge posed by the citizenship question, outreach advocates also sought to use the U.S. Supreme Court’s decision as a starting point “to convince everyone to participate in the census count” and emphasize the benefits of participating in the census.⁷ Because the highest and definitive court in our country had struck down the citizenship question, outreach to immigrant communities could emphasize this as a selling point to fill out the census without any fears about someone’s immigration status being reported. For the Census Bureau’s part, they would enact a public outreach plan that involved “working with local organizations to encourage census participation among immigrants, communities of color and other groups the bureau considers hard to count” to combat the mistrust by these communities.⁸

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⁶ Some point out that matching census and administrative data will lead to matching errors and exclude millions of U.S. citizens from the apportionment process. Randy Capps et al., Millions of U.S. Citizens Could Be Excluded under Trump Plan to Remove Unauthorized Immigrants from Census Data, Migration Policy Institute (July 2020), https://www.migrationpolicy.org/news/millions-us-citizens-could-be-excluded-under-plan-remove-unauthorized-immigrants-census

⁷ https://www.huffpost.com/entry/2020-census-citizenship-question_n_5d2f378ce4b02fd71ddd974

31. The new PM undermines these efforts and implies the government is attempting to enumerate the undocumented immigrant population, which could undercut participation. Because of the 2019 Supreme Court decision, there is no direct mechanism for assessing whether a Census response includes data from an undocumented immigrant using Census responses. If the federal government is attempting to exclude undocumented immigrants from the Census count, immigrant communities are likely to draw two conclusions. First, undocumented immigrants, the people they live in the same household with, and others in immigrant communities may be worried the government is attempting to find out their legal status through other means. This is not beyond the realm of possibility, given that the Trump administration has instructed federal agencies to use existing state and federal records to determine citizenship status (Levine, 2020). This could generate a chilling effect and incentivize households with undocumented immigrants to provide no additional information to the Federal Government that they feel would implicate their immigration status. Second, undocumented immigrants and those with ties with undocumented immigrants may think the government will use other means to find them, such as their responses to questions asking about nativity or ethnic/racial group. Therefore, they will not fill out the Census form writ large since probabilistically, providing information on other characteristics might facilitate government efforts to track and identify undocumented immigrants.

32. After the President announced the PM, widespread reports about how the PM would seek to exclude undocumented immigrant populations from the reapportionment process were published by major news outlets throughout the U.S. Major Spanish-language media and

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9 For instance, Nebraska, South Dakota, and South Carolina voluntarily agreed to transfer citizenship data from their state driver’s license and state ID records to the U.S. Census Bureau (Wang, 2020).
print news outlets throughout the nation also reported on the PM. They included Telemundo, Univision, Azteca America, and Estrella TV—all major media sources for Spanish-speaking viewers with hundreds of local television stations and affiliates throughout the U.S. Newspapers and online media outlets for Spanish-speaking readers also reported on the PM’s intention to leave out undocumented immigrants from the reapportionment process. Whether


through television, print, or online mediums, the message relayed by the media was that the order singled out immigrants through a process that invoked citizenship status, or a lack thereof, as part of the 2020 Census, in an effort to exclude them from the apportionment process. Since the PM was signed, it has prompted discussion by Spanish-language news segments on its implications for the immigrant community. These reports have conveyed to Spanish-speaking audiences that millions of undocumented immigrants living in the U.S. would not be counted when deciding how to apportion congressional seats because of the PM, affecting states such as California, Florida, and Texas, each of which includes large undocumented immigrant populations within their communities.

33. Across these news accounts, immigrants, as well as individuals who worked with community-based organizations that serve immigrants, and even journalists, all stated that they believed the July 21 PM was an effort to sow confusion and distrust, and to reduce the count of Latinos and immigrants on the 2020 Census. Examples of some of the direct quotations from these news sources include:

- "Este memo obviamente causa miedo entre esta población en particular, te preguntó, ¿podría ser el miedo una de las razones por la que la comunidad hispana no participe en el Censo 2020 o se siente que su participación sea baja? Lamentablemente no es la primera vez que el Presidente Trump amenaza y amedrenta nuestra comunidad inmigrante indocumentada... y sí, fomenta el miedo en nuestras comunidades. Una vez más, le dice a nuestra comunidad inmigrante, no se cuenten, no los necesitamos." "This memo obviously causes fear among this particular population, I ask you, could fear be one of the reasons..."
why the Hispanic community does not participate in the 2020 Census or feels that
their participation is low? Unfortunately, this is not the first time that President
Trump has threatened and intimidated our undocumented immigrant community... and yes, he has fostered fear in our communities. Once again, he tells our
immigrant community, don't count yourselves, we don't need you.”19

b. “Hay varias organizaciones que están reaccionando y no están de acuerdo con
esta movida de la casa blanca porque ya llevan más de un año tratando de
incentivar a la comunidad de indocumentados para que participen del censo,
para que no tenga miedo y hagan escuchar su voz, ahora esta acción
prácticamente se convierte en un golpe bajo para la comunidad de inmigrantes
indocumentados en este país.” “There are several organizations that are reacting
and do not agree with this move by the White House because they have been
trying for more than a year to encourage the undocumented community to
participate in the census, so that they are not afraid and make their voice heard,
now this action practically becomes a low blow to the undocumented immigrant
community in this country.” 20

c. “Además, afirman que el anuncio del presidente "claramente" tiene la intención
de promover el miedo y disuadir la participación en el censo de inmigrantes y sus
familias, ya que se produce solo unas semanas antes de que los enumeradores
estén programados para salir y aleentar a los hogares a responder al censo.” “In
addition, it claims that the president's announcement is "clearly" intended to
promote fear and discourage participation in the census by immigrants and their
families, since it comes just weeks before enumerators are scheduled to leave and
courage households to respond to the census.”21

d. “Algunos oponentes afirman que es un intento para suprimir el creciente poder
político de los latinos en Estados Unidos y discriminar a las comunidades
inmigrantes de otras minorías no blancas.” “Some opponents claim it is an
attempt to suppress the growing political power of Latinos in the United States
and to discriminate against other non-white, minority immigrant communities”22

e. “Es una manera de tratar de eliminarlos numéricamente del mapa, borrarlos en
cuanto a números” “It is a way of trying to wipe us out numerically, wipe us out
in terms of numbers”

34. The PM has threatened to upend a year’s worth of outreach efforts by groups

focused on hard-to-count populations. These groups now face a big challenge: reach out to

indocumentados-del-censo-2020/2063236/.
20 Univision. “Líderes Reaccionan Ante Petición De Trump Para Excluir a Personas Indocumentadas Del Censo
peticion-de-trump-para-excluir-a-personas-indocumentadas-del-censo-2020-video.
21 EFE, Agencia. “Coalición De Fiscales Demanda Al Presidente Trump Por Su Acción Con El Censo.” Yahoo!
trump-230425578.html.
22 Mike Schneider. “Orden De Trump Afecta Censo En California, Florida y Texas.” Houston Chronicle. Associated
15434405.php.
people who haven’t filled out their census form yet who are now worried the federal administration will use whatever information they provide in the 2020 Census to target them. Solving this challenge is now more urgent for these groups given the Census Bureau’s recent decision to shorten the period for collecting responses, including NRFU operations, by 31 days.\(^{23}\)

35. According to Arturo Vargas, the CEO of NALEO, one of the nation’s top civic engagement organizations in the Latino and immigrant community, the new PM is a setback that creates fear in the immigrant community. NALEO has been identified by the Census Bureau itself as one of the most important “trusted voices” to earn trust in the Latino community. Vargas stated on Twitter\(^{24}\): “With a successful #NALEOVirtual Conference done, time now to refocus on #Census2020 - which just got even MORE DIFFICULT with @POTUS effort to exclude immigrants from the apportionment numbers and cutting short @uscensusbureau's time to finish the count. Our community is scared.” Vargas went further to note\(^{25}\) that the new PM was undoing progress made after striking the citizenship question, “#Census2020 is the most challenging to promote participation I have seen in my career. After @SCOTUS stopped a citizenship question, we had a fighting chance. Now @POTUS has made it much harder by his July 21 memo and by cutting off @uscensusbureau's field work early. @NALEO”

B. **Spanish-Language News Media is a Trusted Source for Immigrants**

36. Studies show Spanish-language media acts as a catalyst for engaging and mobilizing Latino and immigrant communities. Spanish-language journalists and news anchors act as a medium for the feelings and concerns felt amongst Latino immigrant communities, in particular among undocumented immigrants. Green-Barber discuss these trends in Spanish-speaking media.\(^{26}\) She found that Spanish-speaking households have high utilization of internet

\(^{23}\) https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals
\(^{24}\) https://twitter.com/ArturoNALEO/status/1291764313405812737?s=20
\(^{25}\) https://twitter.com/ArturoNALEO/status/1291792560390729728?s=20
\(^{26}\) Lindsay Green-Barber, Latinos and the media: Patterns, changes and ideas for more connection, Center for Investigative Reporting.
and Spanish TV and radio, indicating the large presence and critical role of the Spanish-language media has in Spanish speaking homes. She also found that the Spanish-speaking media plays a central role in mobilizing and educating Latino communities on immigration issues in particular.

37. Research shows that households who more closely follow Spanish-language news rely on that information when it comes to civic and political engagement.\(^27\) Garcia-Rios and Barreto (2016) investigated media habits of Latino immigrants and found that people with high rates of Spanish-language news consumption were more informed and had high rates of immigrant identity, meaning that they were particularly aware and responsive to immigration-related news and current affairs.\(^28\) In 2012, a positive association between Spanish news coverage of President Obama’s DACA program and immigrant identity spurred naturalized citizens to vote at higher rates. In other instances, exposure to negative information can lead to withdrawal.

38. Research on Spanish-language media by Federico Subervi-Velez (2008) notes “the intersection between media and Latinos when assessing political socialization and mobilization of Latinos.”\(^29\) To put simply, Spanish-language media is a critical bridge that informs and influences immigrants in politics and is often a direct reflection of Latino immigrant opinion in America. One example is the reliance of Spanish-language radio to share and spread information about anti-immigrant legislation in the U.S. Congress (Felix et. al, 2008). Research found that Spanish media personalities such as Almendarez Coello (El Cucuy), Eduardo Sotelo (El Piolin) and Christina Saralei presented and educated the community on the anti-immigration rhetoric that was becoming prominent in politics (Felix et al, 2008). Coello and Sotelo’s provided daily updates and created awareness about H.R. 4437, a bill that could negatively impact immigrant communities. In particular, research has found that the high levels of trust in

Spanish-language media plays a key role when Latino immigrants read or hear about the issues that matter most to them, like immigration policy.

C. **Trust and Socio-Political Context are Two Key Factors That Impact Survey Response Rates and Accuracy**

39. The decennial census is a population survey. There have been extensive studies across the social sciences documenting the best practices and potential pitfalls in collecting accurate survey data. With respect to evaluating the 2020 Census there are two key takeaways that are quite clear in the published literature. First, trust between the public and the survey administrator is crucial. Prior studies conclude that response rates will fall without a high degree of trust, leading to a biased survey project because it excludes people from the data and is no longer representative. Second, the social and political context during survey implementation can greatly impact trust, confidence, and participation rates. This is especially the case for vulnerable populations when they perceive an unwelcoming environment or context. Of these key takeaways, the hallmark of cooperation in any survey is trust. Subjects are more likely to participate in a survey, to complete survey items accurately, and respond fully to survey items when they trust the survey administrator. When potential respondents are suspicious, uncertain, anxious or untrusting, non-response rates significantly increase. An early study on this topic framed the issue as how much threat potential respondents perceive through the source of the survey (Ball 1967; Bradburn et al. 1978). When subjects identify the survey as being implemented on behalf of authorities who they perceive could use their answers against them, they are likely to not-respond, or to respond untruthfully (Ball 1967). From this perspective, newfound fears about citizenship status due to the July 21 PM will make securing participation of immigrant communities much harder than if the PM had never been issued.

40. A research study by the U.S. Government Accountability Office in 2003 (GAO-03-605) laid out the most appropriate approaches to surveying the Latino population specifically. The report was commissioned because prior government surveys, in particular the Census, were
characterized by high rates of non-response with Latino respondents. The report stated that distrust – especially of those representing the government – was a leading factor in Latino immigrant non-response. To fix this, the report recommended increasing trust so that potential survey respondents are not fearful of their participation, and not suspicious of the census questions being asked, or the census enumerators visiting their community. The July 21 PM related to undocumented immigrants does precisely the opposite, increasing distrust and, therefore, making it substantially less likely that members of the Latino immigrant subgroups will respond to the census.

41. De la Puente (1995) examined issues related to trust, confidentiality, and fear among potential census respondents in El Paso, Texas and found that fear and apprehension on part of the sample area residents led to concealment of information from the Census Bureau and from the ethnographers, due to their belief that the government will not keep their information private or confidential when it comes to highly sensitive questions. This research establishes that the Census Bureau already knows it has challenges with trust in some immigrant communities and attempts to overcome those challenges by not asking sensitive questions that make it very difficult to persuade communities with low trust. While the threat of a citizenship question was dropped, this brand new PM of July 21 instills a new sense of confusion and fear and will result in increased problems with trust in such communities and a corresponding reduction in Census response.

42. In a follow-up study a decade later, de la Puente (2004) concluded that individuals with unstable immigration statuses were much less likely to trust the government and specifically less likely to fill out the census questionnaire. Indeed, properly counting undocumented immigrants has long been a concern for the Census Bureau. De la Puente’s research demonstrated that respondents with irregular immigration statuses are unlikely to directly cooperate with the Census if they perceive their immigration status will be revealed. The July 21 PM does precisely this; it sends a strong signal to undocumented immigrants that the federal government is collecting data about them, and will match various government records to find and exclude certain immigrants. One respondent in the de la Puente study, who did have legal status as a student, was afraid to participate in the Census because she feared that at some point in the future she may go out of
status and that the information she provided to the Census Bureau might be used to track her down. According to de la Puente, it is critical that immigrant respondents clearly understand that their immigration status is not associated with the Census population count.

43. An important practice that ensures higher participation rates in surveys is respondent anonymity, particularly when there might be concerns over immigration status. The Census violates anonymity by requiring the respondent to list the names of all household members. If respondents do not trust the survey administrator, and there is no anonymity, vulnerable respondents are far less likely to participate. Tourangeau and Yan (2007) explain how the “threat of disclosure” can result in non-response. Generally, people have concerns about the possible consequences of participating in a survey, or giving a truthful answer should information become known to a third party with enforcement powers. The authors explain a survey may be “sensitive” if it raises fears about the likelihood or consequences of disclosure of the answers to agencies or individuals directly, or not directly involved in the survey. As an example, Tourangeau and Yan (2007) discuss asking a question about marijuana use to a group of teenagers. If the teens suspect that the answers could be shared with their parents, they opt out of the survey or lie. But if the survey is completely anonymous and implemented by their peers, they are much more likely to participate and be truthful. The perceived threat of disclosure to authorities is what matters. With the July 21 PM, the federal government has clearly created a perception of threat for immigrants and the 2020 Census.

44. A review of findings across different surveys suggest that the likelihood of survey response largely depends on timing and contextual factors, including the respondent’s personal situation and the features of the data collection, such as the degree of privacy it offers. The exact same survey might be highly sensitive and risk non-participation in one setting, but be acceptable and proper in another. To this point, a comprehensive review of survey environment research indicates that highly sensitive surveys will be disruptive, produce non-response, or result in biased data when the respondent is concerned that their answers could be known by authorities. However, if the respondent feels secure and has total privacy and anonymity, they are likely to participate.
and provide truthful answers (Tourangeau and Smith 1996). In particular, Krysan (1998) found evidence that respondents greatly modified their answers to questions and issues related to views about race, ethnicity, and immigration based on how they felt the interviewer would perceive or judge their responses.

45. Concerns about confidentiality are likely to exacerbate the unwillingness of certain communities to respond to the Census in the current socio-political context created by the July 21 PM. A study of immigrant communities’ knowledge and awareness of the Census found that one major concern was confidentiality of personal information (Raines 2001). Beyond the Latino immigrant community, this study reported evidence that immigrants from Laos, Somalia, Iraq, Bosnia, and Haiti expressed concerns over anonymity and confidentiality. The general takeaway is that as additional private, personal, or sensitive questions are added, the degree of concern over anonymity and confidentiality raises considerably. Even if the Census Bureau provides assurances, many may not believe or trust those assurances. In part, this might be due to the current social and political context (laid out above in paragraphs 29-34) or could also be due to prior experiences in their home country with authoritarian regimes and government data collection. Thus, for a population survey to be accurate, it is critical that respondents truly believe their answers to questions will always remain confidential and not used against them. The July 21 PM opens the door to that exact fear because the federal government plans to use administrative data and records to exclude undocumented immigrants from the base population count.

D. The Threat of Non-Response is Real and Immediate

46. The overall national sociopolitical environment has raised awareness and alertness among immigrant communities, but by itself, the national context does not depress immigrant participation. Instead the published literature is clear that immigrants react to specific threats as they develop, and they engage fully when those threats are removed. Indeed, in areas with low levels of immigration enforcement and threat of deportation, or in so-called sanctuary cities, research does not find evidence of a chilling effect or withdrawal (e.g. Garcia 2019). However,
the national context does cause immigrants to take more notice of their surroundings and be aware of the potential for a negative interaction with immigration officials. When immigration enforcement is heightened, the current (2017-2020) national sociopolitical climate can result in a more significant withdrawal. Put simply, President Trump has put the immigrant community on edge. In June of 2019, they had the protection of the U.S. Supreme Court which gave assurances that their citizenship status could not be connected to the 2020 Census. The July 21 PM changed the risk of threat in the minds of many immigrants who hear Trump’s words as connecting a federal monitoring program of undocumented immigrants to the 2020 Census. They may not do the full research to realize they can still fill out the Census safely, because they hear the news which is connecting the July 21 PM to Trump’s longstanding desire to increase deportation of undocumented immigrants. Further, the July 21 PM sends the signal to undocumented immigrants to avoid the Census because they will not be counted. If the President issues a memorandum saying you will not be counted on the Census base population count, and you have a lingering fear over your citizenship status, there is virtually no reason at all to transmit your entire household’s personal information to the federal government. Existing research makes clear that when new threats emerge due to changes in policy, immigrants take note and withdraw.

47. Perhaps the best summary of how the combination of federal policies and political environments interact is found in a new book by Angela Garcia, *Legal Passing: Navigating Undocumented Life and Local Immigration Law* (2019). In this book, Garcia reviews a plethora of data and research on how immigrant communities respond and react to both threatening and accommodating environments, and how a national climate of hostility does not automatically create a chilling effect for immigrants everywhere. Rather, Garcia showed with extensive evidence that specific context and the proximate threat of immigration enforcement versus accommodation is what matters the most. Instances with the highest levels of threat produce the most withdrawal. In her study of more accommodating or welcoming environments, Garcia finds immigrants are able to navigate life effectively, writing “At the same time, this book also argues against the popular depictions of undocumented immigrants being pushed underground, their perception of
threat so strong that they avoid engaging in public life... As compared to restrictive destinations, the integrative outcomes of accommodating locales that I describe in this book are evident in undocumented Mexicans’ ease of physical navigation, deeper willingness to interact with local police, and place-based sense of belonging.” Of particular importance is the timing of when threats pop up or become visible. Garcia describes “initial reactions immediately after new clampdowns – sweeps, raids, and checkpoints” being the most intense periods of avoidance. However eventually immigrants learn how to navigate their communities, and to avoid locations of particular threat, but otherwise effectively go about their day.

48. Thus, the literature demonstrates that the current era is a particularly anxiety-inducing period in American history for undocumented immigrants, and those concerned about immigration enforcement. However, this just serves to frame the environment, it does not by itself lead to wholesale withdrawal. Rather, the literature points to the importance of specific instances of threat that result from new policies that create fear, anxiety and avoidance.

49. Prior survey research in January 2020\(^{30}\) assessed how Latinos in New York reacted to information about whether or not ICE was present in and around state courthouses. The question there was whether increased threat of immigration enforcement resulted in immigrant withdrawal. ICE was sporadically conducting immigration-related searches in or near state courthouses across New York. In our survey experiment, we randomly assigned one set of respondents to a condition in which we reminded them of ICE presence at state courthouses, while other respondents were randomly assigned to a condition without the information about ICE presence.

50. Across the full sample of Latinos in New York, the survey experiment results demonstrate that being informed about ICE presence at state courthouses has a strong, and statistically significant causal effect on increasing avoidance behavior and withdrawal. This effect is consistent across eight different types of engagement. When confronted with information about

\(^{30}\) Survey conducted as part of the expert declaration by Matthew A. Barreto in NY v. ICE lawsuit.
ICE conducting arrests and detention at courts in New York, Latino participants reduced their intention to attend state court as a witness, as a defendant, to accompany a family member, to protect their rights, or to testify about a housing complaint. In addition, they were less likely to go to the police as witness, or to call the local police if they witness a crime, or to submit a police report as a victim. This suggests that when Latinos and immigrants learn about a new threat, they respond immediately with reduced intention to participate or engage.

51. Because the overall sample size of the survey was large (n=1,001) the New York courthouse research included additional analyses on immigrant segments within the main sample. The results of the subset analysis are consistent with the extant literature and expectations, with much stronger causal effects of avoidance and withdrawal among the foreign-born Latinos, and much stronger effects among non-citizens, and the strongest causal evidence of the chilling effect among Latinos are acquainted with an undocumented immigrant. These analyses provide very strong evidence that is theoretically motivated and consistent with decades of social science research on the immediate chilling effect of immigration enforcement.

52. A newer study conducted during the period of Trump’s presidency finds similar results. The Violence Against Women Act (VAWA) allows women who are victims of domestic violence to petition to change their immigration status and was used effectively when women felt safe enough to call immigration officials. However, in February 2017 the Trump administration reactivated the Secure Communities program which coordinated local police databases with ICE. As such, in areas of increased ICE presence, the study found that fewer and fewer women initiate police reports of domestic violence. The authors explain this is due to fears over being reported to, or detained by ICE. As the authors conclude, “intensified immigration enforcement might increase misreporting due to fear of being over scrutinized and, potentially, placed in a position that jeopardizes the possibility of staying in the country.” (Amuedo-Dorantes and Arenas-Arroyo 2019). This is yet another example of a before/after study which finds direct and immediate evidence of immigrant withdrawal after a change in policy, in this case, by the Trump administration.
E. Extensive Research Confirms Fears About Immigration Enforcement and The Chilling Effect

53. Additional ethnographic research has revealed that undocumented immigrants and mixed-status households are likely to avoid government contact when they suspect it is not safe to participate (de la Puente 1995). This is especially the case when sensitive topics will be potentially discussed or revealed. Velasco (1992) maintains that undocumented immigrants in his sample area in San Diego, CA avoided contact with government. He argues that this avoidance was one of the important contributing factors to census omission and estimates that over half of the sample area residents were undocumented immigrants. Similar situations were also reported in the Miami, FL sample area (Stepick 1992) and in the 26 rural Marion County, OR sample areas (Montoya 1992). However, the ethnographic research all concludes that participation barriers can be overcome by not including worrisome questions about citizenship status and by working with community based organizations and cultural facilitators to increase trust and confidence in data privacy.

54. Levels of trust in immigrant and minority communities are very low with respect to issues related to citizenship. In a prior national survey about the 2020 Census, when asked about protecting sensitive information, including citizenship of themselves and family members, only 35% of immigrants expressed trust that the Trump administration will protect their information and not share it with other federal agencies. Among Latino respondents overall, just 31% trust the Trump administration to protect their personal information. According to my prior survey research, a very large percent of immigrants and minorities believe the Trump administration will share their personal information with other federal agencies.

55. Research related to the 2020 Census suggests that the Census Bureau was well aware of potential issues related to non-response over immigration fears. A comprehensive study by the Census Bureau’s Center for Survey Measurement presented at the National Advisory Committee on Racial, Ethnic, and Other Populations Fall Meeting 2017 (Meyers 2017) reported an increase in respondents expressing concerns to researchers and field staff about confidentiality and data
access related to immigration, legal residency, and citizenship status, and their perception that certain immigrant groups are unwelcome. There was an observation of increased rates of unusual respondent behaviors during pre-testing and production surveys, including item-nonresponse, break-offs, and refusals, especially when the questions involved citizenship status. The most commonly occurring finding was that respondents appeared visibly nervous about disclosing their private information and who would have access to such data. The current political climate was of concern to respondents: in one Spanish interview, a respondent stated, “the possibility that the Census could give my information to internal security and immigration could come and arrest me for not having documents terrifies me.”

56. As this finding makes clear, immigrant communities can be especially vulnerable to the social and political context surrounding the implementation of a survey. A study of immigrants in California and Texas found that respondents’ fear over citizenship status correlated with their non-participation in the health sector (Berk and Schur 2001). This study found strong evidence that a threatening context can lead immigrants to withdraw and limit their access to public services, including access to medical care which they greatly needed. Likewise, anxiety and fear over immigration status has been found to reduce utilization of services related to health care, law enforcement, and education (Pedraza and Osorio 2017). In particular, research has identified the context of heightened “immigration policing” as one that erodes trust in other public institutions and creates an environment in which immigrant communities are very selective as to where, when, and how they engage with government agencies (Cruz Nichols, LeBrón and Pedraza 2018). The finding is not just limited to first-generation immigrants themselves; the research also finds a strong spillover effect to U.S.-born Latinos who have immigrant parents, or feel connected to the immigrant community, and also demonstrates non-participation during times of threatening context.

57. Studies have shown that the political context after 2016 and the election of Donald Trump has significantly diminished Latinos’ trust of the federal government. For instance, Michelson and Monforti (2018) find that Latinos, including those who are undocumented, were
less trusting of government in 2016 than in 2012. In 2012, trust amongst Latinos was strong across all subgroups of Latino immigrants—citizens, non-citizens with legal status, and undocumented immigrants. Four years later, Latinos registered lower levels of trust in government, with fewer than 1 in 20 Latinos in any subgroup responding that they trust the government “just about always.” In addition, Sanchez and Gomez-Aguinaga (2017) report that an overwhelming majority of Latinos described Trump and his policies as scary (74%), dangerous (77%), hostile (78%), and unwelcoming (80%) and they conclude that the current context is creating tension, anxiety, and nervousness among Latinos and immigrants. While the June 2019 Supreme Court decision striking the citizenship question allowed community outreach groups to push reset and create a campaign that citizenship would not be associated with the Census at all, the new PM reinjects concerns about citizenship status into the 2020 population count.

58. Beyond the Latino and immigrant communities, there is also reason to expect that increased fears about citizenship could increase non-response rates among Arab and Middle Eastern Americans. Research by Oskooii (2016) and Lajevardi and Oskooii (2018) demonstrates that American Muslims and those of Arab and Middle Eastern ancestry currently perceive a high rate of discrimination and an unwelcoming environment. Oskooii (2016) explains how perceived social exclusion can result in withdrawal and non-participation by these communities and documents this fact empirically in his published research. In research by the Center for Survey Measurement, focus groups conducted in Arabic among immigrants from the Middle East revealed the potential for Census non-response due to questions about citizenship status in light of the current political climate. (Meyers 2017). Some focus group participants referred to the “Muslim Ban” when expressing why they would be nervous about reporting their immigration and citizenship status to the federal government.

59. This context is particularly important as it relates to the issues about citizenship status, because this is the point of tension for many in the immigrant community today. That is, there is grave concern over providing information to the federal government given the perceived high rates of immigrant policing. And now that newfound distrust and fear is directly related to citizenship
status as a result of the July 21 PM, a considerable non-response is the likely outcome.

60. A clear implication identified in the relevant literature on surveys is that when respondents perceive a threatening survey, and if trust is low, non-participation will result in an inaccurate survey. Further, attempts to re-interview or re-contact households will not be successful, and some re-contact may only serve to further erode trust. Survey respondents must believe that there is no potential jeopardy before participating. Once a respondent believes that participation in the survey could bring them harm, and that the survey enumerator is acting on behalf of an official agency, attempts at repeated re-contact typically do not result in a completed survey (Ball 1967). In interviews with the enumerators themselves, there is a sense that the issues related to citizenship status will make their jobs harder, if not impossible (Meyers 2017).

61. Prior experiences with census data collection efforts that overlapped with anti-immigrant contexts provide evidence that non-response follow-up (NRFU) will be much more difficult in 2020 given the political climate and the PM. Terry et al. (2017) describe the connection between a threatening context and Census non-response in Arizona and Texas among immigrant communities: “the wider social context also had an important role in enumeration. Just before the NRFU enumeration program started in 2010, Arizona passed a very strong anti-immigration law that coincided with legal ordinances in two Dallas-area cities. These ordinances were aimed at identifying illegal immigrants through police stops or the reporting of immigration status of applicants wishing to rent apartments. The new law provoked heightened tensions around the country, particularly in the Dallas/Fort Worth-area Hispanic community. As a result, these reports conclude that non-response was high and that NRFU was less successful.

62. Undocumented immigrants may already fear providing their information to the government. They are a hard-to-reach population that is difficult for enumerators to gain access to and follow-up on in the event of non-response. To overcome these difficulties, non-governmental organizations and the Census Bureau have engaged in targeted messaging toward immigrant communities that participation in the Census would help increase access to public resources, federal funding, and political representation (Levine, 2020; Liptak et al., 2020; Smith,
2020). However, the PM, by excluding the count of undocumented immigrants from the apportionment base, completely undercuts this incentive to participate. If the government is going to remove them from the base population count, why bother filling out the 2020 Census at all? Undocumented immigrants are likely to perceive that there is no benefit to participation, as the July 21 PM states they will not count, and there is now an increased risk of their information being linked to immigration records and facing immigration enforcement.

63. It is important to note undocumented immigrants and their social ties are often risk-averse, assume the worst-case scenario, and are highly suspicious about whether their information would be shared with Federal immigration authorities (Yoshikawa, 2011; Dreby, 2015; Torres-Ardila, Bravo, and Ortiz, 2020). For example, even U.S.- citizen Latinos reduced their participation in Medicaid as a result of a punitive immigration enforcement environment (Watson, 2014; Vargas, 2015). It is unlikely Medicaid service providers will use their records to find undocumented friends or family, but the perception of legibility to immigration authorities was sufficient to produce system- avoiding behaviors. In another research paper, U.S.- born children of undocumented immigrants avoided a variety of record-keeping institutions (e.g. banking, formal employment, voter registration) as a result of their social ties with an undocumented parent (Desai, Su, and Adelman, 2019).

64. Undercounting undocumented immigrants will have spillover effects on effectively counting the broader legal non-citizen and citizen population. Mixed-status households are affected by the PM. The PM suggests the government may be using various forms of information to identify undocumented immigrants. If undocumented immigrants are the head of the household or if the head of household is responsible for undocumented immigrant friends and/or family members, they may not respond or allow themselves to be contacted by follow-up enumerators in order to protect the anonymity of their undocumented social ties. This means citizen children, documented spouses of undocumented immigrants, documented partners of undocumented immigrants, and/or documented family of undocumented immigrants will be less likely to be counted in the census.
65. One implication of the fear and unrest in the immigrant community is the increased mobility which could render any attempt at imputation or substitution incomplete and inaccurate. For imputation to work, the missing unit household cannot be vacant, and likewise cannot be a second home or vacation home of someone already counted. The missing unit household should have someone living there as their primary residence. However, as Frost notes that many undocumented immigrants who receive government letters or notices may pick-up and move their entire family, rather than wait around and figure out a way to interact with public officials. Similarly, this is documented by O’Hare (2017) who notes that Latino children are especially susceptible to being undercounted due to mobility. There is evidence that if immigrants are fearful of attempts by the federal government to obtain the personal information, identities, and citizenship statuses of all members of their household, they may vacate their homes and move to avoid being contacted again (Meyers 2017). To the extent this happens, attempts at imputation or substitution will be inaccurate, both on the national level, but especially on state and local levels.

F. When Subsequent Official Action is Taken to Remove Threats Related to Immigration Status, Immigrants Respond with Participation

66. =On January 9, 2018, a federal court in the Northern District of California issued a nationwide preliminary injunction against the Trump administration effort to phase-out DACA. The January 2018 decision allowed existing DACA recipients to apply for renewals. Later, on February 13, 2018 a second federal court in the Eastern District of New York also issued a nationwide preliminary injunction to allow DACA renewals to continue. When the court enjoined the effort by the Trump administration to repeal DACA and allowed undocumented immigrants to begin applying for DACA, there was an immediate rush of applications by undocumented immigrants who held DACA status, but were expired. According to data from the United States Customs and Immigrant Services (“USCIS”), 64,210 immigrants applied for renewal immediately after the January 2018 injunction, and 31,860 were approved by March 31,
2018 and 32,280 were pending, with only 70 having been denied. Over the course of 2018, USCIS reported 287,709 total requests for DACA renewal were made by undocumented immigrants. Despite additional legal challenges, throughout 2019 the injunctions from Northern California and Eastern New York remained in place nationwide and 406,586 persons applied for DACA renewals across 2019. Despite the Trump administration’s continued legal challenges to DACA, public statements denigrating immigrants, once the courts issued the injunctions to protect DACA, undocumented immigrants became trusting of this program.

67. On July 2, 2015, the Priority Enforcement Program (PEP) was implemented by U.S. Immigration and Customs Enforcement (ICE). It was announced by then-DHS Secretary Jeh Johnson in a November 2014 memo, and was meant to replace the then-existing Secure Communities program, which coordinated local police databases with ICE. PEP implemented a series of mandates that immigration enforcement should prioritize individuals who have engaged in serious criminal activity or who pose national security threats. In short, it mandated that ICE cast a smaller net in identifying, detaining, and deporting undocumented immigrants. In addition, PEP made it more difficult for ICE to execute immigration detainers. ICE had to state probable cause (via reference to the priorities) in order to execute a detainer in addition to the local law enforcement agency having to serve a copy of the detainer request on the individual in order for it to take effect. The intent of the new policy was for police to collaborate less with ICE and to only focus their detention efforts on serious criminals. The Dallas County Sheriff, which controls the county jails and oversees the processing of immigrants detained agreed to participate in the PEP program to reduce the local prominence of ICE in Dallas.

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31 Approximate Count of DACA Receipts: Since January 10, 2018, As of Mar. 31, 2018
32 Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012-Mar. 31, 2020
33 Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012-Mar. 31, 2020
34 Dallas county jails complied with the PEP. Dallas County Sheriff Lupe Valdez formally agreed to participate in the program after meeting with ICE representatives in July and August 2015. In August 2015, Dallas County
analyzing Dallas Police Department (DPD) police reports finds clear evidence that the implementation of PEP increased crime reporting to DPD by Hispanic and immigrant subjects in Dallas. The data shows Hispanic and immigrant engagement with police increased significantly in the immediate quarter after PEP was implemented. And in the six quarters following the change in policy, Hispanics and immigrants voluntarily reported around 6,000 more incidents to the police than they would have been if the enforcement priorities had not changed. Thus, reversals or limitations imposed on executive actions may have measurable consequences on promoting trust among immigrant communities and influencing behavioral interactions with various aspects of government.

68. In prior survey research in 2018 to test the impact of a citizenship question being included or excluded from the 2020 Census, there was a clear finding of increased Census participation after removing any fear of immigration status being exposed. Initially, after being told about the citizenship question, a sizable share of respondents said they would not participate in the 2020 Census. Later in the survey, respondents were randomly assigned to a condition in which they were told the government changed their mind and a citizenship question would NOT be included after all. A second set of participants were randomly assigned to a condition in which it was reaffirmed that the government would in fact include a citizenship question.

### Table 7: Percent of Non-Responders Who Change to Responders at Q7 / Q8

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>White</th>
<th>Latino</th>
<th>Black</th>
<th>AAPI</th>
<th>Other</th>
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<td>Q7 Yes</td>
<td>84.3</td>
<td>89.3</td>
<td>80.1</td>
<td>78.6</td>
<td>53.3</td>
<td>94.9</td>
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<td>Q8 Yes</td>
<td>45.2</td>
<td>49.5</td>
<td>38.9</td>
<td>62.2</td>
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<td>Difference</td>
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<td>-39.7</td>
<td>-41.2</td>
<td>-16.5</td>
<td>-53.1</td>
<td>-77.7</td>
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</tbody>
</table>

officials began reviewing ICE’s request prior to honoring them with the vetting guidelines being similar to PEP priorities, ensuring only individuals who posed a threat to public safety were transferred to ICE’s custody. This is evidenced in data by Jacone (2018), who finds total detainers dropped by roughly 1,000 by the end of 2015 due to decreases in detainers issued for individuals convicted of misdemeanors and those with no conviction.


Among Latinos who said they would not participate in the census with a citizenship question, 80 percent changed their mind and said they would participate once they learned that the citizenship question would be removed. The mechanism here is whether or not those in the immigrant community believe their participation creates increased risk of exposing themselves to immigration enforcement. Members of immigrant communities are very concerned about their citizenship status being monitored or revealed. When they believe the threat is real, they will withdraw from the Census, and when that threat has been removed, they reengage. This provides very strong evidence that when fears about citizenship status being revealed are removed, a large share of Latinos will indeed increase their participation in Census 2020.37

69. Across the wide-ranging literature, a key finding is that immigrants are normally eager to engage in public life and with political institutions, but when there is a threat of negative consequences for their immigration status, avoidance behavior is likely. (e.g. Garcia 2019).

G. Non-Response Follow-Up (NRFU) and Imputation of Non-Responding Households

70. The Census Bureau is aware that some households will not respond to the initial request for participation, and as such they have long had a program called Non-Response Follow-Up (NRFU) which provides follow-up contact with any households that do not initially respond. The Census Bureau estimates they conducted follow-up with around 50 million households in 2010 (Rao 2017). NRFU is critical for the Census Bureau to increase participation rates, but it is a costly and difficult undertaking by their own admission. Any increased non-response at initial contact makes NRFU much more difficult, especially if non-responding households come to not trust the survey questions that enumerators are attempting to ask. What’s more, NRFU is now profoundly more difficult due to COVID-19 and the time available has been shortened. As discussed in this report, the PM increases the likelihood that Latinos, immigrants, and noncitizens are less likely to self-respond to the 2020 census. These non-responding individuals are also unlikely to respond

37 See id.
after household visits by census enumerators because of fear of government interaction. (de la Puente 1995; 2004).

71. In fact, with the new focus on excluding undocumented immigrants directed by the PM, the Census outreach efforts after July 21, 2020 could actually create more fear and anxiety in immigrant communities and further drive down response rate and increase the net undercount. For example, the Census Bureau plans to send enumerators into non-responding communities on behalf of the federal government, and if nobody is home, they will leave a “Notice of Visit” from the federal government which includes a unique household “census identification number.” Further, they inform the household that additional visits will be made back to their house by enumerators on behalf of the federal government. This sends a clear signal of federal government monitoring of the household and will result in increased anxiety and concern over cooperating (e.g. Menjivar 2011; Szkupinski Quiroga et al. 2014). Research by Hagan et al. (2011) documents with clear evidence the extensive chilling effect of increased presence of government officials who appear to be monitoring immigrants and checking on their status. They find immigrants “withdrawing from the community” as well as “avoiding public places” and that they “spend most of their non-working hours in their homes because it is the safest way to avoid detection.” (Hagan et al. 2011.) According to Abrego (2011), undocumented immigrants will go to great lengths to reduce their visibility in society when they perceive a potential threat of deportation. Her research identifies withdrawal from interactions with government agencies as awareness of immigration checks increases. From the perspective of an anxious immigrant, each additional household visit from a government Census worker, following a PM directing the exclusion of undocumented people, is the exact environment that would produce withdrawal. According to Abrego: “In effect, their well-being and stability are perennially threatened because, as they are constantly reminded, there may be an ICE raid... at any time” (2011).

72. Research also finds that increased presence and visibility of government officials who appear to be collecting immigration information creates withdrawal and also misreporting on government forms (Rodriguez and Hagan 2004). Increased presence of immigration officials in
the community lead to a decline of student attendance in the nearby school to avoid any contact with the government officials. However, in communities without ICE presence, school attendance is not impacted. The research study observed this trend across three different cities in Texas and attributed increased withdrawal to an increased visibility and presence of government officials asking about immigration status. Further, the same study reported that Hispanics began to change their racial identification to White on government forms at health clinics to avoid any risk of association with immigration officials (Rodriguez and Hagan 2004).

73. Another study specifically examined the willingness of immigrants to participate in surveys and data collection efforts, in particular examining how fear of deportation impacted response rates and general engagement with government services (Arbona et al. 2010). One of the most important findings of this study was that if immigrants fear their participation could somehow lead to their deportation, they will not participate unless they are fully comfortable and trusting of the survey taker. As the research study progressed, Arbona et al. reported, through quantitative data, that fear of deportation was a strong motivating factor for avoidance and that over 80% of immigrants in their sample stated that they avoided activities such as “ask[ing] for help from government agencies, report[ing] an infraction to the police, attend[ing] court if requested to do so,” and other items. The more census enumerators visit immigrant communities to attempt household counts, following the July 21 PM to exclude undocumented immigrants, the more likely they will be to not participate. That is, the outreach itself will produce further non-response as a result of the socio-political climate following the PM.

74. NRFU enumerators may not be able to make contact with adult households. Enumerators may not be sufficiently linguistically or culturally competent in order to persuade undecided households to respond. For example, they may not be able to effectively convince Latinos who may be concerned about immigration issues or enforcement to respond. Many Latinos, in the context of heightened immigration enforcement, are told to not open the door to strangers due to commercial scams and guidance from immigration legal advisors regarding ICE visits (Kissam et al., 2019). Moreover, even if enumerators are able to convince members of
immigrant communities to respond despite the existence of a chilling effect, it may be logistically difficult for enumerators to make contact with adult householders. In many immigrant communities, work hours are long and weekend work is common, increasing the difficulty for NRFU enumerators to conduct a direct interview of the household (Kissam et al., 2019).

75. NRFU also cannot account for households omitted from the Master Address File as a result of “complex households” in low-visibility unconventional and/or hidden housing units (Kissam, 2019). These complex households may be more likely to be made up of immigrants and their direct social ties. Kissam (2019) notes in the San Joaquin Valley, only 95% of the Latino immigrant study population live in housing units included in the Census Bureau’s Master Address File, resulting in a 5% household omission rate. The only way these households can be counted in the Census is if they proactively respond via online non-ID processing operations or by phone. However, these alternative mechanisms may not work if these complex households are concerned about the prospect of providing information to a government seeking to identify their citizenship status or exclude them from the count for specific purposes, such as apportionment, as required by the PM.

76. Even if NRFU results in data production, it may be faulty data. High levels of non-response force the Census Bureau to rely on alternative statistical procedures such as triangulation via administrative records, proxy interviews with neighbors, and, imputation. Some of these alternative efforts might fail in immigrant communities. Proxy interviews may fail to resolve undercounting due to mistrust of Federal authorities and lack of willingness to provide information on neighbors. Indeed, only 17% of respondents in a survey of the San Joaquin Valley immigrant community indicated they were willing to provide an enumerator with information about neighbors in the San Joaquin Valley (Kissam, 2019). It is important to note proxy interview efforts are error-prone, since they are, at best, estimates by neighbors of the number and characteristics of neighboring households. The same survey of immigrant communities in the San Joaquin Valley indicates less than half of potential Census respondents believe they know enough about their
neighbors to provide accurate responses (Kissam, 2019).

77. Moreover, finding administrative records that match households is likely to be more difficult for immigrant households, who may be less prone to providing personal or household information to various aspects of government and may not be eligible for a variety of government programs that keep records (Kissam, 2019; Asad, 2020). While the Trump administration may assume they can rely on administrative records, the reality is that this creates major methodological problems for NRFU and then imputation. The data is fraught with errors and inconsistencies and will lead to lower quality data and undercounts. Research by Bhaskar, Fernandez, and Porter (2018), who are Census Bureau researchers, indicates matching an administrative record to a household requires a Personal Identification Key (PIK). They also find foreign-born households are less likely to have a PIK than U.S.-born households. Lack of having a PIK is associated with more people in a household, living in a Census tract with a high density of foreign-born individuals, Latino/Hispanic race/ethnicity, non-citizen status, limited English or no English proficiency, and being a recent immigrant. IRS administrative records may not serve as effective proxies for enumeration given not all undocumented immigrants file income tax returns on a regular basis (Gee, Gardner, and Wiehe, 2016). Social Security Administration (SSA) records may be incomplete if immigrant workers have only worked in the informal or underground economy. Parents also may never apply for an SSN for foreign-born children without legal status. Foreign-born non-working spouses may have never applied for an SSN (Kissam, 2019). Often, the use of borrowed SSNs is prevalent among immigrant workers, which may result in potential undercounts or discrepancies in the count. Moreover, employer reports of employee’s earnings do not provide reliable or exhaustive information on household size.

78. Even if a match to an administrative record is found for a specific address, it may not accurately enumerate household size and composition because the record may be out of date or exclude peripheral household members who are not part of the primary core family living in the housing unit (Kissam, 2019). There may be discrepancies via administrative matching in neighborhoods where low-income renter households move often and administrative records may
not update frequently in immigrant communities such that newly born children will be disproportionately omitted (Kissam, 2019). If information via administrative records or proxy interviews do not bear fruit, the Census Bureau may attempt to use hot-deck imputation to determine the characteristics of households that did not respond. The problem is that non-responding households in immigrant communities may be systematically larger than those that do respond. Thus, each imputation will contribute to a differential undercut given that “donor” households have less inhabitants (Kissam, 2019).

79. In addition to trying to match households to their administrative records, the Census Bureau has indicated that it may employ statistical imputation techniques to address nonresponse. During the collection of any survey, two types of nonresponse can emerge: unit nonresponse and item nonresponse. Unit nonresponse concerns an entire missing case resulting from either non-contact, refusal, or inability to participate. Item nonresponse concerns missing values on certain questions in the survey. Bias, or incorrect and faulty data, can emerge from nonresponse when the causes of the nonresponse are linked to the survey statistics being measured, which is referred to as nonignorable nonresponse (Groves et al 2004). By way of illustration, public health officials designed a survey to measure the prevalence of HIV in the population during the early days of the HIV epidemic. Despite incentives, cooperation rates among those who were HIV-positive were extremely low because of the stigma of the disease. Thus, the key statistic sought – namely, the percentage of HIV-positive people – was causally related to the likelihood of self-response; specifically, in that case, those who were HIV-positive did not want to participate in the study at all. Non-ignorable nonresponse is particularly egregious because even if the causal influence is known “there is no way that the statistic among respondents can be made free of nonresponse bias (without making heroic assumptions about the status of the nonrespondents)” (Groves et al. 2004). What this means is that if a factor influencing the decision to not respond is correlated with an important outcome variable, imputation is impractical because you cannot observe the existence of the precise variable you are trying to count. In the case of the 2020 Census, the key outcome variable is producing an accurate count of total household size; yet, prior research establishes that
larger households are more likely to not respond when the responder’s citizenship status may be implicated. Thus, the decision whether to respond is correlated with household size, a key outcome variable of interest.

80. Some statistical tools are available to deal with nonresponse. At one end of the spectrum, if every variable of interest is known for the nonrespondent, except one, then we can use these variables to form an imputation model that will predict a value for the missing value – for example, we may know the existence of the respondent and that person’s age, but may not know their income level and can use predictive models to impute income for that respondent. At the other end of the spectrum we have entire missing cases (unit nonresponse), where the existence of the person is unknown. Imputation for unit nonresponse, sometimes called “whole person imputation,” is used almost exclusively in longitudinal surveys where ample data from prior waves exists for a missing respondent. It is extremely rare to impute for unit nonresponse if little is known about the nonrespondent case (Groves and Couper 1998). Unit nonresponse is typically dealt with by some form of post-stratification or response rate weighting adjustment38 (Kalton 1983). While imputation can be useful for missing values in an otherwise completed survey form (item nonresponse), it is particularly problematic for imputing the existence of whole persons, and is especially likely to end up with an undercount in vulnerable communities. This is part of the reason that social scientists and government statisticians want the decennial census to be as non-burdensome and non-sensitive as possible, to ensure an overall accurate count through high rates of participation (Wines 2018).

81. In general, whole-person imputation itself relies on a number of assumptions to work correctly. If data is missing completely at random (MCAR) (Rubin 1976), then non-response generally introduces less bias. Models are of less help with non-ignorable nonresponse, as noted above, where nonresponse depends on the values of a response variable. In this case, models can

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38 After the survey data are collected, statisticians can use the known universe of respondent demographics to apply weights and possibly correct for non-response, however this only corrects the dataset for use in a data analysis project or academic research paper, not necessarily population counts, which are supposed to serve as the baseline universe estimate in the first place.
help but never eliminate all nonresponse bias (Lohr 1999). Indeed, recent reviews of cutting edge imputation procedures like “hot deck imputation” argue that “hot deck” methods for situations where nonresponse is non-ignorable have not been well explored (Andridge and Little 2010). Whole person imputation, then, has its dangers. The Census Bureau currently acknowledges that “whole person substitutions and whole person imputations are not very accurate.” (See Abowd 30(b)(6) Deposition 2018)

82. With respect to the U.S. census and counts of Latino and immigrant households, previous research has shown that whole person imputation efforts are seriously error-prone. Because family arrangements, housing styles and total household sizes vary considerably, attempts to impute the population of non-respondent households have been shown to undercount the population (Kissam 2017). First, many non-traditional housing units are simply not included in the imputation, leaving them as vacant when in reality they had tenants or dwellers. Second, the household size of missing units tends to be larger, on average, than of reported units. Reports also document differences by socioeconomic status. The end result is that even with imputation, there can still be a significant undercount of the Latino immigrant population.

83. Beyond the raw count being inaccurate, there is also evidence of misattribution of those imputed, because they rely on higher acculturated units for which there is data to make adjustments (i.e. substituting data on U.S.-born, English-speaking and college educated households when in fact missing cases are more likely to be foreign-born, Spanish-speaker, less educated households), suggesting the imputed data do not accurately describe the true population (Kissam 2017). The U.S. Government Accountability Office has itself admitted this is a problem with respect to getting a complete count of Latinos. In the 2003 report on trying to improve the Latino count, they wrote “even with the Bureau’s guidelines and training, deciding whether a house is unfit for habitation or merely unoccupied and boarded-up can be very difficult. An incorrect decision on the part of the census worker could have caused the dwelling and its occupants to get missed by the census.” U.S GAO Report (2003) (GAO-03-605).

84. By examining data from a prior 2018 survey specifically about the Census, we can
conclude that unit non-response on the 2020 census will not be at random. Households that do not respond and represent missing units, are certain to have very different characteristics and demographics than the households that do respond. In this event, it makes it nearly impossible to impute or infer the population totals or any other demographic information about missing units (e.g. missing households) because we do not have enough reliable information on “matched” or similar units. Further, it is quite likely that unit non-response in 2020 will be clustered geographically, meaning that there will be fewer available adjacent units for imputation, and that analysts will have to rely on dissimilar households for imputation, thus violating the most important assumption needed for accurate imputation. In particular, non-responders were found more likely in dense urban areas and locales with high numbers of renters. These factors are known to be related to census undercounts and make NRFU difficult and result in erroneous imputation (U.S. GAO Report, 2003).

85. It is virtually certain that the reduced self-response caused by the July 21 PM related to citizenship status will lead to a net undercount among those populations with lower rates of self-response. Previous census reports have documented that high rates of non-response to the initial questionnaire result in undercounts, and that NRFU is not always successful in converting those cases into respondents. In addition, matching household to administrative records can be an unreliable method of enumerating the household, particularly for immigrant communities. Prior census reports have also documented that errors are made in imputation and that undercounts persist even after attempted imputation. Ultimately, the worse the initial non-response is, the worse the initial undercount is, making it increasingly more difficult to convert those cases into responding cases, and increasing more difficult to impute missing units (US Census Bureau 2017b; National Research Council 2002; 2004).

86. This problem has been documented to be worse in Latino and immigrant communities where the Census admits the undercount is problematic, and that their efforts at NRFU and imputation have errors (Eriksen and Defonso 1993; O’Hare et al. 2016). One primary reason is that issues related to trust of government officials significantly hampers the NRFU process, and in
2020 the citizenship question will greatly exacerbate issues of trust in immigrant communities (See section below “Perceptions of Trust and Confidentiality” at paragraph 96). In particular, young children in Latino households have been found to be regularly undercounted by previous census efforts and that imputation methods do not appropriately find or count this population. The best assurance for an accurate count is high response rates on the initial census request for participation, which requires a high degree of trust (O’Hare et al. 2016; Casey Foundation 2018). Previous self-reports by the Census Bureau are clear: immigrant communities are already at-risk of an undercount because of lower levels of trust of government officials, and have particular anxiety over citizenship information being shared. What’s more, these previous census reports have documented that low self-participation on round one of invitations ultimately leads to an undercount that no amount of NRFU, administrative-record matching, or imputation can correct. In 2020, the PM will only create more problems, more anxiety in immigrant communities, and less self-participation on round one. With nearly 17 million people, including 6 million citizen children, living in households with at least one person who is an undocumented immigrant (Casey Foundation 2018), there is enormous potential for a massive non-response with a newly created anxiety over citizenship status as a result of the July PM.

87. After reviewing defendants report(s), I plan to offer rebuttal opinions as requested by plaintiffs.

Executed on August 7, 2020 at Agoura Hills, CA.

I declare under penalty of perjury that the foregoing is true and correct.

Matthew A. Barreto
References


Torres-Ardila, Fabian, Daniela Bravo, and Franklin Ortiz (2020). “Increasing Latino Participation Rates in the 2020 Census in Chelsea, MA”.


Abowd, John, Depositions on August 15, 2018 (hereinafter Abowd Deposition) and August 29, 2018 (Abowd 30(b)(6)).


Center for Survey Measurement. 2017. “MEMORANDUM FOR Associate Directorate for Research and Methodology (ADRM).”


Appendix A
MATT A. BARRETO – BARRE TOM@UCLA.EDU
UNIVERSITY OF CALIFORNIA, LOS ANGELES, 3345 BUNCHE HALL, LOS ANGELES CA 90095 / 909.489.2955

EMPLOYMENT:

Professor, Political Science, University of California Los Angeles (2015 – present)
Professor, Chicana/o Studies, University of California Los Angeles (2015 – present)
Co-Founder & Faculty Director, Latino Policy & Politics Initiative

Dept. Political Science, University of Washington
Professor (2014 – 2015)
Associate Professor (2009 – 2014)
Assistant Professor (2005 – 2009)
Co-Founder & Director, Washington Institute for the Study of Ethnicity and Race
Founding Director, Center for Democracy and Voting Rights, UW School of Law

Affiliated Research Centers

Latino Policy & Politics Initiative (LPPI), University of California, Los Angeles
Chicano Studies Research Center (CSRC), University of California, Los Angeles
Center for the Study of Los Angeles (CSLA), Loyola Marymount University

PERSONAL:

Born: June 6, 1976
San Juan, Puerto Rico

High School: 1994, Washburn Rural HS, Topeka, KS

EDUCATION:

Ph.D., Political Science, June 2005
University of California – Irvine
Sub Fields: American Politics / Race, Ethnicity and Politics / Methodology
Thesis: Ethnic Cues: The Role of Shared Ethnicity in Latino Political Participation
Thesis Committee: Bernard Grofman (chair), Louis DeSipio, Katherine Tate, Carole Uhlaner
Thesis Awards: Ford Foundation Dissertation Fellowship for Minorities, 04-05
University of California President’s Dissertation Fellowship, 04-05
University of California Institute for Mexico & the U.S. Dissertation Grant, 04-05

Master of Science, Social Science, March 2003
University of California – Irvine

Bachelor of Science, Political Science, May 1998
Eastern New Mexico University, Portales, NM
Minor: English. Cumulative GPA: 3.9, Summa Cum Laude
M.A. Barreto / UCLA / Curriculum Vitae / MAR 2020

PUBLICATION RECORD

Google Scholar citation indices: Cites: 3,768  h-index: 28  i10-index: 54  Years post-PhD: 15  Cites/year: 236

BOOK MANUSCRIPTS:

Barreto, Matt and Christopher Parker. nd. The Great White Hope: Donald Trump, Race, and the Crisis of American Politics. Under Contract, University of Chicago Press. expected Fall 2020


PEER-REVIEWED ARTICLES


*Edited Volume Book Chapters*


### RESEARCH AWARDS AND FELLOWSHIPS

<table>
<thead>
<tr>
<th>Month</th>
<th>Institution / Project Description</th>
<th>Amount</th>
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<td>Aug 2018</td>
<td>Provost Initiative for Voting Rights Research, UCLA Latino Policy &amp; Politics Initiative [With Chad Dunn]</td>
<td>$90,000</td>
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<td>American Values Institute [With Ben Gonzales], Racial Narratives and Public Response to Racialized Moments</td>
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<td>Jan 2012</td>
<td>American Civil Liberties Union Foundation [With Gabriel Sanchez], Voter Identification Laws in Wisconsin</td>
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<td>June 2011</td>
<td>State of California Citizens Redistricting Commission, An Analysis of Racial Bloc Voting in California Elections</td>
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<td>Apr 2011</td>
<td>Social Science Research Council (SSRC) [With Karam Dana], Muslim and American? A national conference on the political and social incorporation of American Muslims</td>
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<td>impreMedia [With Gary Segura], Latino public opinion tracking poll of voter attitudes in 2011</td>
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<td>Oct 2010</td>
<td>National Council of La Raza (NCLR) [With Gary Segura], Measuring Latino Influence in the 2010 Elections</td>
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<td>Oct 2010</td>
<td>We Are America Alliance (WAAA) [With Gary Segura], Latino and Asian American Immigrant Community Voter Study</td>
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<td>May 2010</td>
<td>National Council of La Raza (NCLR) [With Gary Segura], A Study of Latino Views Towards Arizona SB1070</td>
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<td>Apr 2010</td>
<td>Social Science Research Council (SSRC) [With Karam Dana], Muslim and American? The influence of religiosity in Muslim political incorporation</td>
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<td>Oct 2009</td>
<td>American Association of Retired Persons (AARP) [With Gary Segura], Health care reform and Latino public opinion</td>
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<td>Nov 2008</td>
<td>impreMedia &amp; National Association of Latino Elected Officials (NALEO) [With Gary Segura], 2008 National Latino Post-Election Survey, Presidential Election</td>
<td>$46,000</td>
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<td>July 2008</td>
<td>National Association of Latino Elected Officials (NALEO) [With Gary Segura], Latino voter outreach survey – an evaluation of Obama and McCain</td>
<td>$72,000</td>
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<td>June 2008</td>
<td>The Pew Charitable Trusts, Make Voting Work Project [with Karin MacDonald and Bonnie Glaser], Evaluating Online Voter Registration (OVR) Systems in Arizona and Washington</td>
<td>$220,000</td>
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RESEARCH GRANTS AND FELLOWSHIPS CONTINUED...

April 2008  National Association of Latino Elected Officials (NALEO) &
            National Council of La Raza (NCLR), 2008 Latino voter messaging survey  
            $95,000 – 6 months

Dec. 2007  Research Royalty Fund, University of Washington
            2008 Latino national post-election survey  
            $39,000 – 12 months

Oct. 2007  Brennan Center for Justice, New York University
            [with Stephen Nune and Gabriel Sanchez] Indiana Voter Identification Study  
            $40,000 – 6 months

June 2007  National Science Foundation, Political Science Division [with Gary Segura]
            American National Election Study – Spanish translation and Latino oversample  
            $750,000 – 24 months

Oct. 2006  University of Washington, Vice Provost for Undergraduate Education
            Absentee voter study during the November 2006 election in King County, WA  
            $12,000 – 6 months

Mar. 2006  Latino Policy Coalition Public Opinion Research Grant [with Gary Segura]
            Awarded to the Washington Institute for the Study of Ethnicity and Race  
            $40,000 – 18 months

2005 – 2006  University of Washington, Institute for Ethnic Studies, Research Grant  
            $8,000 – 12 months

Mar. 2005  Thomas and Dorothy Leavey Foundation Grant [with Fernando Guerra]
            Conduct Exit Poll during Los Angeles Mayoral Election, Mar. 8 & May 17, 2005
            Awarded to the Center for the Study of Los Angeles  
            $30,000 – 6 months

2004 – 2005  Ford Foundation Dissertation Fellowship for Minorities  
            $21,000 – 12 months

2004 – 2005  University of California President’s Dissertation Fellowship  
            $14,700 – 9 months

            $12,000 – 9 months

Apr. 2004  UC Regents pre-dissertation fellowship, University of California, Irvine,  
            $4,700 – 3 months

2003 – 2004  Thomas and Dorothy Leavey Foundation Grant [with Fernando Guerra]
            Awarded to the Center for the Study of Los Angeles  
            $20,000 – 12 months

2002 – 2003  Ford Foundation Grant on Institutional Inequality [with Harry Pachon]
            Conducted longitudinal study of Prop 209 on Latino and Black college admittance
            Awarded to Tomás Rivera Policy Institute  
            $150,000 – 12 months

            Knowledge Economy in the Inland Empire region of Southern California
            Awarded to Tomás Rivera Policy Institute  
            $150,000 – 18 months

2001 – 2002  William F Podlich Graduate Fellowship, Center for the Study of Democracy,
            University of California, Irvine  
            $24,000 – 9 months
RESEARCH UNDER REVIEW/WORKING PAPERS:


Barreto, Matt, Natalie Masuoka, Gabe Sanchez and Stephen El-Khatib. “Religiosity, Discrimination and Group Identity Among Muslim Americans” Revise and Resubmit

Barreto, Matt, Gabe Sanchez and Barbara Gomez. “Latinos, Blacks, and Black Latinos: Competition, Cooperation, or Indifference?” Revise and Resubmit

Walker, Hannah, Matt Barreto, Stephen Nuno, and Gabriel Sanchez. “A comprehensive review of access to valid photo ID and the right to vote in America” [Under review]


Barreto, Matt, David Redlawsk and Caroline Tolbert. “Framing Barack Obama: Muslim, Christian or Black?” [Working paper]
CONSULTING EXPERT:

- North Carolina, 2019, Expert for Plaintiffs in North Carolina voter ID lawsuit, NAACP v. Cooper
- East Ramapo CSD, 2018, Expert for Plaintiffs in Section 2 VRA lawsuit, assessed polarized voting
- Dallas County, TX, 2017, Expert for Defense in Section 2 VRA lawsuit, Harding v. Dallas County
- Galveston County, TX Redistricting, 2013, Expert report for Dunn & Brazil, LLC, Demographic analysis, vote dilution analysis, and racially polarized voting analysis for Section 2 lawsuit Galveston County JP/Constable districting
- Pasadena, TX Redistricting, 2013, Expert report for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, and racially polarized voting analysis for Section 2 lawsuit within Pasadena School District
- Harris County, TX Redistricting, 2011, Testifying Expert for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, and racially polarized voting analysis for Section 2 lawsuit within Harris County
- Orange County, FL, 2012, Consulting Expert for Latino Justice/PRLDEF, Racially polarized voting analysis in Orange County, Florida
- Anaheim, CA, 2012, Consulting Expert for Goldstein, Demchak & Baller Legal, Racially polarized voting analysis for CVRA redistricting case Anaheim, CA
- Los Angeles County, CA, 2011, Consulting Expert for Goldstein, Demchak & Baller Legal, Racially polarized voting analysis for three redistricting cases in L.A.: Cerritos Community College Board; ABC Unified Schools; City of West Covina
- Harris County, TX Redistricting, 2011, Consulting Expert for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, for Section 5 objection within Harris County
- Monterey County, CA Redistricting, 2011, Consulting Expert for City of Salinas, Demographic analysis, creation of alternative maps, and racially polarized Voting analysis within Monterey County
- Asian Pacific American Legal Center, 2011, Racially Polarized Voting analysis of Asian American candidates in Los Angeles for APALC redistricting brief
- Lawyers’ Committee for Civil Rights and Arnold & Porter, LLP, 2010-12, Racially Polarized Voting analysis of Latino and Asian candidates in San Mateo County, concerning San Mateo County Board of Supervisors
- ACLU of Washington, 2010-11, preliminary analysis of Latino population patterns in Yakima, Washington, to assess ability to draw majority Latino council districts
- State of Washington, 2010-11, provided expert analysis and research for *State of Washington v. MacLean* in case regarding election misconduct and voting patterns

- Los Angeles County Chicano Employees Association, 2008-10, Racially Polarized Voting analysis of Latino candidates in L.A. County for VRA case, concerning L.A. County Board of Supervisors redistricting (6 reports issued 08-10)

- Brennan Center for Justice and Fried, Frank, Harris, Shriver & Jacobson LLP, 2009-10 Amicus Brief submitted to Indiana Supreme Court, *League of Women Voters v. Rokita*, regarding access to voter identification among minority and lower resource citizens

- State of New Mexico, consulting expert for state in *AAPD v. New Mexico*, 2008,

- District of Columbia Public Schools (DCPS), statistical consultant for survey methodology of opinion survey of parents in DCPS district (for pending suit), 2008,

- Brennan Center for Justice, 2007-08, Amicus Brief submitted to U.S. Supreme Court, and cited in Supreme Court decision, *Crawford v. Marion County*, regarding access to voter identification among minority and lower-resource citizens

- Los Angeles County Chicano Employees Association, 2002-07, Racially Polarized Voting analysis of Latino candidates in L.A. County for VRA case, concerning L.A. County Board of Supervisors redistricting (12 + reports issued during 5 years)

- Monterey County School Board, 2007, demographic and population analysis for VRA case

- Sweetwater Union School District, 2007-08, Racially Polarized Voting analysis, and demographic and population analysis for VRA case

- Mexican American Legal Defense Fund, 2007-08, Racially Polarized Voting analysis for Latino candidates, for City of Whittier city council races, for VRA case


- Nielsen Media Research, 2005-08, with Willie C. Velasquez Institute, assessed the methodology of Latino household recruitment in Nielsen sample
TEACHING EXPERIENCE:

UCLA & UW

- Minority Political Behavior (Grad Seminar)
- Politics of Immigration in the U.S. (Grad Seminar)
- Introduction to Empirical/Regression Analysis (Grad Seminar)
- Advanced Empirical/Regression Analysis (Grad Seminar)
- Qualitative Research Methods (Grad Seminar)
- Political Participation & Elections (Grad Seminar)
- The Voting Rights Act (Law School seminar)
- Research methodology II (Law School Ph.D. program seminar)
- U.S. Latino Politics
- Racial and Ethnic Politics in the U.S.
- Politics of Immigration in the U.S.
- Introduction to American Government
- Public Opinion Research
- Campaigns and Elections in the U.S.
- Presidential Primary Elections

Teaching Assistant
University of California, Irvine

- Intro to American Politics (K. Tate)
- Intro to Minority Politics (L. DeSipio)
  Recognized as Outstanding Teaching Assistant, Winter 2002
- Statistics and Research Methods (B. Grofman)
  Recognized as Outstanding Teaching Assistant, Winter 2003

BOARD & RESEARCH APPOINTMENTS

Founding Partner
Latino Decisions

Senior Research Fellow
Center for the Study of Los Angeles, Loyola Marymount University

Board of Advisors
American National Election Study, University of Michigan

Advisory Board
States of Change: Demographics & Democracy Project
CAP, AEI, Brookings Collaborative Project

Research Advisor
American Values Institute / Perception Institute

Expert Consultant
State of California, Citizens Redistricting Committee

Senior Scholar & Advisory Council
Latino Policy Coalition, San Francisco, CA

Board of Directors
CASA Latina, Seattle, WA

Faculty Research Scholar
Tomás Rivera Policy Institute, University of Southern California

2005 – Present
2002 – 2005
2007 – Present
2002 – Present
2010 – Present
2014 – Present
2009 – 2014
2011 – 2012
2006 – 2008
2006 – 2009
1999 – 2009
PHD STUDENTS
UCLA & UW

Committee Chair or Co-Chair
- Francisco I. Pedraza – University of California, Riverside (UW Ph.D. 2009)
- Loren Collingwood – University of California, Riverside (UW Ph.D. 2012)
- Betsy Cooper – Public Religion Research Institute, Washington DC (UW Ph.D. 2014)
- Sergio I. Garcia-Rios – Cornell University (UW Ph.D. 2015)
- Hannah Walker – Rutgers University (UW Ph.D. 2016)
- Kassra Oskooii – University of Delaware (UW Ph.D. 2016)
- Angela Ocampo – Arizona State University (UCLA Ph.D. 2018)
- Ayobami Laniyonu – University of Toronto (UCLA Ph.D. 2018)
- Adria Tinim – in progress (UCLA ABD)
- Bang Quan Zheng – in progress (UCLA ABD)
- Bryan Wilcox-Archuleta – in progress (UCLA ABD)
- Tyler Reny – in progress (UCLA ABD)
- Angie Gutierrez – in progress (UCLA)
- Shakari Byerly-Nelson – in progress (UCLA)
- Vivien Leung – in progress (UCLA)

Committee Member
- Jessica Stewart – Emory University (UCLA Ph.D. 2018)
- Jonathan Collins – Brown University (UCLA Ph.D., 2017)
- Lisa Sanchez – University of Arizona (UNM Ph.D., 2016)
- Nazita Lajevardi – Michigan State University (UC San Diego Ph.D., 2016)
- Kiku Huckle – Pace University (UW Ph.D. 2016)
- Patrick Rock (Social Psychology) – (UCLA Ph.D. 2016)
- Raynee Gutting – Loyola Marymount University (Stony Brook Ph.D. 2015)
- Christopher Towler – Sacramento State University (UW Ph.D. 2014)
- Benjamin F. Gonzalez – San Diego State University (UW Ph.D. 2014)
- Marcela Garcia-Castañon – San Francisco State University (UW Ph.D. 2013)
- Justin Reedy (Communications) – University of Oklahoma (UW Ph.D. 2012)
- Dino Bozzoneos – Cal State San Marcos (UC Riverside Ph.D. 2012)
- Brandon Bosch – University of Nebraska (UW Ph.D. 2012)
- Karam Dana (Middle East Studies) – UW Bothell (UW Ph.D. 2010)
- Joy Wilke – in progress (UCLA ABD)
- Erik Hanson – in progress (UCLA)
- Christine Slaughter – in progress (UCLA)
- Lauren Goldstein (Social Psychology) – in progress (UCLA)
- Barbara Gomez-Aguinaga – University of Nebraska (UNM Ph.D., in progress)
Exhibit 57
IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

NEW YORK IMMIGRATION COALITION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

Expert Declaration of Mr. John Thompson

1. Introduction

1. On July 21, 2020 President Trump issued a Memorandum for the Secretary of Commerce on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census (in the remainder of this document I will use the term “Memorandum” to refer to this document). I am extremely concerned that this action will adversely affect the quality and accuracy of the 2020 Census.

2. The 2020 Census results will be of great importance to our nation. The Constitution requires that the census be used for reapportioning the Congress of the United States and the Electoral College. The 2020 Census will also be used for numerous other functions to support good
policymaking and economic growth including: redrawing congressional and state legislative
voting districts; allocating over $1.5 trillion of federal funds annually; informing sound
policy development; providing critical information for state, local and tribal government
planning; and supplying critical information to large and small businesses to generate growth
and job creation. Inaccuracies or errors in the 2020 Census will have grave consequences on
these uses for the subsequent 10-year period.

3. I have carefully reviewed the Memorandum instructing the Secretary of Commerce to
provide information to exclude undocumented persons from the Apportionment counts. I
have also reviewed the 2020 Census Operational Plans as well as the documentation that the
Census Bureau has issued describing the actions it is taking in response to the COVID-19
pandemic. I have two serious concerns regarding the Memorandum: (1) it will significantly
increase the risk of larger total and differential undercounts, relative to previous censuses, for
the hard-to-count populations, including immigrant communities; and (2) it lacks
transparency as required by law and the Census Bureau Statistical Quality Standards that
would allow for the assessment of the methodology that might be used in response to the
direction to exclude undocumented persons from the 2020 Census Apportionment counts.

II. Qualifications

4. Below I briefly describe specific aspects of my qualifications and work experience that
establishes my credentials as an accomplished statistician and an expert on the Census
Bureau and Decennial Census. I have also attached a copy of my CV to this declaration.

5. I have served as both the Director of the U.S. Census Bureau and as the career senior
executive in charge of management of all aspects of the 2000 Decennial Census. I am also a
distinguished professional in the area of statistics and survey design. I have a deep
understanding of the processes that are necessary to achieve a complete and highly accurate
Decennial Census.

6. I served as the Director of the U.S. Census Bureau from August 2013 to June 2017. Prior to
becoming Director, I worked at the Census Bureau for 27 years (from 1975 to 2002). I
started my career as a mathematical statistician in 1975. I spent the majority of my
employment at the Census Bureau focused on the Decennial Census and ultimately served as
the Associate Director for the 2000 Decennial Census, with management responsibility for
all phases of the 2000 Decennial Census.

7. The Census Bureau is the largest Statistical Agency and produces a wide range of
demographic and economic statistics including: the Decennial Census; the American
Community Survey; the Current Population Survey; the National Crime Victimization
Survey, the National Health Interview Survey; the Economic Census; the release of 13
principle key economic indicators on a monthly or quarterly basis; and conducts about 100
additional surveys. The Director of the Census Bureau is appointed by the President and
confirmed by the Senate.

8. My responsibilities as Director of the Census Bureau included overseeing the research and testing that produced the design for the 2020 Census. During my tenure, the original operational plan for conducting the 2020 Census was released, as was an updated version 2.0 of this plan. In addition, major field tests were conducted in 2013, 2014, 2015 and 2016. The results of these tests informed the final 2020 Census Design that was tested in the 2018 end-to-end test. During my service, the Census Bureau reviewed the residence criteria used to determine where to count the residents of the United States. A preliminary proposal for the 2020 residence criteria was issued for public comment on June 30, 2016.1 In particular, the Census Bureau was following the same principles that had guided each previous Decennial Census – the Constitution requires that everyone living in the United States should be included in the enumeration, regardless of immigration status, for all uses of the census, including Apportionment. The final 2020 Census residence criteria were issued on February 5, 2018, and again followed these same principles to count everyone living in the United States at their usual place of residence regardless of immigration status for Apportionment and all other uses.2

9. Prior to being appointed Director of the Census Bureau I was at National Opinion Research Center (NORC) at the University of Chicago, serving as Executive Vice President from 2002 to 2008 and President from 2008 to 2013. NORC is an objective, non-partisan independent research institution that delivers reliable data and rigorous analysis to guide critical programmatic, business, and policy decisions. Clients include government, corporate, and nonprofit organizations around the world who partner with NORC to transform increasingly complex information into useful knowledge. NORC conducts research in five main areas: Economics, Markets, and the Workforce; Education, Training, and Learning; Global Development; Health and Well-Being; and Society, Media, and Public Affairs. NORC services include designing and conducting surveys (telephone, Internet, and in-person) as well as analytical studies.

10. From July 2017 to August 2018, I served as the Executive Director of the Council of Professional Associations on Federal Statistics (COPAFS). COPAFS is an organization with a membership consisting of professional associations and research organizations that depend on and support high quality federal statistics. The Executive Director of COPAFS must have a deep understanding of the Federal Statistical System and the wide range of data products that are produced. Serving as the Executive Director of COPAFS reinforced my appreciation of the importance of high-quality Decennial Census data to the entire Federal Statistical System.

11. In addition to the work experience described above, I am an elected Fellow of the American Statistical Association and was selected to serve on the National Academies of Science, Engineering, and Medicine Committee on National Statistics.

III. Concerns

A. Background on the Decennial Census

12. The uses of the data generated by the Decennial Census are extremely important for all components of our democracy and economy, including: the constitutionally required reapportionment of the Congress; redrawing congressional and state legislative voting districts; allocating over $1.5 trillion in federal funds annually; supporting evidence-based policy making by state, local and tribal governments; and allowing informed decisions by large and small business to generate economic growth and job creation. Inaccuracies or undercounts in Decennial Census data will result in under-representation of the affected population groups not just in the immediate term, but for ten subsequent years until the next Decennial Census results are available.

B. The 2020 Census was already facing unprecedented challenges prior to the release of the Memorandum.

13. The COVID-19 pandemic forced the delay of key operations out of concerns for the safety of both census workers and the general public. The in-person components of the local partnership program to increase response rates of the traditionally hard-to-count populations were delayed, as was the operation to collect responses from those households that do not self-respond. This operation is referred to as nonresponse follow-up or NRFU. In my opinion, NRFU is the most critical operation to achieving a fair and accurate enumeration. Currently the national self-response rate is 63 percent, which means that over 37 percent or over 50 million housing units and their occupants must still be enumerated.\textsuperscript{3} A successful NRFU is therefore essential to achieving a complete enumeration for the 2020 Census.

14. The NRFU operation had been scheduled to start on May 15, 2020 and run through July 31, 2020. However, as a result of the COVID-19 pandemic, the Census rescheduled it to start in most of the United States on August 11, 2020 and initially planned to complete it by October 30, 2020.

15. In order to accommodate this delay, the Census Bureau had requested, through the Department of Commerce, a four-month extension of the legal deadlines\textsuperscript{4} to deliver Apportionment and redistricting data. For Apportionment this would extend the current deadline of December 31, 2020 to April 30, 2021. For redistricting data, the requested


\textsuperscript{4} Title 13, US Code, Section 141, (b) and (c).
extension was from March 31, 2021 to July 31, 2021.

16. However, the Census Bureau has announced that the deadlines will not be extended, and that the NRFU will now be completed by September 30, 2020.\(^5\) The Census Bureau will have to take steps to complete the NRFU more rapidly than they planned.

17. In this situation the risk that the hard-to-count populations will be underrepresented increases greatly. Cooperation on the part of the households in NRFU is going to be essential. However, as I discuss below, the issuance of the Memorandum will most likely decrease cooperation and willingness to participate further reducing the effectiveness of NRFU in achieving a fair and accurate enumeration.

C. The confidence of respondents that the 2020 Census will be confidential will be significantly eroded leading to increased undercounts

18. The Census Bureau has made good progress since the 1990 Decennial Census, and had great success during both the 2000 and 2010 Decennial Censuses in reducing undercounts. A key component of this success has been the deployment of a combined national and local advertising and local partnership program to deliver a message to hard-to-count populations that the census is important to their community, and that the data collected through the census is completely confidential. No individual’s information is shared with any other organization or law enforcement entities.

19. This messaging program was responsible for dramatic gains in the accuracy and coverage of the 2000 and 2010 Decennial Census relative to the 1990 Census, which did not include such a program. For example, the undercount of Black or African Americans dropped from 4.6 percent in 1990 to 2.1 percent in 2010.\(^6\) For the Hispanic population the undercount dropped from 5.0 percent to 1.5 percent.\(^7\)

20. Census Bureau research conducted in planning for the 2020 Census has identified serious concerns that potential respondents have with respect to the confidentiality of their information prior to the release of the Memorandum. For example:

   a. Census Bureau researchers conducted qualitative research that was presented at the 2018 American Association of Public Opinion Research annual conference that

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indicated that fear of government was higher than had been experienced in prior years. 8

b. The 2020 Census Barriers Attitudes and Motivators Study was conducted to understand the concerns of potential respondents to help shape the 2020 Census advertising and communication program themes and messages. The study found that the two most significant barriers to participation in the 2020 Census were: (1) concerns that the Census Bureau would share information with other government agencies; and (2) that the information that respondents provided would be used against them 9. Non-White and Hispanic groups were much more concerned than the White non-Hispanic group. In addition, respondents that were not proficient in English were much more concerned than those who were (39 percent compared to 23 percent).

c. The Census Bureau also conducted research on the potential effects of adding a citizenship question to the 2020 Census questionnaire. 10 This research indicated that the question would reduce self-response of the non-citizen population. Furthermore, the research found that it was likely that households that refuse to respond to the census questionnaire because of the citizenship question are also likely to not respond to NRFU enumerators. It is my opinion, based on my experience in implementing the 2000 Census and my work in leading the design and planning for the 2020 Census, that the Memorandum is likely to have similar effects on NRFU response.

21. In order to address these concerns, a cornerstone of the 2020 Census advertising and partnership program, is a message that respondent information is confidential. The Census Bureau will not share it with any outside entities, including law and immigration enforcement. It is my opinion that the Memorandum will reduce the effectiveness of the 2020 Census advertising and partnership program in gaining the confidence of respondents in traditionally hard-to-count communities.

22. For example, a critical factor in underlying response and participation in the 2020 Census is the macro environment under which the NRFU is being conducted. While the 2020 Census advertising and partnership program is designed to positively influence this environment, other factors such as the issuance of the Memorandum can have the opposite effect. As Census Bureau Chief Scientist, Dr. John Abowd, acknowledged during recent trial testimony 11 in the matter considering the potential effects of adding a citizenship question to the 2020 Census questionnaire, the macro environment was likely to be affected by actions to

8 AAPOR Panel on Changes in Respondent Privacy, Confidentiality, and Data Sharing Concerns, Meyers, Goerman, Harris-Kojetin, Terry, and Fobia, Denver, Colorado, May 18, 2018
9 CBAMS report
add a citizenship question. Furthermore, Dr. Abowd acknowledged that the political environment around immigration could amplify the effects of a citizenship question on decreased response.

23. It is my opinion that the effects of the Memorandum on the current macro environment are likely to be as great if not greater than the addition of a citizenship question. Therefore, immigrants and the families of immigrants will be reluctant to participate in the NRFU and many will not be enumerated. It is also likely, in my opinion, that this reluctance to participate will extend to other hard-to-count populations as well. The issuance of the Memorandum has significantly increased the risk of larger total and differential undercounts, relative to previous censuses.

D. Lack of transparency

24. At this point, little is known about the ultimate quality and accuracy of the 2020 Census. The location and magnitude of errors caused by potential undercounts and overcounts has not been determined. In addition, the level of inclusion of undocumented persons in the 2020 Census is also unknown.

25. It will be very challenging for the Census Bureau to determine the number of undocumented persons that are included in the 2020 Census at the time when Apportionment data is required to be reported. It is critical for the Census Bureau and the Department of Commerce to describe the methodology that they intend to utilize to estimate the numbers of undocumented persons enumerated in the 2020 Census and what are appropriate measures of accuracy that would support the usage of such methodologies. The Memorandum does not provide any specific directions and the Census Bureau has not described how it will comply with the Memorandum.

26. There are legal and statistical standards that the Census Bureau has followed and should continue to follow with respect to transparency:

a. The Census Bureau is a Federal Statistical Agency and as Director Dillingham noted in sworn testimony July 29, 2020, the Census Bureau intends to follow the principles and practices identified by the Committee on National Statistics for Federal Statistical Agencies.12 Principle 2, Credibility among Data Users, states: “Also essential to building credibility are for an agency to be open and transparent about its data sources and their limitations, demonstrate understanding of users’ needs and priorities, fully document the processes used to produce and disseminate statistical products, and take proactive steps to preserve data for future use.”

b. The Office of Management and Budget issued a Memorandum on April 24, 2019 Improving Implementation of the Information Quality Act to the Heads of all Executive Departments and Agencies strengthening previous guidance in this area.\textsuperscript{13} This document states: “The IQA requires agencies conduct pre-dissemination review of their information products. During this review, each agency should consider the appropriate level of quality for each of the products that it disseminates based on the likely use of that information.”

27. In 2013 the Census Bureau issued Statistical Quality Standards that are currently guiding the conduct of all their programs including the 2020 Census.\textsuperscript{14}

a. In particular: Statistical Quality Standard F1, Releasing Information Products Requirement F1-6 states: “Information products must comply with the Census Bureau’s statistical quality standards and must be free of serious data quality issues in order to be released outside the Census Bureau without restrictions.” Statistical Quality Standard F2, Providing Documentation to Support Transparency in Information Products Requirement F2-2 states: “Documentation must be readily accessible in sufficient detail to allow qualified users to understand and analyze the information and to reproduce (within the constraints of confidentiality requirements) and evaluate the results.”

28. The most important information produced and released by the Census Bureau is the constitutionally mandated Apportionment data. Because this information is so vital to our democracy, it is critically important that the Department of Commerce and the Census Bureau are transparent in their adherence to their legal and statistical standards. At a minimum, the Census Bureau has an obligation to assure the public and stakeholders that any methods it develops for determining the number of undocumented individuals is statistically sound.

VI. Conclusion

In conclusion, it is my opinion that the issuance of the Memorandum will significantly increase the risk of much larger undercounts for the 2020 Census than measured in previous censuses, including undercounts of immigrant communities. In addition, there is no transparency or documentation of how the quality and fitness for use of the Apportionment counts will be determined, nor is there any documentation of how the number of undocumented persons potentially included in the 2020 Census will be determined.

\textsuperscript{13} Russel T. Vought, Acting Director OMB, Memorandum for the Heads of Executive Departments and Agencies, Subject: Improving Implementation of the Information Quality Act (Apr. 24, 2019).

\textsuperscript{14} U.S. Census Bureau Statistical Quality Standards (Jul. 2013).
Executed on August 6, 2020 at Bend, Oregon.

I declare under penalty of perjury that the foregoing is true and correct.

[Signature]

John Thompson
Appendix A
JOHN H. THOMPSON

BRIEF CAREER HISTORY

Extensive Senior Executive leadership in the non-profit and federal sectors, with experience in social science research and statistics, congressional advocacy, building coalitions, operational management, business development, stakeholder relations, innovation, and strategic vision.

Independent Consultant, August 2018 to present

Consulting service focusing on survey methodology, executive leadership, the Federal Statistical System, and decennial census. Activities have included:

- Expert witness for the plaintiffs in two court cases opposing the addition of a citizenship question to the 2020 Census
  - New York Immigration Coalition, et al v. United States Department of Commerce and Wilbur Ross, U.S. District Court for the Southern District of New York, and
  - Robyn Kravitz et al., v. United States Department of Commerce, et al
- Training news media journalists on the 2020 Census with Georgetown University, the Poynter Center, and the Harvard Shorenstein Center.
- Providing consultation services to NORC at the University of Chicago

Executive Director, Council of Professional Associations on Federal Statistics – July 2017 to August 2018

The Council of Professional Associations on Federal Statistics (COPAFS) was founded in 1981 to coordinate activities of a number of Associations, Organizations, and Businesses that rely on federal statistics to support good governance and economic growth. COPAFS now represents a growing body of stakeholders that support the production and use of high quality statistics. The Executive Director represents these stakeholders in realizing their mission to Advance Excellence in Federal Statistics. Activities include:

- Advocated on behalf of federal agencies. For example, COPAFS is a co-chair of the Friends of the Bureau of Labor Statistics, and the Friends of the National Center for Health Statistics;
- Worked with stakeholder coalitions to support proper funding for the 2020 Census and the American Community Survey;
- Ensured members of Congress, COPAFS members, and other stakeholders were informed of critical issues facing agencies that produce federal statistics;
- Alerted members and stakeholders of breaking issues that needed immediate support and attention;
- Organized and supported ongoing educational efforts for members of Congress and their staff on the value and importance of federal statistics both nationally and in their own states and districts;
- Created and joined in powerful coalitions of organizations and businesses to advocate on behalf of federal agencies that produce statistics, building broad support across a wide spectrum of data users;
Built partnerships with foundations that help fund critical research in the statistical agencies and academia to ensure the on-going modernization of how statistical data are created and made available to the public and researchers, and to fund educational efforts;

Worked closely with the Chief Statistician of the United States and the statistical agencies to help inform and promote modernization efforts underway and assist agencies in keeping abreast of new stakeholder data needs; and

Hosted events to demonstrate the importance of federal statistics such as the 2018 Federal Committee on Statistical Methodology Research and Policy Conference.

**Director, United States Census Bureau – August 2013 to June 2017**

Appointed by the President as Director of the largest federal statistical agency, with a staff of over 5,000 headquarters employees and approximately 10,000 to 15,000 staff spread across the United States in six regional offices and a major production facility in Indiana, with an annual budget exceeding $1 billion. Key accomplishments include:

- Worked successfully with the executive and legislative branches of the federal government, including the White House, the Office of Management and Budget, Cabinet officials, and members of Congress and congressional staff, to accomplish a major transformation of the Census Bureau into a forward-looking 21st century statistical agency. Testified at 6 congressional hearings on the Census Bureau;
- Provided a conceptual vision and lead a redesign of the 2020 decennial census that is estimated to save $5 billion through effective use of operations research-driven reengineering of field operations, innovative use of technology, and partnership with key stakeholders;
- Lead outreach to key stakeholders including representatives of state local and tribal governments; advocacy organizations; professional associations, business groups, various media; and academic researchers;
- Put in place a robust research program to support mission critical activities, such as linking administrative records, disclosure avoidance methods, economic studies, statistical research, survey methodology, big data, and data dissemination;
- Lead efforts to maintain congressional support and funding for the American Community Survey, a critical data asset of the federal government, including mobilizing a diverse group of key stakeholders to effectively advocate in support of the survey, personally visiting almost all of the House of Representatives and Senate members of the Census Bureau appropriations and oversight committees, and establishing a program of research directly related to the concerns that had been raised;
- Improved economic statistics through research on using alternatives to direct survey data collection to produce statistics that are timelier and have increased granularity, and carrying out three initiatives to advance the release of principal economic indicators on trade, retail sales and services, which allowed the Bureau of Economic Analysis to significantly reduce revisions to Gross Domestic Product (GDP) estimates;
- Recruited outstanding research staff including new senior leadership for Research and Methodology, the Director of a newly established big data center, and seven former Presidential Innovation Fellows; and
- Improved data dissemination to the public, including development of a platform to deliver data in ways that will meet the rapidly evolving demands of a growing body of users. In addition,
in order to meet immediate targeted demands two new tools were released: City SDK (Software Development Kit) to allow easy developer access; and Census Business Builder a tool that combines small area demographic and economic data in a way that is easily accessible for entrepreneurs and small business owners.

President and Executive Vice President, NORC at the University of Chicago – July 2002 to August 2013

NORC is a national non-profit organization that conducts high quality social science research in the public interest. As President, I had responsibility for all NORC corporate activities and for the quality of all NORC research efforts. I provided vision for NORC to establish the organization as a leader in the social science research industry. My accomplishments included:

- Strengthened the organization’s high-quality, diverse staff;
- Broadened the scope of the collaborations between NORC and the University of Chicago;
- Realized nearly 50 percent growth in revenue and greatly expanding NORC’s portfolio of business and research programs; and
- Provided leadership in the social science research community - selected to be a Fellow of the American Statistical Association (ASA), elected to serve a term as Chair of the Social Statistics Section of the ASA, and chaired the 2009 ASA Committee on Fellows. Also elected as a member of the Committee on National Statistics, serving on two National Academy of Sciences panels addressing 2010 and 2020 Census concerns.

As Executive Vice President of Survey Operations (2002 – 2008), I provided oversight and direction to the Economics, Labor Force, and Demography Research Department, the Statistics and Methodology Department, and Survey Operations for field and telephone data collection. My major accomplishments included:

- Provided leadership and guidance for a major corporate initiative, the National Immunization Survey, which is conducted on behalf of the Centers for Disease Control and Prevention, and is the largest telephone survey in the United States conducted via random digit dialing for scientific purposes.
- Significantly increased the productivity and cost effectiveness of NORC’s overall data collection activities;
- Successfully utilized skills in directing large project start-ups, and in managing large complex operations, directing the project through the completion of the first contract phase, which included the first year of data collection and the delivery of the first data set; and
- All survey operations were completed on schedule, and within budget including the delivery of an extremely complex data set, and a public use file.
Principal Associate Director and Associate Director for Decennial Census Programs, United States Census Bureau – 1997 to July 2002

Served as the senior career executive responsible for all aspects of the 2000 Decennial Census. This was the largest peacetime mobilization undertaken by the U.S. government, with a budget of $6.5 billion, establishment of over 500 field offices, a temporary workforce that peaked at over 500,000, and establishment of telephone capacity to receive over 5 million calls over a period of one month. I was also chairman and director of the Executive Steering Committee for Accuracy & Coverage Evaluation Policy for the 2000 Census. This Committee was charged with making a recommendation as to whether or not to adjust the 2000 Census redistricting data for coverage errors, an issue fraught with political disagreement and controversy. This work was widely recognized as superb – with the Committee’s recommendation supported by numerous reviews, including the National Academy of Sciences Panel on evaluating Census 2000.

EDUCATION

M.S. Virginia Polytechnic Institute and State University, 1975 Mathematics Graduate course work in statistics - George Washington University 1977-1981

B.S. Virginia Polytechnic Institute and State University, 1973 Mathematics

PROFESSIONAL SERVICE AND ASSOCIATIONS

American Statistical Association, 1975 to Present
  Chair, Social Statistics Section – 2011
  Chair, ASA Committee on Fellows - 2009

National Academy of Sciences,
  Member of the Committee on National Statistics – 2011 - 2013
  Member of the Panel on the Design of the 2010 Census Program of Evaluations and Experiments
  Member of the Panel to Review the 2010 Census

HONORS AND AWARDS

Virginia Tech College of Science Hall of Distinction inaugural class, 2013
Presidential Rank Award of Meritorious Executive, 2001
Department of Commerce, Gold Medal, U.S. Bureau of the Census, 2000
Elected Fellow of the American Statistical Association, 2000
Department of Commerce, Bronze Medal, U.S. Bureau of the Census, 1988
PAPERS AND PUBLICATIONS


Navarro, Alfredo, John H. Thompson, and Linda Flores-Baez, "Results of Data Switching Simulation." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, April, 1988.


Exhibit 58
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ST- TE OF NEW YORK, et al.,

Plaintiffs,

v.

DON- LD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

NEW YORK IMMIGRATION, et al.,

Plaintiffs,

v.

DON- LD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

EXPERT DECLARATION OF DR. CHRISTOPHER WARSHAW
I. Introduction

1. My name is Christopher Warshaw. I have been an Assistant Professor of Political Science at George Washington University since August 2017. I was recently awarded tenure, and will become a tenured Associate Professor on September 1, 2020. Prior to working at George Washington University, I was an Associate Professor at the Massachusetts Institute of Technology from July 2016 - July 2017, and an Assistant Professor at MIT from July 2012 - July 2016.

2. I have been asked by counsel representing the plaintiffs in *New York Immigration Coalition v. Trump* and *State of New York v. Trump* to analyze relevant data and provide my expert opinions.

3. More specifically, I have been asked:
   
   • To forecast the populations of every state in the United States in 2020.
   
   • To estimate the proportion of the population in every state in the United States likely to be excluded if undocumented immigrants are not included in the Census enumeration used for apportionment.
   
   • To analyze the likely effects of the exclusion of undocumented immigrants on the apportionment of representatives across states for the U.S House of Representatives.

4. My opinions are based on the knowledge I have amassed over my education, training and experience, including a detailed review of the relevant academic literature. They also follow from a statistical analysis that I describe in detail below.
A. Qualifications and Publications

5. My Ph.D. is in Political Science, from Stanford University, where my graduate training included courses in political science and statistics. I also have a J.D. from Stanford Law School. My academic research and teaching focuses on public opinion based on surveys and Census data, as well as the study of representation, elections, and polarization in American Politics. I have also taught courses on statistical analysis.

6. My curriculum vitae is attached to this Declaration at Appendix C. All publications that I have authored and published appear in my curriculum vitae. I have published 30 academic articles and book chapters. My work is published or forthcoming in peer-reviewed journals such as: the American Political Science Review, the American Journal of Political Science, the Journal of Politics, Political Analysis, Political Science Research and Methods, the British Journal of Political Science, Political Behavior, the Annual Review of Political Science, the Election Law Journal, Nature Energy, Public Choice, and edited volumes from Cambridge University Press and Oxford University Press. My non-academic writing has been published in the New York Times and the Washington Post.

7. Most relevantly, I provided an expert report and declaration in New York Immigration Coalition et al v. United States Department of Commerce, No. 18-CV-2921-JMF (S.D. NY). In that report, I assessed the consequences of an undercount caused by a potential citizenship question on the U.S. Census. Specifically, I examined the effects of a net differential undercount of people who live in immigrant households on congressional apportionment. I found that the inclusion of a citizenship question on the Census would likely have led to substantial effects on the population counts of each state, and the apportionment of
representatives across states for the U.S House of Representatives. In that case, the court found my analysis and findings “credible and persuasive.”


9. The opinions in this declaration are my own, and do not represent the views of George Washington University.

B. Research Design

10. President Trump recently issued a presidential memorandum charging the Secretary of Commerce to “exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”\(^1\) In order to assess the consequences of excluding undocumented immigrants from the count of people in the United States used for apportionment, I conduct the following steps:

   A. I estimate the baseline population of each state in 2020 based on the Census Bureau’s annual estimates of the population of each state from the past three decades.\(^2\) The populations used for apportionment also include overseas federal employees and their dependents. Then, based on data from the U.S. Military and the Census Bureau, I

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\(^1\) See https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-alien-apportionment-base-following-2020-census/.

estimate the number of overseas federal employees and dependents that would be added to the population of each state for apportionment.

B. I use data from the Pew Research Center to estimate the number of undocumented immigrants in each state in 2020. These are the most widely used data in the academic literature on the undocumented immigrant population. However, I reach very similar conclusions using a variety of alternative sources of data on the number of undocumented immigrants in each state.

C. Based on all of these data, I estimate the proportion of each state’s population that would be excluded from the enumeration used for apportionment due to the presidential memorandum. I then use the official apportionment table published by the U.S. Census Bureau to estimate the number of congressional seats that states would gain or lose. Finally, I report the uncertainty in all of my analyses.

D. I evaluate the robustness of my findings to a variety of alternative data sources and modeling strategies. I also compare my findings to four other independent reports from different research groups. My findings are robust to alternative modeling assumptions and are similar to these other groups’ findings.

C. Summary of Findings

11. Based on my analysis, I have reached the following conclusions:

- The exclusion of undocumented immigrants from the apportionment base (i.e., the population enumeration used for apportionment) is likely to have substantial effects on the population counts of each state, and the apportionment of representatives across states for the U.S House of Representatives.
• It will almost certainly lead Texas to lose a seat in Congress. It is likely to lead California and New Jersey to lose a congressional seat. It also could lead other states, such as Arizona, Florida, New York, or Illinois, to lose seats. These conclusions are similar across multiple data sources on the prevalence of undocumented immigrants. They are also similar to the conclusions reached by a variety of independent analysts and organizations.

• The exclusion of undocumented immigrants from the apportionment base would affect political representation in Congress. For instance, it is likely to affect the distribution of federal funds to each state, and the general power that each state holds in Congress.

II. Projecting the State Populations in 2020

12. The first stage of my analysis is to develop baseline projections of the population of each state in the country in 2020. These projections are critical to determining the likely effects of excluding undocumented immigrants from the apportionment base. In order to develop these estimates, I use the Census Bureau’s official estimates of the population of each state from 1990-2019. The Census Bureau does not provide public estimates of each geographic unit’s populations in future years.

13. In this section, I first discuss several possible approaches for estimating future populations. I show that my preferred approach performs as well or better at a similar modeling problem than alternative approaches. I then discuss how I incorporate uncertainty into my population projections. Finally, I present estimates of the 2020 populations in each state in the country.

A. Data

14. The Census Bureau’s Population Estimates Program (PEP) produces estimates of the population for the United States, states, counties, cities, towns, and other geographic areas.
These aggregate estimates are based on the demographic components of population change (births, deaths, and migration) at each level of geography.\textsuperscript{3} My population projections are based on these official population estimates for each state for the period from 1990-2019.\textsuperscript{4}

**B. Statistical Model for Population Projections**

15. There are a number of potential options for forecasting the likely population of each state in 2020. One possible forecasting option would be to allow the forecasts to increase or decrease over time, where the amount of change over time (called the drift) is set to be the average change in the historical data (see Hyndman and Athanasopoulos 2018, 48-49). Some related methods in this family of forecasting approaches are:

- **Model 1: Linear trend between 2010-2019:** One approach would be to project forward based on the linear trend in the population estimates since the last Census (e.g., Election Data Services 2017). This approach assumes that each geographic unit’s population follows the same linear rate of change in the future that it has followed over the past decade. This approach has the benefit of using many years of data, but it could yield biased estimates if the population trends have changed over this period. I estimate linear trends using a simple linear regression model in the software program R.

- **Model 2: Linear trend between 2016-2019:** Another possibility is to project forward based on the linear trend in the population estimates over the past 4 years. This approach

\textsuperscript{3} I do not directly use the more detailed cohort-component method used by the Census for my population projections because this information is unavailable for some geographic levels, particularly for the 2000-2010 period. It is also unclear whether the additional complexities associated with this approach would yield substantial gains in predictive accuracy.

assumes that each geographic unit’s population follows the same linear trend in the future that it has followed over this shorter time period. This approach has the benefit of being sensitive to more recent trends, but it could be noisier than estimates based on the longer time series. That is, it could be overly sensitive to short-term trends. I estimate linear trends using a simple linear regression model in R.

- **Model 3: Change between two most recent years (i.e., 2018 to 2019):** A third possibility is to focus on the change between each geographic unit’s populations in the two most recent years and assume that future years will follow this recent trend. This approach has the benefit of being based on the most recent changes in populations, but it could also be overly sensitive to short-term idiosyncratic trends. I estimate these short-term trends using the software program R.

16. As Hyndman and Athanasopoulos (2018, 50) discusses: “Sometimes one of these simple methods will be the best forecasting method available; but in many cases, these methods will serve as benchmarks rather than the method of choice. That is, any forecasting methods [] will be compared to these simple methods to ensure that the new method is better than these simple alternatives. If not, the new method is not worth considering.” I consider one more complex approach against these benchmarks:

- **Model 4: A state space model with exponential smoothing:** This approach uses an exponential smoothing model that weights levels and trends to an extent determined by the data (Hyndman et al. 2008; Hyndman and Athanasopoulos 2018). This model uses all of the available data, but it gives more weight to the most recent years. I estimate the exponential smoothing model using the ets function in the forecast package in R.
C. Validation of Population Projections

17. The accuracy of forecasting models can only be determined by considering how well a given model performs on new data that were not used when fitting the original model (Hyndman and Athanasopoulos 2018, 62). In order to choose the best model for this analysis, I evaluated each model using a benchmark that is similar to the challenge of forecasting the 2020 populations. Specifically, I forecasted the 2019 population estimates in each state based on 1990-2018 population data. For each analysis I used the following evaluation metrics (see Hyndman and Athanasopoulos 2018, 64-65).

- **The mean error across states (ME):** This helps assess whether a given metric has a systematic bias in one direction or another.

- **The root mean-squared error across states (RMSE):** This helps assess the accuracy of the forecasts. It penalizes larger errors more than smaller errors.

- **The mean absolute error across states (MAE):** This helps assess the accuracy of the forecasts. It penalizes all errors equally.

- **The mean percentage error across states (MPE):** This helps assess whether a given metric has a systematic bias in one direction or another. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

- **The mean absolute percentage error across states (MAPE):** This metric also helps assess the accuracy of the forecasts. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).
Table 1: Validation of State Population Projections at Predicting 2019 State Populations

<table>
<thead>
<tr>
<th>Model</th>
<th>ME</th>
<th>RMSE</th>
<th>MAE</th>
<th>MPE</th>
<th>MAPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1): Linear model (decade)</td>
<td>-20,821</td>
<td>71,748</td>
<td>32,448</td>
<td>-0.29%</td>
<td>0.57%</td>
</tr>
<tr>
<td>(2): Linear model (4 years)</td>
<td>-12,219</td>
<td>33,933</td>
<td>14,513</td>
<td>-0.11%</td>
<td>0.21%</td>
</tr>
<tr>
<td>(3): Delta in last two years</td>
<td>-2,940</td>
<td>12,129</td>
<td>6,073</td>
<td>-0.02%</td>
<td>0.09%</td>
</tr>
<tr>
<td>(4): State space model</td>
<td>-4,034</td>
<td>12,623</td>
<td>6,766</td>
<td>-0.04%</td>
<td>0.13%</td>
</tr>
</tbody>
</table>

18. Table 1 shows the results. Overall, the state space model (4) and delta model (3) perform the best in this validation exercise. These models have much less error than the other models across all the metrics. Other studies have shown that state space models generally outperform other modeling approaches due to its flexibility (Hyndman et al. 2008; Hyndman and Athanasopoulos 2018). It also provides measures of uncertainty. As a result, I use this approach in my main analysis. I also show below, however, that I reach very similar findings using the delta model (3) (see Additional Scenario #6).

D. Baseline estimates of 2020 populations

19. The next stage is to use the official Census population estimates to project each geographic unit’s population in 2020. Table 2 shows the results.\(^5\) Note that all of the analysis of apportionment that follow fully incorporate the uncertainties in these projections.

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\(^5\) The projections shown here do not include the overseas military population, federal employees, and dependents. However, the apportionment projections in Table 6 do include these groups.
Table 2: State population projections

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>4,779,736</td>
<td>4,903,185</td>
<td>4,918,700</td>
</tr>
<tr>
<td>Alaska</td>
<td>710,231</td>
<td>731,545</td>
<td>726,000</td>
</tr>
<tr>
<td>Arizona</td>
<td>6,392,017</td>
<td>7,278,717</td>
<td>7,399,400</td>
</tr>
<tr>
<td>Arkansas</td>
<td>2,915,918</td>
<td>3,017,804</td>
<td>3,025,900</td>
</tr>
<tr>
<td>California</td>
<td>37,253,956</td>
<td>39,512,223</td>
<td>39,724,500</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,029,196</td>
<td>5,758,736</td>
<td>5,833,000</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,574,997</td>
<td>3,565,287</td>
<td>3,565,300</td>
</tr>
<tr>
<td>Delaware</td>
<td>897,934</td>
<td>973,764</td>
<td>982,000</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>601,723</td>
<td>705,749</td>
<td>710,000</td>
</tr>
<tr>
<td>Florida</td>
<td>18,801,310</td>
<td>21,477,737</td>
<td>21,706,500</td>
</tr>
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<td>Georgia</td>
<td>9,687,653</td>
<td>10,617,423</td>
<td>10,723,200</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,360,301</td>
<td>1,415,872</td>
<td>1,411,500</td>
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<td>Idaho</td>
<td>1,507,582</td>
<td>1,787,065</td>
<td>1,823,600</td>
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<td>Illinois</td>
<td>12,830,632</td>
<td>12,671,821</td>
<td>12,622,100</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,483,802</td>
<td>6,732,219</td>
<td>6,769,900</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,046,355</td>
<td>3,155,070</td>
<td>3,168,400</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,853,118</td>
<td>2,913,314</td>
<td>2,915,500</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,339,367</td>
<td>4,467,673</td>
<td>4,474,200</td>
</tr>
<tr>
<td>Louisiana</td>
<td>4,533,372</td>
<td>4,648,794</td>
<td>4,650,500</td>
</tr>
<tr>
<td>Maine</td>
<td>1,326,361</td>
<td>1,344,212</td>
<td>1,349,400</td>
</tr>
<tr>
<td>Maryland</td>
<td>5,773,552</td>
<td>6,045,680</td>
<td>6,071,200</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,547,629</td>
<td>6,892,503</td>
<td>6,904,900</td>
</tr>
<tr>
<td>Michigan</td>
<td>9,883,640</td>
<td>9,986,857</td>
<td>9,986,900</td>
</tr>
<tr>
<td>Minnesota</td>
<td>5,303,925</td>
<td>5,639,632</td>
<td>5,676,100</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,907,297</td>
<td>2,976,149</td>
<td>2,972,300</td>
</tr>
<tr>
<td>Missouri</td>
<td>5,988,927</td>
<td>6,137,428</td>
<td>6,152,400</td>
</tr>
<tr>
<td>Montana</td>
<td>980,415</td>
<td>1,068,778</td>
<td>1,077,400</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,826,341</td>
<td>1,934,408</td>
<td>1,946,500</td>
</tr>
<tr>
<td>Nevada</td>
<td>2,700,551</td>
<td>3,060,156</td>
<td>3,132,200</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,316,470</td>
<td>1,359,711</td>
<td>1,363,300</td>
</tr>
<tr>
<td>New Jersey</td>
<td>8,791,894</td>
<td>8,882,190</td>
<td>8,894,300</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2,059,179</td>
<td>2,096,829</td>
<td>2,100,400</td>
</tr>
<tr>
<td>New York</td>
<td>19,378,102</td>
<td>19,453,561</td>
<td>19,377,200</td>
</tr>
<tr>
<td>North Carolina</td>
<td>9,535,483</td>
<td>10,488,084</td>
<td>10,594,600</td>
</tr>
<tr>
<td>North Dakota</td>
<td>672,591</td>
<td>752,062</td>
<td>766,100</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,536,504</td>
<td>11,889,100</td>
<td>11,706,400</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,751,351</td>
<td>3,956,971</td>
<td>3,971,200</td>
</tr>
<tr>
<td>Oregon</td>
<td>3,831,074</td>
<td>4,217,737</td>
<td>4,260,000</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>12,702,370</td>
<td>12,801,989</td>
<td>12,803,100</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,952,567</td>
<td>1,059,361</td>
<td>1,059,400</td>
</tr>
<tr>
<td>South Carolina</td>
<td>4,629,364</td>
<td>5,148,714</td>
<td>5,213,000</td>
</tr>
<tr>
<td>South Dakota</td>
<td>814,190</td>
<td>881,659</td>
<td>891,700</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,346,105</td>
<td>6,829,174</td>
<td>6,886,700</td>
</tr>
<tr>
<td>Texas</td>
<td>25,145,561</td>
<td>28,995,881</td>
<td>29,432,600</td>
</tr>
<tr>
<td>Utah</td>
<td>2,763,885</td>
<td>3,205,958</td>
<td>3,259,800</td>
</tr>
<tr>
<td>Vermont</td>
<td>625,741</td>
<td>623,989</td>
<td>624,100</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,001,024</td>
<td>8,535,519</td>
<td>8,570,600</td>
</tr>
<tr>
<td>Washington</td>
<td>6,724,540</td>
<td>7,614,893</td>
<td>7,707,400</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,852,994</td>
<td>1,792,147</td>
<td>1,780,000</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,866,986</td>
<td>5,822,434</td>
<td>5,836,800</td>
</tr>
<tr>
<td>Wyoming</td>
<td>563,626</td>
<td>578,759</td>
<td>578,700</td>
</tr>
</tbody>
</table>

III. Estimating the Overseas Federal Population Allocated to each State

20. The population estimates above include all people living in the United States. However, the populations used for apportionment also include overseas federal employees and their
dependents. Thus, it is necessary to estimate how overseas federal employees and dependents would be allocated for purposes of apportionment.

21. In the 2010 Census, the overseas military population were generally allocated to their “home of record” (the address provided when the service member entered the military) for purposes of apportionment. For the 2020 Census, however, all overseas federal personnel will be counted at their usual residential address in the United States. In other words, military personnel will typically be counted as residing in or near the domestic base where they are stationed. Unfortunately, there is no currently available public estimate of how these overseas personnel will be allocated to individual states. The Census Bureau has stated that it plans to count federal personnel living outside the United States, and their dependents living with them outside the United States, using administrative data provided by the Department of Defense and the Department of Homeland Security.

22. I used the following process to estimate the number of overseas federal population that will be allocated to each state for apportionment:

- First, I estimated the number of military personnel overseas in each branch using data from the Department of Defense from March, 2020.
- Second, I allocated these personnel to each state in proportion to the number of service members in each branch based in each state. This approach implicitly assumes that each

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6 “Overseas” is defined as anywhere outside the 50 U.S. States and the District of Columbia.
8 See https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/.
10 I used the spreadsheet DMDC_Website_Location_Report_2003.xlsx that is available from https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp.
member of the military has an equal probability of being assigned abroad. While this is clearly a simplification, I believe it is the most reasonable analytical approach with currently available data.

- Third, I assumed that military personnel have the same number of dependents (1.44) as they did in the 2010 Census.\textsuperscript{12}

- Finally, I assumed that the overseas federal civilian population is the same as in 2010 (39,674). Since the majority of overseas federal civilian employees are with the State Department,\textsuperscript{13} I assume these are all headquarters staff that work in Washington DC. I use ACS Commuting Flows from the Census to allocate them between the District of Columbia, Virginia, and Maryland.\textsuperscript{14} I also assumed that these civilian employees each have 1.44 dependents.

- Of course, this estimation method has considerable uncertainty. So I assumed that there is a standard error associated with my estimates of the overseas federal population for each state that is equal to 10\% of the size of the estimates.

23. Based on this methodology, I estimate that there are about 230,000 overseas federal personnel. Including dependents, I estimate there are about 561,000 federal employees and dependents overseas population will be included for purposes of apportionment for the 2020 Census. Table 3 shows the state-by-state results. A copy of Table 3 is provided in Appendix

\textsuperscript{12} I used the spreadsheet DMDC_Website_Location_Report_2003.xlsx that is available from https://www.dmdec.osd.mil/appj/dwp/dwp_reports.jsp.
\textsuperscript{13} I used the “2010 Census Federally Affiliated Overseas Count Operation Assessment Report” that is available at https://www.census.gov/2010census/pdf/2010_Census_Federally_Affiliated_Overseas_Count_Operation_Assessment.pdf.
\textsuperscript{14} 98\% of people that work in Washington DC live in Maryland, Virginia, or Washington, DC. See https://www.census.gov/data/tables/2015/demo/metro-micro/commuting-flows-2015.html.
A to this Declaration. My estimates indicate that California, North Carolina, Texas, and Virginia have the largest overseas federal populations.\textsuperscript{15} It is important to note that the federal overseas population is down by nearly 50% since the 2010 Census.\textsuperscript{16} This likely reflects the reduction in the nation’s military deployments in conflict areas over the past decade.\textsuperscript{17}

IV. Estimating the Number of Undocumented Immigrants in Each State

24. The President’s Memorandum charges the Secretary of Commerce to “exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”\textsuperscript{18} In order to assess the impact of this memorandum, we next need to estimate the number of undocumented immigrants in each state.

25. There is no official estimate from the Census Bureau or any other federal government agency of the number of undocumented immigrants in each state that would be affected by the President’s memorandum. The most commonly used estimates of the number of undocumented people have been developed by the Pew Research Center.\textsuperscript{19} There are hundreds of citations in Google Scholar for Pew’s estimates of the number of undocumented immigrants in the United States. As a result, I use these estimates in my main analysis. However later, I also examine the estimates of the number of undocumented immigrants from a number of other organizations that use a variety of slightly different methodologies.

\textsuperscript{15} These estimates seem to be in-line with discussions in news coverage of apportionment. See https://www.rollingcall.com/2020/02/26/census-troop-counting-rules-could-tip-congressional-balance/.
\textsuperscript{16} I use information on these populations from the 2010 apportionment available at https://www.census.gov/data/tables/2010/dec/2010-apportionment-data.html.
\textsuperscript{17} See Pew’s report on the number of overseas military personnel at https://www.pewresearch.org/fact-tank/2017/08/22/us-active-duty-military-presence-overseas-is-at-its-smallest-in-decades/.
\textsuperscript{18} See https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/.
Each of these analyses yields substantively similar conclusion as my main analysis using Pew’s data.

26. Pew estimates the U.S. unauthorized immigrant population from 1995-2017 in each state based on a residual estimation methodology that compares a demographic estimate of the number of immigrants residing legally in the country with the total number of immigrants as measured by either the American Community Survey (ACS) or the March Supplement to the Current Population Survey (CPS).\textsuperscript{20} The difference is assumed to be the number of unauthorized immigrants in the survey, a number that later is adjusted for omissions from the survey (see below). The basic estimate is:

\[
\text{Unauthorized Immigrants (U) = Survey, Total Foreign Born (F) – Estimated Lawful Immigrant Population (L)}
\]

27. The lawful resident immigrant population was estimated by applying demographic methods to counts of lawful admissions covering the period since 1980 obtained from the Department of Homeland Security’s Office of Immigration Statistics\textsuperscript{21} and its predecessor at the Immigration and Naturalization Service, with projections to current years, when necessary. Initial estimates were calculated separately for age-gender groups in six states (California, Florida, Illinois, New Jersey, New York and Texas) and the balance of the country. This residual method has been used in a wide variety of government reports and peer reviewed articles (e.g., Baker 2018; Warren and Warren 2013; Passel 2016).

28. The overall estimates for unauthorized immigrants built on these residuals by adjusting for survey omissions in these six states and the balance of the country, subdivided for Mexican immigrants and other groups of immigrants (balance of Latin America, South and East Asia,

\textsuperscript{20} The next few paragraphs of this section are adapted from Pew’s discussion of their methodology at https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigration-estimate-methodology/.
\textsuperscript{21} See https://www.dhs.gov/immigration-statistics/yearbook/2016/.
rest of world) depending on sample size and state. Once the residual estimates were produced, Pew assigned individual foreign-born respondents in the survey a specific status (one option being unauthorized immigrant) based on the individual’s demographic, social, economic, geographic and family characteristics in numbers that agree with the initial residual estimates for the estimated lawful immigrant and unauthorized immigrant populations in the survey. A last step in the weighting-estimation process involves developing state-level estimates that take into account trends over time in the estimates.

29. Overall, Pew estimates there were about 10,481,000 undocumented immigrants in the United States in 2017. They estimate that the states with the most undocumented immigrants are California, Texas, Florida, New York, and New Jersey. The states with the fewest undocumented immigrants are Maine, Montana, Vermont, and West Virginia.

30. Of course, Pew’s estimation process has substantial uncertainties inherent in it. First, there is no way to know that individual respondents to the ACS and CPS are undocumented immigrants. Pew estimates undocumented status based on a variety of pieces of information. Second, the ACS and CPS are themselves surveys, subject to sampling error. There could also be misreporting of country of birth on the ACS and/or unit non response by undocumented immigrants (Brown et al. 2018). In order to characterize these uncertainties, Pew provides a 90% confidence interval for their estimates of the number of undocumented people in each state.

---

22 These estimates seem plausible since the Department of Homeland Security estimated there were 12 million undocumented immigrants in the country in January 2015 (Baker 2018). They are also similar to estimates of the number of undocumented immigrants developed by other think tanks (see below).  
31. Lastly, Pew’s data of the number of undocumented immigrants in each state between 1995-2017 need to be projected 3 years forward to 2020. To determine how to forecast the number of undocumented immigrants in each state, I compared the same four modeling strategies that I discussed earlier for the state population projections. For each method, I used data through 2014 to evaluate its performance at predicting the number of undocumented immigrants three years forward in 2017.

32. All of the models generate significant levels of error compared to the population forecasting validation shown above in Table 4. However, the state space model (4) and a linear time trend (2) using the previous four years of data perform somewhat better than the other models. In my main analysis, I use the state space model to project the number of undocumented immigrants in 2020. Moreover, I ensured that the state space model estimates fully incorporate the uncertainty in Pew’s estimates in the number of undocumented immigrants (see Treier and Jackman 2008; Caughey and Warshaw 2018). I checked the robustness of my analysis by showing that I reach similar substantive conclusions using the linear time trend model (see Additional Scenario #7).

<table>
<thead>
<tr>
<th>Model</th>
<th>ME</th>
<th>RMSE</th>
<th>MAE</th>
<th>MPE</th>
<th>MAPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1): Linear model (decade)</td>
<td>-21,908.25</td>
<td>90,634.40</td>
<td>31,639.51</td>
<td>-3.34</td>
<td>14.56</td>
</tr>
<tr>
<td>(2): Linear model (4 years)</td>
<td>-10,944.23</td>
<td>50,403.96</td>
<td>25,971.15</td>
<td>-3.95</td>
<td>17.59</td>
</tr>
<tr>
<td>(3): Delta in last two years</td>
<td>-12,884.62</td>
<td>58,005.64</td>
<td>28,961.54</td>
<td>-0.40</td>
<td>19.24</td>
</tr>
<tr>
<td>(4): State space model</td>
<td>-13,688.05</td>
<td>55,204.49</td>
<td>22,794.32</td>
<td>-3.46</td>
<td>15.48</td>
</tr>
</tbody>
</table>

Pew’s data are available at https://www.pewresearch.org/hispanic/interactives/unauthorized-trends/.

Specifically, I used the following approach. First, I constructed 100 simulations of the number of undocumented immigrants in each state from 2005-2017 using Pew’s estimates and the associated confidence intervals. For each simulation, I used the state space model to forecast each state’s number of undocumented immigrants in 2020. I then constructed a bootstrap sample of the forecast of undocumented immigrants in each state based on the mean and confidence intervals in the state space model’s population forecast. Finally, I estimated the number of undocumented immigrants in each state in 2020, and its associated standard error to represent uncertainty, based on these simulations.
33. Table 5 shows the estimates of the number of undocumented immigrants in each state (standard errors that represent uncertainty are in parentheses). A copy of Table 5 is provided in Appendix A to this Declaration. It shows that California, Florida, Illinois, New Jersey, New York, and Texas each have at least 400,000 undocumented immigrants.\(^{26}\)

34. These final estimates take into account the uncertainty in Pew’s initial estimates of the number of undocumented immigrants from 2005-2017. They also take into account the uncertainty in projecting the trends in each state from 2017-2020. In general, the additional uncertainty associated with forecasting to 2020 approximately triples the size of Pew’s confidence intervals for their estimates of undocumented immigrants in each state in 2017.

A. Incorporating Uncertainty

35. All modeled estimates have uncertainty. My analyses uses bootstrap simulations to incorporate three sources of uncertainty in all my models:

- The uncertainty in the population forecasts in every state for 2020.
- The uncertainty in the estimates of the overseas federal employees and dependents, and how they are allocated to states.
- The uncertainty in the estimate of the number of undocumented immigrants in each state in 2020.

V. State-level Effects of Excluding Undocumented Immigrants from Apportionment Base

36. Now that we have calculated population projections and estimates of the number of undocumented immigrants in each state, we are in a position to estimate state-level impacts.

\(^{26}\) These state-by-state figures are similar to those in a 2015 Department of Homeland Security report, which provided estimates of the number of undocumented immigrants in several states (Baker 2018).
A. Effect on State Population Enumerations

37. To begin, I analyzed the effects on the enumerated population of each state in 2020. The results are shown in Table 6. Column (1) of Table 6 shows the baseline apportionment population projections for each state (including the overseas military population, federal employees, and dependents). Column (2) shows my estimate of the number of undocumented immigrants in each state in 2020. Column (3) shows my estimate of the percentage of the apportionment population in each state that consists of undocumented immigrants.
Table 6: Estimates of Effect on State Population Enumerations in 2020

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline 2020 Apportionment Population</th>
<th>Undocumented Immigrants (Pew)</th>
<th>Undocumented Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>4,926,400</td>
<td>71,900</td>
<td>1.5%</td>
</tr>
<tr>
<td>Alaska</td>
<td>735,700</td>
<td>8,400</td>
<td>1.1%</td>
</tr>
<tr>
<td>Arizona</td>
<td>7,410,500</td>
<td>274,400</td>
<td>3.7%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>3,028,800</td>
<td>65,300</td>
<td>2.2%</td>
</tr>
<tr>
<td>California</td>
<td>39,799,200</td>
<td>2,066,000</td>
<td>5.2%</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,846,100</td>
<td>190,100</td>
<td>3.3%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,560,100</td>
<td>148,300</td>
<td>4.2%</td>
</tr>
<tr>
<td>Delaware</td>
<td>984,300</td>
<td>29,700</td>
<td>3%</td>
</tr>
<tr>
<td>Florida</td>
<td>21,736,600</td>
<td>796,000</td>
<td>3.7%</td>
</tr>
<tr>
<td>Georgia</td>
<td>10,749,300</td>
<td>375,700</td>
<td>3.5%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,428,900</td>
<td>43,800</td>
<td>3.1%</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,825,700</td>
<td>38,300</td>
<td>2.1%</td>
</tr>
<tr>
<td>Illinois</td>
<td>12,633,400</td>
<td>409,300</td>
<td>3.2%</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,773,300</td>
<td>103,200</td>
<td>1.5%</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,169,100</td>
<td>51,000</td>
<td>1.6%</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,924,300</td>
<td>81,300</td>
<td>2.8%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,485,300</td>
<td>44,700</td>
<td>1%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>4,657,900</td>
<td>100,100</td>
<td>2.1%</td>
</tr>
<tr>
<td>Maine</td>
<td>1,350,400</td>
<td>4,000</td>
<td>0.3%</td>
</tr>
<tr>
<td>Maryland</td>
<td>6,105,000</td>
<td>261,600</td>
<td>4.3%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,907,400</td>
<td>231,900</td>
<td>3.4%</td>
</tr>
<tr>
<td>Michigan</td>
<td>9,989,700</td>
<td>103,800</td>
<td>1%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>5,677,700</td>
<td>86,800</td>
<td>1.5%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,979,500</td>
<td>23,000</td>
<td>0.8%</td>
</tr>
<tr>
<td>Missouri</td>
<td>6,160,800</td>
<td>63,100</td>
<td>1%</td>
</tr>
<tr>
<td>Montana</td>
<td>1,079,300</td>
<td>4,400</td>
<td>0.4%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,950,200</td>
<td>55,800</td>
<td>2.9%</td>
</tr>
<tr>
<td>Nevada</td>
<td>3,137,300</td>
<td>211,200</td>
<td>6.7%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,363,700</td>
<td>10,400</td>
<td>0.8%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>8,894,400</td>
<td>493,200</td>
<td>5.5%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2,107,400</td>
<td>59,200</td>
<td>2.8%</td>
</tr>
<tr>
<td>New York</td>
<td>19,386,100</td>
<td>679,800</td>
<td>3.5%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>10,639,700</td>
<td>330,800</td>
<td>3.1%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>770,300</td>
<td>5,900</td>
<td>0.8%</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,715,100</td>
<td>94,400</td>
<td>0.8%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,981,800</td>
<td>90,100</td>
<td>2.3%</td>
</tr>
<tr>
<td>Oregon</td>
<td>4,261,500</td>
<td>109,100</td>
<td>2.6%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>12,809,600</td>
<td>217,800</td>
<td>1.7%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,061,000</td>
<td>32,900</td>
<td>3.1%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>5,229,800</td>
<td>101,500</td>
<td>1.9%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>893,800</td>
<td>5,700</td>
<td>0.6%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,888,900</td>
<td>139,200</td>
<td>2%</td>
</tr>
<tr>
<td>Texas</td>
<td>29,479,700</td>
<td>1,649,100</td>
<td>5.6%</td>
</tr>
<tr>
<td>Utah</td>
<td>3,263,900</td>
<td>106,100</td>
<td>3.3%</td>
</tr>
<tr>
<td>Vermont</td>
<td>624,400</td>
<td>3,500</td>
<td>0.6%</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,639,600</td>
<td>297,600</td>
<td>3.4%</td>
</tr>
<tr>
<td>Washington</td>
<td>7,730,300</td>
<td>274,400</td>
<td>3.5%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,780,600</td>
<td>4,300</td>
<td>0.2%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,838,300</td>
<td>72,900</td>
<td>1.2%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>580,300</td>
<td>4,800</td>
<td>0.8%</td>
</tr>
</tbody>
</table>

38. Overall, Table 6 indicates that each state would be affected by an exclusion of undocumented immigrants. Figure 1 shows a map of the percentage of people in each state that would be dropped from the Census apportionment base if undocumented immigrants are excluded.
Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Maryland, Massachusetts, Nevada, New Jersey, New York, North Carolina, Rhode Island, Texas, Utah, Virginia, and Washington would all lose at least 3% of their population from their apportionment base. Thus, they could be at risk of losing a congressional seat during apportionment.

![Change in Population Due to Excluding Undocumented Immigrants](image.png)

**Figure 1: Effects on State Populations**

**B. Effect on Apportionment**

39. Next, I used the population projections and estimates of undocumented immigrants in each state to examine the likely effect of excluding undocumented immigrants from the Census count on the apportionment of seats in the House of Representatives. Article 1, Section 2, of the United States Constitution states: “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.”

40. Since the first census in 1790, five methods of apportionment have been used. The government currently uses a method called the Method of Equal Proportions, which was
adopted by Congress in 1941 following the census of 1940. This method first assigns each state one seat. Then, additional seats in the House of Representatives are assigned to a “priority” value. The priority value for each seat is determined by multiplying the population of a state by a “multiplier.” The multiplier is \(1/\sqrt{n(n-1)}\). So the formula for calculating the multiplier for the second seat is \(1/\sqrt{2(2-1)} = 0.70710678\), the formula for calculating the multiplier for the third seat is \(1/\sqrt{3(3-1)} = 0.40824829\), and so on. The Census provides an official table of these multipliers, which I used for my calculations.\(^{27}\)

41. The next step is to multiply the multipliers by the population total for each of the 50 states (the District of Columbia is not included in these calculations). The resulting numbers are the priority values. Multipliers and priority values must be calculated for the largest number of seats that could be assigned to a state. In my analysis, I calculated the priority values for each state for seats 2 through 60. The next step is to rank and number the resulting priority values starting with seat 51 until all 435 seats have been assigned. The final step is to tally the number of seats for each state to arrive at the total number of seats in the House of Representatives apportioned to each state.

42. I conducted these steps for 1,000 simulations of the population projections and undocumented populations in each state. Table 7 shows the results.\(^{28}\) Column (1) shows the rounded, baseline projections for the number of seats that each state is likely to receive in 2020 if there is a full population enumeration. Column (2) shows the rounded projections for the number of seats that each state is likely to receive in 2020 if undocumented immigrants are excluded from the apportionment base. Column (3) shows the rounded, average change in

\(^{27}\) See https://www.census.gov/population/apportionment/about/computing.html.
\(^{28}\) Table 12 in the Appendix A shows unrounded numbers for this table.
the number of congressional seats each state would gain or lose due to the exclusion of undocumented immigrants. Finally, column (4) shows the probability that each state would lose at least one seat.

Table 7: Estimates of Effect of Excluding Undocumented Immigrants on Congressional Apportionment

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Seats (1)</th>
<th>Seats after Exclusion (2)</th>
<th>Seat Delta (3)</th>
<th>Prob. Seat Loss (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>6</td>
<td>7</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Alaska</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Arizona</td>
<td>10</td>
<td>10</td>
<td>-0</td>
<td>0.3%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>California</td>
<td>52</td>
<td>51</td>
<td>-1</td>
<td>72.1%</td>
</tr>
<tr>
<td>Colorado</td>
<td>8</td>
<td>8</td>
<td>-0</td>
<td>0.3%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>5</td>
<td>5</td>
<td>-0</td>
<td>3.4%</td>
</tr>
<tr>
<td>Delaware</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Florida</td>
<td>29</td>
<td>28</td>
<td>-0</td>
<td>38.4%</td>
</tr>
<tr>
<td>Georgia</td>
<td>14</td>
<td>14</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Idaho</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Illinois</td>
<td>17</td>
<td>17</td>
<td>-0</td>
<td>10.1%</td>
</tr>
<tr>
<td>Indiana</td>
<td>9</td>
<td>9</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Iowa</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Kansas</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Maine</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Maryland</td>
<td>8</td>
<td>8</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>9</td>
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<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Michigan</td>
<td>13</td>
<td>13</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>7</td>
<td>8</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Missouri</td>
<td>8</td>
<td>8</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Montana</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Nevada</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>12</td>
<td>11</td>
<td>-1</td>
<td>69.8%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>New York</td>
<td>26</td>
<td>25</td>
<td>-0</td>
<td>18.9%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>14</td>
<td>14</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Ohio</td>
<td>15</td>
<td>16</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Oregon</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>17</td>
<td>17</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>9</td>
<td>9</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Texas</td>
<td>39</td>
<td>38</td>
<td>-1</td>
<td>98.3%</td>
</tr>
<tr>
<td>Utah</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Vermont</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Virginia</td>
<td>11</td>
<td>11</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Washington</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>8</td>
<td>8</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
</tbody>
</table>

43. My analysis indicates that there is a 98% chance that Texas would lose a Congressional seat if undocumented immigrants are excluded from the apportionment base. It loses a seat in
nearly every single one of my simulations. In addition, my analysis indicates that there is a 72% chance that California would lose a Congressional seat. On average, it loses .83 seats across my simulations (i.e., in most simulations it loses 1 seat, in some it loses 2 seats, and in some it loses zero seats). My analysis also indicates that there is a 70% chance that New Jersey would lose a Congressional seat if undocumented immigrants are excluded from the apportionment base. There are smaller chances that several other states could lose seats, including Connecticut, Florida, Illinois, and New York.²⁹

44. The states that lose seats in Congress would likely see decreases in their share of federal outlays due to their reduction in voting power in Congress. A number of economics and political science studies have found that distributive spending is allocated in part based on the number of seats that a geographic area has in Congress (e.g., Ansolabehere, Gerber, and Snyder 2002; Cascio and Washington 2014; Elis, Malhotra, and Meredith 2009). For instance, Elis, Malhotra, and Meredith (2009) find that a 10% increase in a state’s share of the U.S. House of Representatives equates to a 0.7% increase in a state’s share of the federal budget. This implies that an extra congressional seat can gain a state as much as $100 per capita in additional federal funding (360).

VI. Robustness Checks

45. It is always helpful to evaluate the robustness of any analysis to alternative modeling assumptions. In this section, I undertake four different robustness checks. First, I evaluate the impact of using alternative sources of information on the number of undocumented immigrants in each state on my analysis. Second, I evaluate the impact of alternative population forecasting methodologies. Third, I evaluate whether my conclusions would differ

²⁹ Note the rounded numbers in Table 7 imply that Florida and New York would lose seats. The unrounded numbers in the Appendix (Table 12), however, show that there is a less 50% chance that they would lose a seat.
if former Census Director John H. Thompson is correct that the exclusion of undocumented immigrants from the apportionment base would cause an undercount of immigrant populations. I used the foreign-born population in the United States to evaluate the impact of an undercount of immigrants. Fourth, I compare my results to the conclusions of various organizations’ reports on the impact of excluding undocumented immigrants on apportionment.

46. Overall, the analysis in this section shows that my conclusions are robust to a wide variety of alternative data sources and modeling strategies. They are also consistent with the findings of other organizations and analysts. All of these alternative data sources, methodologies, and third-party reports indicate that Texas would lose a congressional seat if undocumented immigrants are excluded from the apportionment base. They nearly all indicate that California would lose a seat. They also indicate that some mix of Florida, New Jersey, and New York could lose seats.

A. Robustness to Alternative Estimates of the Number of Undocumented Immigrants

47. Due to the substantial uncertainties in Pew’s estimates of the number of undocumented people in each state, I conducted a canvass of alternative sources of estimates for the undocumented population. I identified several alternative sources of data:

- Additional Scenario 1: The Migration Policy Institution (MPI) has developed estimates of the number of undocumented people in each state based on the U.S. Census Bureau’s 2012-16 American Community Survey data.\(^{30}\) They estimate there are about 11,300,000 undocumented immigrants in the United States. Their national estimate is very similar to

Pew’s estimate.\textsuperscript{31} However, their estimates differ more in some states. For instance, MPI estimates that there are about 50% more undocumented immigrants in California than Pew estimates. They do not provide measures of uncertainty for their estimates so I assume that each state has a standard error that is 10% of the state’s point estimate.

- **Additional Scenario 2:** The Center for Migration Studies (CMS) has developed estimates of the number of undocumented people in each state in 2018.\textsuperscript{32} Their methodology is described in two articles that were published in the *Journal of Migration and Security* (Warren 2014, 2019). They estimate there are about 10,543,500 undocumented immigrants in the United States, which is nearly identical to Pew’s national estimate.\textsuperscript{33} They do not provide measures of uncertainty for their estimates so I assume that each state has a standard error that is 10% of the state’s point estimate.

- **Additional Scenario 3:** Third, I examine a scenario where the national estimates of the number of undocumented immigrants are somewhat too high. To do this, I simply decrease all of my main estimates using Pew’s data of the number of undocumented immigrants in each state by 20% to examine the effects on apportionment if the Pew, MPI, and CMS estimates of the total number of undocumented immigrants in the United States are all too high.

- **Additional Scenario 4:** Fourth, I examine a scenario where the national estimates of the number of undocumented immigrants are much too high. To do this, I decrease all of my main estimates using Pew’s data on the number of undocumented immigrants in each state by 40%.

\textsuperscript{31} MPI’s national estimate is about 8% higher than Pew’s estimate.
\textsuperscript{32} Their estimates are available at http://data.cmsny.org/state.html.
\textsuperscript{33} CMS’s national estimate is about 0.5% higher than Pew’s estimate.
• **Additional Scenario 5:** Finally, I examine a scenario where the national estimates of the number of undocumented immigrants are much too low. To do this, I increase all of my main estimates using Pew’s data on the number of undocumented immigrants in each state by 50%.

Table 8: Comparison of My Findings with Analyses Based on Alternative Estimates of the Number of Undocumented Immigrants. The table shows the probability that various states would lose seats in each scenario.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Scenario #1 MPI</th>
<th>Scenario #2 CMS</th>
<th>Scenario #3 Pew (80%)</th>
<th>Scenario #4 Pew (60%)</th>
<th>Scenario #5 Pew (150%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>72%</td>
<td>100%</td>
<td>93%</td>
<td>49%</td>
<td>36%</td>
<td>92%</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>0%</td>
<td>26%</td>
<td>39%</td>
<td>48%</td>
<td>60%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td>80%</td>
<td>23%</td>
<td>57%</td>
<td>36%</td>
<td>60%</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td>52%</td>
<td>19%</td>
<td>17%</td>
<td>28%</td>
<td>24%</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>96%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>99.5%</td>
</tr>
</tbody>
</table>

48. Table 8 compares my main findings (the “Main Analysis” column) to analyses based on alternative estimates of the number of undocumented immigrants. It shows each of the states that at least one scenario (including my main analysis) finds has a 33% chance or more of losing a seat if undocumented immigrants are excluded from the apportionment base. For each of these states, it shows the probability that my analysis indicates the state would lose a seat and the probability it would lose a seat under the various alternative scenarios.

49. Overall, all of these analyses yield substantively similar results as my main analysis. In each scenario, Texas has more than 95% chance of losing a congressional seat if undocumented immigrants are excluded from the apportionment base. Moreover, in all of the additional scenarios but one, California has about a 50% chance or more of losing a congressional seat. There is also a significant chance that Florida, New Jersey, and New York could lose a seat in most of the scenarios.
B. Robustness to Alternative Modeling Approaches

50. As I discussed above, there are a number of alternative approaches we could use to project the 2020 populations and estimates of undocumented immigrants in each state. In this section, I discuss alternative forecasting methodologies for each of these:

- **Additional Scenario 6**: For the population forecasts of each state in 2020, I use a forecasting methodology based on the deltas in the two most recent years. In Table 1, I found that this approach was roughly equivalent to the state space model. The state space model is preferable because it is more flexible and provides a measure of uncertainty.

- **Additional Scenario 7**: For the forecasts of the number of undocumented immigrants in each state in 2020 based on Pew’s data, I use a methodology based on a linear time trends over the four most recent years. In Table 4, I found that this approach performed nearly as well as the state space model. The state space model is preferable because it is more flexible and requires fewer assumptions about future time trends.

51. Both of these alternative-modeling strategies produce similar results as my main results (Table 9). In each scenario, Texas is nearly certain to lose a seat. California and New Jersey are likely to lose seats in each scenario. Florida and New York also have significant chances of losing a seat in each scenario.

Table 9: Comparison of My Findings with Alternative Modeling Strategies. The table shows the probability that various states would lose seats in each scenario.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Scenario #6 Alternative Population Forecasts</th>
<th>Scenario #7 Alternative Forecasts of Undoc. Imm.</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>72%</td>
<td>84%</td>
<td>75%</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>45%</td>
<td>96%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td>73%</td>
<td>51%</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td>58%</td>
<td>30%</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>99.5%</td>
<td>100%</td>
</tr>
</tbody>
</table>
C. Robustness to a Possible Census Undercount

52. The testimony of the former U.S. Census Bureau Director, John H. Thompson, to Congress on July 29, 2020 raises the possibility that the president’s memorandum could lead to nonresponse to the Census by hard-to-count populations, including noncitizens and immigrants.\(^{34}\) This, in turn, could lead the Census to undercount foreign-born people. It is possible that planned reductions in door-to-door canvassing due to COVID-19 could lead to a further undercount of foreign-born people.\(^{35}\)

53. In this section, I examine whether an undercount of foreign-born people would affect my findings about the effects of excluding undocumented immigrants from the apportionment base. I use my estimates from *New York Immigration Coalition et al v. United States Department of Commerce*, No. 18-CV-2921-JMF (S.D. NY) of the number of foreign-born people in each state. I then assess the consequences of a scenario with a 10% undercount of foreign-born people using the same methodology that I use in my main analyses. I am adopting my declaration provided in that matter by reference and include a copy in Appendix B.

Table 10: Comparison of My Findings with Analyses that Assume 10% Undercount of Foreign-born People. The table shows the probability that various states would lose seats in each scenario.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Scenario #8 Undercount</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>72%</td>
<td>67%</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>0%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td>93%</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td>0%</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>76%</td>
</tr>
</tbody>
</table>


54. Table 10 compares my main findings to the results of this undercount scenario. It shows each state that my analysis indicates has a significant chance of losing a seat if undocumented immigrants are excluded from the apportionment base. Once again, in this scenario Texas is likely to lose a congressional seat if undocumented immigrants are excluded from the apportionment base. California and New Jersey are also likely to lose congressional seats.

D. Comparison with Other Organizations’ Analyses

55. There have been a number of studies and reports by various organizations estimating how excluding undocumented immigrants would affect apportionment. These include:

- The Pew Research Center
- The Center for Immigration Studies (CIS)
- The Center for Politics at the University of Virginia (CfP)
- A peer reviewed academic study published in 2019 (Baumle and Poston Jr 2019).

Table 11: Comparison of My Findings with Other Studies. The table shows whether each study finds various states would lose a seat.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis (1)</th>
<th>Pew (2)</th>
<th>CIS (3)</th>
<th>CfP (4)</th>
<th>Academic Study (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>0.3%</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>California</td>
<td>72%</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td></td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

56. Table 11 compares my main findings to the results of these studies. It shows each state that at least one study finds would lose a seat if undocumented immigrants are excluded from the apportionment base. For each of these states, it shows the probability that my analysis

---

indicates the state would lose a seat and an X for each of the other studies that shows it would lose a seat.

57. Overall, each of these four other studies reaches substantively similar conclusions as the ones in this Declaration. They all conclude that California and Texas would lose congressional seats if undocumented immigrants are excluded from the apportionment base. They also find a mix of other states that might lose seats, including Arizona, Florida, New Jersey, and New York.

VII. Conclusion

58. Based on the analyses in this Declaration, I conclude that failing to count undocumented immigrants for apportionment is likely to have effects on the population counts of each state, and the apportionment of representatives across states for the U.S. House. Texas is nearly certain to lose a congressional seat. California and New Jersey are very likely to each lose a congressional seat. Other states, such as Florida and New York could lose seats as well. This would affect political representation in Congress. For instance, it is likely to affect the distribution of federal funds to each state, and the general power that each state holds in Congress.
I reserve the right to amend or supplement my opinions if additional information or materials become available. I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct to the best of my knowledge.

Executed on August 7, 2020 in Bethesda, Maryland.

[Signature]

Christopher Warshaw
References


**Appendix A**

1. **Estimates of Overseas Federal Personnel**


<table>
<thead>
<tr>
<th>State</th>
<th>Overseas Personnel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>7,700</td>
</tr>
<tr>
<td>Alaska</td>
<td>7,500</td>
</tr>
<tr>
<td>Arizona</td>
<td>11,000</td>
</tr>
<tr>
<td>Arkansas</td>
<td>2,900</td>
</tr>
<tr>
<td>California</td>
<td>74,900</td>
</tr>
<tr>
<td>Colorado</td>
<td>14,200</td>
</tr>
<tr>
<td>Connecticut</td>
<td>2,600</td>
</tr>
<tr>
<td>Delaware</td>
<td>2,100</td>
</tr>
<tr>
<td>Florida</td>
<td>29,500</td>
</tr>
<tr>
<td>Georgia</td>
<td>26,800</td>
</tr>
<tr>
<td>Hawaii</td>
<td>17,500</td>
</tr>
<tr>
<td>Idaho</td>
<td>2,200</td>
</tr>
<tr>
<td>Illinois</td>
<td>10,300</td>
</tr>
<tr>
<td>Indiana</td>
<td>3,300</td>
</tr>
<tr>
<td>Iowa</td>
<td>900</td>
</tr>
<tr>
<td>Kansas</td>
<td>8,900</td>
</tr>
<tr>
<td>Kentucky</td>
<td>11,200</td>
</tr>
<tr>
<td>Louisiana</td>
<td>7,300</td>
</tr>
<tr>
<td>Maine</td>
<td>1,100</td>
</tr>
<tr>
<td>Maryland</td>
<td>33,600</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>2,700</td>
</tr>
<tr>
<td>Michigan</td>
<td>2,900</td>
</tr>
<tr>
<td>Minnesota</td>
<td>1,600</td>
</tr>
<tr>
<td>Mississippi</td>
<td>6,700</td>
</tr>
<tr>
<td>Missouri</td>
<td>8,400</td>
</tr>
<tr>
<td>Montana</td>
<td>2,000</td>
</tr>
<tr>
<td>Nebraska</td>
<td>3,600</td>
</tr>
<tr>
<td>Nevada</td>
<td>6,200</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>700</td>
</tr>
<tr>
<td>New Jersey</td>
<td>5,300</td>
</tr>
<tr>
<td>New Mexico</td>
<td>7,000</td>
</tr>
<tr>
<td>New York</td>
<td>9,300</td>
</tr>
<tr>
<td>North Carolina</td>
<td>44,500</td>
</tr>
<tr>
<td>North Dakota</td>
<td>4,900</td>
</tr>
<tr>
<td>Ohio</td>
<td>8,600</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>10,700</td>
</tr>
<tr>
<td>Oregon</td>
<td>1,200</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>6,900</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,700</td>
</tr>
<tr>
<td>South Carolina</td>
<td>16,400</td>
</tr>
<tr>
<td>South Dakota</td>
<td>2,000</td>
</tr>
<tr>
<td>Tennessee</td>
<td>2,600</td>
</tr>
<tr>
<td>Texas</td>
<td>51,500</td>
</tr>
<tr>
<td>Utah</td>
<td>4,200</td>
</tr>
<tr>
<td>Vermont</td>
<td>300</td>
</tr>
<tr>
<td>Virginia</td>
<td>68,800</td>
</tr>
<tr>
<td>Washington</td>
<td>23,000</td>
</tr>
<tr>
<td>West Virginia</td>
<td>700</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>1,600</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1,800</td>
</tr>
</tbody>
</table>
2. Estimates of Undocumented Immigrants

Table 5: Estimates of Undocumented Immigrants in each State in 2020. Standard errors, which represent the uncertainty in each estimate, are shown in parentheses.

<table>
<thead>
<tr>
<th>State</th>
<th>Undocumented Immigrants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>71,900 (28,800)</td>
</tr>
<tr>
<td>Alaska</td>
<td>8,400 (3,500)</td>
</tr>
<tr>
<td>Arizona</td>
<td>274,400 (56,400)</td>
</tr>
<tr>
<td>Arkansas</td>
<td>65,300 (20,400)</td>
</tr>
<tr>
<td>California</td>
<td>2,066,000 (275,700)</td>
</tr>
<tr>
<td>Colorado</td>
<td>190,100 (50,200)</td>
</tr>
<tr>
<td>Connecticut</td>
<td>148,300 (67,700)</td>
</tr>
<tr>
<td>Delaware</td>
<td>29,700 (12,100)</td>
</tr>
<tr>
<td>Florida</td>
<td>796,000 (105,300)</td>
</tr>
<tr>
<td>Georgia</td>
<td>375,700 (140,000)</td>
</tr>
<tr>
<td>Hawaii</td>
<td>43,800 (19,000)</td>
</tr>
<tr>
<td>Idaho</td>
<td>38,300 (9,400)</td>
</tr>
<tr>
<td>Illinois</td>
<td>409,300 (70,100)</td>
</tr>
<tr>
<td>Indiana</td>
<td>103,200 (48,200)</td>
</tr>
<tr>
<td>Iowa</td>
<td>51,000 (20,400)</td>
</tr>
<tr>
<td>Kansas</td>
<td>81,300 (27,900)</td>
</tr>
<tr>
<td>Kentucky</td>
<td>44,700 (20,400)</td>
</tr>
<tr>
<td>Louisiana</td>
<td>100,100 (61,500)</td>
</tr>
<tr>
<td>Maine</td>
<td>4,000 (1,900)</td>
</tr>
<tr>
<td>Maryland</td>
<td>261,600 (76,300)</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>354,900 (69,300)</td>
</tr>
<tr>
<td>Michigan</td>
<td>103,800 (37,500)</td>
</tr>
<tr>
<td>Minnesota</td>
<td>86,800 (34,200)</td>
</tr>
<tr>
<td>Mississippi</td>
<td>23,000 (11,600)</td>
</tr>
<tr>
<td>Missouri</td>
<td>63,100 (31,300)</td>
</tr>
<tr>
<td>Montana</td>
<td>4,400 (1,700)</td>
</tr>
<tr>
<td>Nebraska</td>
<td>55,800 (17,900)</td>
</tr>
<tr>
<td>Nevada</td>
<td>211,200 (31,600)</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>10,400 (4,400)</td>
</tr>
<tr>
<td>New Jersey</td>
<td>490,200 (90,000)</td>
</tr>
<tr>
<td>New Mexico</td>
<td>59,200 (16,600)</td>
</tr>
<tr>
<td>New York</td>
<td>679,800 (102,800)</td>
</tr>
<tr>
<td>North Carolina</td>
<td>330,800 (73,400)</td>
</tr>
<tr>
<td>North Dakota</td>
<td>5,900 (3,200)</td>
</tr>
<tr>
<td>Ohio</td>
<td>94,400 (43,400)</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>90,100 (30,200)</td>
</tr>
<tr>
<td>Oregon</td>
<td>109,100 (32,200)</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>217,800 (85,500)</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>32,900 (12,800)</td>
</tr>
<tr>
<td>South Carolina</td>
<td>101,500 (47,500)</td>
</tr>
<tr>
<td>South Dakota</td>
<td>5,700 (2,300)</td>
</tr>
<tr>
<td>Tennessee</td>
<td>139,200 (56,000)</td>
</tr>
<tr>
<td>Texas</td>
<td>1,649,100 (182,200)</td>
</tr>
<tr>
<td>Utah</td>
<td>106,100 (19,100)</td>
</tr>
<tr>
<td>Vermont</td>
<td>3,500 (1,600)</td>
</tr>
<tr>
<td>Virginia</td>
<td>297,600 (104,600)</td>
</tr>
<tr>
<td>Washington</td>
<td>374,400 (82,600)</td>
</tr>
<tr>
<td>West Virginia</td>
<td>4,300 (2,000)</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>72,900 (31,000)</td>
</tr>
<tr>
<td>Wyoming</td>
<td>4,800 (1,300)</td>
</tr>
</tbody>
</table>
3. Unrounded Main Results for Congressional Apportionment

Table 12: Unrounded Estimates of Excluding Undocumented Immigrants on Congressional Apportionment

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Seats</th>
<th>Seats after Exclusion</th>
<th>Seat Delta</th>
<th>Prob. Seat Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
</tr>
<tr>
<td>Alabama</td>
<td>6.46</td>
<td>7.60</td>
<td>0.54</td>
<td>0%</td>
</tr>
<tr>
<td>Alaska</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Arizona</td>
<td>10.00</td>
<td>10.00</td>
<td>-0.00</td>
<td>0.3%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>California</td>
<td>52.15</td>
<td>51.32</td>
<td>-0.83</td>
<td>72.1%</td>
</tr>
<tr>
<td>Colorado</td>
<td>8.00</td>
<td>8.00</td>
<td>-0.00</td>
<td>0.3%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>5.00</td>
<td>4.97</td>
<td>-0.03</td>
<td>3.4%</td>
</tr>
<tr>
<td>Delaware</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Florida</td>
<td>28.86</td>
<td>28.47</td>
<td>-0.38</td>
<td>38.4%</td>
</tr>
<tr>
<td>Georgia</td>
<td>14.00</td>
<td>14.02</td>
<td>0.02</td>
<td>0%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>2.00</td>
<td>2.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Idaho</td>
<td>2.00</td>
<td>2.12</td>
<td>0.12</td>
<td>0%</td>
</tr>
<tr>
<td>Illinois</td>
<td>17.00</td>
<td>16.90</td>
<td>-0.10</td>
<td>10.1%</td>
</tr>
<tr>
<td>Indiana</td>
<td>9.00</td>
<td>9.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Iowa</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Kansas</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>6.00</td>
<td>6.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>6.00</td>
<td>6.02</td>
<td>0.02</td>
<td>0%</td>
</tr>
<tr>
<td>Maine</td>
<td>2.00</td>
<td>2.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Maryland</td>
<td>8.00</td>
<td>8.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>9.00</td>
<td>9.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Michigan</td>
<td>13.00</td>
<td>13.28</td>
<td>0.28</td>
<td>0%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>7.07</td>
<td>8.00</td>
<td>0.92</td>
<td>0%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Missouri</td>
<td>8.00</td>
<td>8.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Montana</td>
<td>1.92</td>
<td>2.00</td>
<td>0.08</td>
<td>0%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>3.00</td>
<td>3.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Nevada</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>2.00</td>
<td>2.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>12.00</td>
<td>11.89</td>
<td>-0.11</td>
<td>69.2%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>3.00</td>
<td>3.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>New York</td>
<td>25.54</td>
<td>25.35</td>
<td>-0.19</td>
<td>18.9%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>14.00</td>
<td>14.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Ohio</td>
<td>15.00</td>
<td>16.00</td>
<td>1.00</td>
<td>0%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>5.00</td>
<td>5.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Oregon</td>
<td>6.00</td>
<td>6.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>17.00</td>
<td>17.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1.00</td>
<td>1.17</td>
<td>0.17</td>
<td>0%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>7.00</td>
<td>7.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>9.00</td>
<td>9.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Texas</td>
<td>38.99</td>
<td>37.93</td>
<td>-1.06</td>
<td>98.3%</td>
</tr>
<tr>
<td>Utah</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Vermont</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Virginia</td>
<td>11.00</td>
<td>11.16</td>
<td>0.16</td>
<td>0%</td>
</tr>
<tr>
<td>Washington</td>
<td>10.00</td>
<td>10.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>2.00</td>
<td>2.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>8.00</td>
<td>8.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
</tbody>
</table>
Appendix B
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NEW YORK IMMIGRATION COALITION, et. al,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF COMMERCE, et. al,

Defendant.

Civil Action No. 18-CV-2921-JMF
Hon. Jesse M. Furman

DECLARATION OF DR. CHRISTOPHER WARSHAW

I. Qualifications

1. I have been asked by counsel representing the plaintiffs in New York Immigration Coalition v. U.S. Dept of Commerce and State of New York v. U.S. Dept of Commerce to analyze relevant data and provide my expert opinions. More specifically, I have been asked: to forecast the populations of every state, county, and city in the United States in 2020; given the assumption that various demographic groups are likely to be undercounted due to the inclusion of a citizenship question on the Census, to estimate the proportion of the population that belongs to those groups; to estimate the proportion of the population in every state, county, and city in the United States that belongs to those demographic groups assumed to be likely to be undercounted in 2020 due to the inclusion of a citizenship question on the Census; to analyze the likely effects of an undercount caused by the citizenship question affecting those same demographic groups on the apportionment of representatives across states for the U.S. House of Representatives; and to examine the likely consequences of an undercount caused by the citizenship question affecting those demographic groups on the
distribution of people in urban and rural counties. My expert report is PX-32 and the errata to that report is PX-323.

2. I have been an Assistant Professor of Political Science at George Washington University since August 2017. Prior to that, I was an Associate Professor at the Massachusetts Institute of Technology from July 2016 - July 2017, and an Assistant Professor at MIT from July 2012 - July 2016.

3. My Ph.D. is in Political Science, from Stanford University, where my graduate training included courses in political science and statistics. I also have a J.D. from Stanford Law School.

4. My academic research focuses on public opinion based on surveys and census data, as well as the study of representation, elections, and polarization in American Politics. I have also taught courses on statistical analysis. My curriculum vitae is PX-323. All publications that I have authored and published appear in my curriculum vitae. My work is published or forthcoming in peer-reviewed journals such as: American Political Science Review, the American Journal of Political Sciences, the Journal of Politics, Political Analysis, Political Science Research and Methods, the British Journal of Political Science, Political Behavior, the Election Law Journal, Nature Energy, Public Choice and edited volumes from Cambridge University Press and Oxford University.

6. The opinions in this declaration are my own, and do not represent the views of
George Washington University.

7. I offer these opinions with a strong degree of professional certainty based on the knowledge I
have amassed over my education, training and experience, and through a detailed review of
the relevant academic literature.

II. Projecting Future Populations

8. The first stage of my analysis is to develop baseline projections of the population of each
state, county, and city in the country in 2020. These projections are critical to determining the
likely effects of an undercount in the Census due to the inclusion of a citizenship question. In
order to develop these estimates, I use the Census’s official estimates of the population of
each state, county, and city from 2000-2017. The Census does not provide public estimates
of each geographic unit’s populations in future years.

   A. Data

9. The Census Bureau’s Population Estimates Program (PEP) produces estimates of the
population for the United States, states, counties, cities, towns, and other geographic areas.
These aggregate estimates are based on the demographic components of population change
(births, deaths, and migration) at each level of geography.¹

10. My population projections are based on these official population estimates for each state,

11. For the state populations from 2010-2017, I used the file ‘nst-est2017-01.xlsx’ which I
obtained from https://www.census.gov/data/tables/2017/demo/pep/state-total.html. For the

¹I do not directly use the more detailed cohort-component method used by the Census for my population
projections because this information is unavailable for some geographic levels, particularly for the 2000-
2010 period. It is also unclear whether the additional complexities associated with this approach would
yield substantial gains in predictive accuracy.
populations from 2000-2009, I used the file ‘st-est00int-01.xls’ from https://www.census.gov/data/tables/ time-series/demo/popest/intercensal-2000-2010-
state.html.

12. For the county populations from 2010-2017, I used the file ‘co-est2017-alldata.csv’ from https://www.census.gov/data/tables/2017/demo/popest/counties-total.html. For the populations from 2000-2009, I used the file ‘co-est00int-tot.csv’ from https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-counties.html.


14. For the city populations from 2010-2017, I used the data in Factfinder available from https://www.census.gov/data/tables/2017/demo/popest/total-cities-and-towns.html. For the populations from 2000-2009, I used the file ‘sub-est00int.csv’ from https://www.census.gov/data/datasets/time-series/demo/popest/intercensal-2000-2010-cities-
and-towns.html.

**B. Statistical Model for Population Projections**

15. There are a number of potential options for forecasting the likely population of a geographic unit (e.g., states) in 2020. One possible forecasting option would be to allow the forecasts to increase or decrease over time, where the amount of change over time (called the drift) is set to be the average change in the historical data. See Hyndman and Athanasopoulos 2018, at 48-49. Some related methods in this family of forecasting approaches are:
a. **Linear trend between 2010-2017:** One possibility is to project forward based on the linear trend in the population estimates since the last Census (e.g., Election Data Services 2017). This approach assumes that each geographic unit’s population follows the same linear rate of change in the future that it has followed over the past decade. This approach has the benefit of using many years of data, but it could yield biased estimates if the population trends have changed over this period. I estimate linear trends using a simple linear regression model in the software program R.

b. **Linear trend between 2014-2017:** Another possibility is to project forward based on the linear trend in the population estimates over the past 4 years. This approach assumes that each geographic unit’s population follows the same linear trend in the future that it has followed over this shorter time period. This approach has the benefit of being sensitive to more recent trends, but it could be noisier than estimates based on the longer time series. That is, it could be overly sensitive to short-term trends. I estimate linear trends using a simple linear regression model in R.

c. **Change between two most recent years (i.e., 2016 to 2017):** A third possibility is to focus on the change between each geographic unit’s populations in the two most recent years, and assume that future years will follow this recent trend. This approach has the benefit of being based on the most recent changes in populations, but it could also be overly sensitive to short-term idiosyncratic trends. I estimate these short-term trends using the software program R.
16. As Hyndman and Athanasopoulos discuss, “Sometimes one of these simple methods will be the best forecasting method available; but in many cases, these methods will serve as benchmarks rather than the method of choice. That is, any forecasting methods . . . will be compared to these simple methods to ensure that the new method is better than these simple alternatives. If not, the new method is not worth considering.” *Id.* at 50.

17. I consider one more complex approach against these benchmarks, a state space model with exponential smoothing: This approach uses an exponential smoothing model that weights levels and trends to an extent determined by the data. *See* Hyndman and Athanasopoulos. This model uses all of the available data, but it gives more weight to the most recent years. I estimate the exponential smoothing model using the ets function in the forecast package in R.

C. **Validation of Population Projections**

18. The accuracy of forecasting models can only be determined by considering how well a given model performs on new data that were not used when fitting the original model. *Id.* at 62. In order to choose the best model for this analysis, I evaluated each model using two benchmarks that are similar to the challenge of forecasting the 2020 populations. First, I forecasted the Census 2010 population in each state based on 2000-2007 population estimates data. Second, I forecasted the 2017 population estimates in each state based on 2007-2014 population data. For each analysis, I used the following evaluation metrics. *Id.* at 64-65.

---

2 For my state-level population projections, I used the default parameters for the ets function in R, which allowed the function to choose the exponential smoothing state space model that best fit the data in each state. The best model was usually an ‘MAN’ or ‘AAN’ model. For the population projections for cities and counties, I estimated an ‘MAN’ state space model using the ets function. The details of the state space model specification, however, do not affect any of my substantive conclusions. All of the state space models yield very similar results.
a. The mean error across states: This helps assess whether a given metric has a systematic bias in one direction or another.

b. The mean absolute error across states: This helps assess the accuracy of the forecasts.

c. The mean absolute proportional error across states: This metric also helps assess the accuracy of the forecasts. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

19. Table 1 shows the results. For the forecast of the 2010 population, the state space model performs the best, with the lowest error, the second lowest mean absolute error, and the lowest absolute proportional errors. The two linear trend models perform the worst on this forecasting exercise. For the forecast of the 2017 population, the state space model and the linear trend model using data from 2010-2017 perform the best. The state space model has slightly lower mean errors, and the two models have similar mean absolute errors and absolute proportional errors.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Linear model (full period)</td>
<td>22,800</td>
<td>62,860</td>
<td>0.013</td>
<td>7,827</td>
<td>32,003</td>
<td>0.007</td>
</tr>
<tr>
<td>Linear model (4 years)</td>
<td>27,399</td>
<td>83,306</td>
<td>0.014</td>
<td>33,470</td>
<td>39,396</td>
<td>0.014</td>
</tr>
<tr>
<td>Delta in last two years</td>
<td>20,383</td>
<td>50,663</td>
<td>0.010</td>
<td>140,472</td>
<td>142,506</td>
<td>0.020</td>
</tr>
<tr>
<td>State space model</td>
<td>5,826</td>
<td>51,033</td>
<td>0.009</td>
<td>-2,509</td>
<td>33,378</td>
<td>0.008</td>
</tr>
</tbody>
</table>

20. Overall, the state space model performs the best across the two validation exercises. It has an average absolute proportional error of only .8% and an average absolute error of only about 40,000 people in each state. As a result, I use the state space model as my main forecasting model to generate population projections. However, the results of all the analyses that follow would be substantively similar using any of these population forecasting approaches.
D. Incorporating Uncertainty

21. All modeled estimates have uncertainty. My analyses use bootstrap simulations to incorporate two sources of uncertainty in all my models:

- The uncertainty in the population forecasts in every geographic unit
- Where available, uncertainty in the undercount estimates for each group

E. Baseline estimates of 2020 populations with no undercount

22. I used the official Census population estimates to project each geographic unit’s population in 2020. Table 2 shows the population projections for a selection of cities and counties involved in lawsuits regarding the citizenship question. Table 3 shows the population projections for each state.\(^3\) All of the analysis of apportionment that follows fully incorporates the uncertainties in the projections discussed above. But for simplicity, the tables themselves do not show the uncertainties.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, AZ</td>
<td>1,466,909</td>
<td>1,626,078</td>
<td>1,698,187</td>
</tr>
<tr>
<td>Los Angeles County, CA</td>
<td>9,818,605</td>
<td>10,163,507</td>
<td>10,256,275</td>
</tr>
<tr>
<td>Monterey County, CA</td>
<td>415,052</td>
<td>437,907</td>
<td>444,016</td>
</tr>
<tr>
<td>San Francisco, CA</td>
<td>805,193</td>
<td>884,363</td>
<td>909,143</td>
</tr>
<tr>
<td>Miami, FL</td>
<td>399,457</td>
<td>463,347</td>
<td>491,295</td>
</tr>
<tr>
<td>Chicago, IL</td>
<td>2,695,620</td>
<td>2,716,450</td>
<td>2,704,974</td>
</tr>
<tr>
<td>Price Georges County, MD</td>
<td>863,420</td>
<td>912,756</td>
<td>931,412</td>
</tr>
<tr>
<td>New York NY</td>
<td>8,174,959</td>
<td>8,622,698</td>
<td>8,645,147</td>
</tr>
<tr>
<td>Columbus, OH</td>
<td>788,877</td>
<td>879,170</td>
<td>925,408</td>
</tr>
<tr>
<td>Philadelphia, PA</td>
<td>1,526,006</td>
<td>1,580,863</td>
<td>1,598,072</td>
</tr>
<tr>
<td>Pittsburgh, PA</td>
<td>305,391</td>
<td>302,407</td>
<td>297,243</td>
</tr>
<tr>
<td>Central Falls, RI</td>
<td>19,393</td>
<td>19,359</td>
<td>19,250</td>
</tr>
<tr>
<td>Providence, RI</td>
<td>177,997</td>
<td>180,393</td>
<td>181,532</td>
</tr>
<tr>
<td>Cameron County, TX</td>
<td>406,219</td>
<td>423,725</td>
<td>429,603</td>
</tr>
<tr>
<td>El Paso County, TX</td>
<td>800,647</td>
<td>840,410</td>
<td>851,600</td>
</tr>
<tr>
<td>Hidalgo County, TX</td>
<td>774,770</td>
<td>860,661</td>
<td>892,083</td>
</tr>
<tr>
<td>Seattle, WA</td>
<td>608,664</td>
<td>724,745</td>
<td>780,550</td>
</tr>
</tbody>
</table>

\(^3\) The projections shown here do not include the overseas military population, federal employees, and dependents. However, the apportionment projections in Table 5 do include these groups.
Table 3: State population projections

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>4,779,736</td>
<td>4,874,747</td>
<td>4,917,351</td>
</tr>
<tr>
<td>Alaska</td>
<td>710,231</td>
<td>739,795</td>
<td>739,473</td>
</tr>
<tr>
<td>Arizona</td>
<td>6,392,017</td>
<td>7,016,270</td>
<td>7,339,157</td>
</tr>
<tr>
<td>Arkansas</td>
<td>2,915,918</td>
<td>3,064,279</td>
<td>3,051,838</td>
</tr>
<tr>
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<td>563,626</td>
<td>579,315</td>
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III. Estimating Proportion of People Likely to be Undercounted Due to Citizenship Question

23. I was not asked to and I did not attempt to calculate the specific undercount that the addition of the citizenship question might cause. However, I evaluated a range of potential undercounts of individuals who live in households with at least one non-citizen, Hispanics or foreign-born member to demonstrate the potential effects that the addition of the citizenship question might have. Theory indicates that the addition of a citizenship question could lead to unit non-response, which occurs when a household does not respond to the Census, thereby depressing response rates among non-citizens and immigrant communities. Indeed, the Census acknowledges that it is “a reasonable inference that a question on citizenship would lead to some decline in overall self-response because it would make the 2020 Census modestly more burdensome in the direct sense, and potentially much more burdensome in the indirect sense that it would lead to a larger decline in self-response for noncitizen households.” (Abowd 2018, Section B2, p. AR 001281)

24. In my analysis, I use this information to look at three potential undercount scenarios:

   a. First, I used a 5.8% undercount estimate based on the results of the Census Bureau’s internal study of the effect of a citizenship question on self-response rates. For these analyses, I assumed that respondents that do not self-respond would not be enumerated.

   b. Second, I was asked by legal counsel to examine a potential 10% undercount for the analysis of state-level apportionment as an outer bound for the potential effects of the citizenship question on population enumerations and apportionment. This higher number reflects the Census’s finding that the differences between citizen and noncitizen
response rates and data quality are likely to be “amplified” compared to historical levels (Abowd 2018, Section B4, p. AR 001282). The Chief Scientist at the Census has acknowledged that the 5.8% estimate of the effect of the citizenship question on self-response rates is “a conservative estimate of the differential impact of the citizenship question on the self-response rates of noncitizens compared to citizens” (Abowd, J. Dep., Aug. 15, 2018, p. 202).

c. Third, I was asked by legal counsel to examine a potential 2% undercount as a lower bound for the potential effects of the citizenship question on population enumerations. My report shows the results for cities and counties, and the calculations for a 2% undercount in states are PX-324. I was not asked to and I did not do any analysis of the impact of the Census Bureau’s Non-Response Follow-Up (“NRFU”) on non-response rates, but note that the 2% scenario could be viewed as taking into account some NRFU success after an initial larger nonresponse rate.

25. The recent Census Bureau studies discussed above focus largely on the effects of a citizenship question on self-response rates in non-citizen households. As a result, the first set of analyses I conducted for each of these undercount scenarios focuses on people in households with a non-citizen in them. Beyond the effects on non-citizen households, there are also strong theoretical reasons to believe that citizen Hispanics would also be less likely to respond to the Census if a citizenship question is included. Citizen Hispanics in immigrant communities could fear deportation due to their Census responses.\(^4\) Moreover, a large

\(^4\) Title 13, U.S.C. prohibits the use of Census data for enforcement purposes, but respondents may still have this concern (Brown et al. 2018).
fraction of citizen Hispanics are likely to know non-citizens or even people that have been deported. The Census’s internal analysis has shown that citizenship-related questions are likely to be more sensitive for Hispanics (Brown et al. 2018, p. 10). Indeed, the Census has found clear evidence there are likely to be differential impacts on self-response rates among Hispanics from the addition of a citizenship question. Hispanics have a greater breakoff rate (i.e., item non-response) on the citizenship question on the American Community Survey (ACS) than other demographic groups.\(^5\) There is also evidence of growing unit nonresponse rates among Hispanics on the ACS (Brown et al. 2018, p. 12). For these reasons, I analyzed the effect of all three undercount scenarios (2%, 5.8% and 10%) on both people in non-citizen households and citizen Hispanics.

A. Undercount Estimate Based on Original Survey Experiment

26. An empirical approach to determine the potential undercount caused by a citizenship question is through a randomized control trial (RCT). The Census Bureau suggests that an appropriate RCT could compare self-response rates between households “randomly chosen to have [] a citizenship question (the treated group), and a randomly chosen set of control households [that] receive a [] Census questionnaire without citizenship” (Brown et al. 2018, p. 39)

27. We were unable to conduct a real-world RCT. A similar approach, however, is to conduct an experiment that mimics an RCT on a nationally representative survey of Americans. As part of this case, the State of New York and other plaintiffs funded a nationally representative survey that included an experiment along these lines to examine whether the inclusion of a

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\(^5\) See Abowd (2018, Section b3) and Brown et al. (2018, 7).
citizenship question would reduce the likelihood that people would complete the Census.\textsuperscript{6} This survey was designed by Dr. Matt Barreto and conducted by Pacific Market Research.\textsuperscript{7}

1. **Design of Survey**

28. This survey included a probability sample of 6,309 people, including over-samples of Hispanics, Californians, and people in several cities and counties (San Jose, CA, Cameron County, TX, and Hidalgo County, TX).\textsuperscript{8} It was conducted via phone by Pacific Research Group to both landlines and cell phones using live interviews and random digit dialing. The survey asked a number of questions about the Census and assessed reactions to the inclusion of a citizenship question. The survey did not include a question about the citizenship of respondents. But it did include a question about whether respondents were born in the United States or a foreign country.

29. In my analysis, I focus on an experiment embedded in the survey that mimics the RCT approach suggested by Brown et al. (2018). This enables us to estimate the causal effect of the citizenship question on the likelihood that various demographic subgroups will complete the Census.

30. In the experiment on our survey, the control group received a vignette stating that the government had decided not to include a citizenship question on the census, while the treatment group received a vignette stating that the government had decided to include a citizenship question on the census. Then the survey asked whether respondents would ‘participate and fill out the 2020 Census form, or not?’

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\textsuperscript{6} As part of my work as an expert in this matter, I reviewed Professor Barreto’s expert report that describes the survey methodology and his analysis of the results. However, I ran all of the analyses of the survey used in this report myself. I did not directly use any of Professor Barreto’s findings for my report.

\textsuperscript{7} Data and statistical code to replicate my analysis of this survey is available in my replication materials.

\textsuperscript{8} The survey includes sampling weights that incorporate these over-samples and make the results representative at the national-level.
**Control Group:** Now that you’ve heard a little bit about the 2020 Census let me ask you one final question about how likely you are to participate. If the government decides in 2020 to NOT include a question about citizenship status, and instead only asks you to report the race, ethnic background, gender of people living in your household, and the government provides assurances that your information will be kept confidential and ONLY used for purposes of counting the total population and nothing more, would you participate and fill out the 2020 Census form, or not?

**Treatment Group:** Now that you’ve heard a little bit about the 2020 Census let me ask you one final question about how likely you are to participate. If the government decides in 2020 to include a question about citizenship status, and asks you to report the race, ethnic background, gender and citizenship status of people living in your household, and the government provides assurances that your information will be kept confidential and ONLY used for purposes of counting the total population and nothing more, would you participate and fill out the 2020 Census form, or not?

31. This experimental design is a strong one for assessing the causal effect of the citizenship question on the likelihood that people will complete the Census. However, it does have limitations. First, the experiment on the survey imperfectly captures the actual experience of completing the Census. Second, many respondents are probably already aware of the potential inclusion of the citizenship question on the Census, which could lead to Stable Unit Treatment Value Assumption (SUTVA) violations. These SUTVA violations could attenuate the effects we detect in the experiment by artificially reducing the differences between the treatment and control groups. Overall, I think these limitations mean the survey-based
analysis is conservative in its estimates of the citizenship question on self-response rates on the Census.

2. Results of Survey

32. My primary analyses focus on two immigrant communities that theory indicates are particularly likely to be impacted by the citizenship question. First, I analyze the impact on Latinos. This analysis is helpful because there is little publicly available Census analysis of the potential effects of the citizenship question on this group. Second, I analyze the impact on non-Latino people that are not born in the United States.

33. I ran three sets of analyses that are shown in Table 4. My primary analysis of the effect of the citizenship question on each group is a weighted regression that evaluates the treatment effect of the citizenship question. In other words, it evaluates whether people in the treatment group, that were told the Census would include a citizenship question, are less likely to indicate they would respond to the Census than people in the control group that were told it would not include a citizenship question.

34. As robustness checks, I also ran two additional models. The middle column of Table 4 for each group is a weighted regression model that includes control variables for other factors that might affect respondents’ willingness to complete the Census, including their age, race, and state of residence. The third column of Table 4 for each group is an unweighted regression model that includes this same set of control variables for other factors that might affect respondents’ willingness to complete the Census. All of my main analyses in the results below are based on linear probability models. However, logistic regression models yield similar results.

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9 Note that I use the terms Hispanic and Latino interchangeably throughout this declaration.
10 I include in this group both people that explicitly stated they were born in a foreign country and the small number of people that refused to answer the nativity question on the survey.
35. Overall, Table 4 shows that the citizenship question makes both Latinos and Foreign-born non-Latinos less likely to respond to the Census. The weighted regression model in column (1) indicates that Latinos are about 5.9% less likely to complete the Census if it includes a citizenship question. The results are similar in the other two models shown in columns (2) and (3). For foreign-born, non-Latinos, the weighted regression in column (4) indicates that they are about 11.3% less likely to complete the Census if it includes a citizenship question. The results are substantively similar, though more statistically significant, in the other two models shown in columns (5) and (6).

<table>
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<tr>
<th>Table 4: Experiment Results on Effects of Citizenship Question on Census Response among Latinos and Foreign-born</th>
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<td>----------------------</td>
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<table>
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<tr>
<th>Survey Weights Controls</th>
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<td>2,362</td>
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<tr>
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</tr>
<tr>
<td>Adjusted R²</td>
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<td>Log Likelihood</td>
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<td>-2,763.581</td>
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</tbody>
</table>

*Note:* X = included; *p<0.1; **p<0.05; ***p<0.01

IV. Baseline Estimates of Proportion of Population in Immigrant Communities Vulnerable to Undercount

36. In order to analyze the effects of an undercount of individuals that live in households with at least one non-citizen and Hispanic on total population enumerations, I used the American Community Survey (ACS) to generate baseline estimates of the proportion of the 2020 population in each state, county, and large city in the following groups that are vulnerable to an undercount:
• Non-citizen households (based on whether any member of a household in the ACS self-reports that they are a noncitizen)\textsuperscript{11}
• All Hispanics and citizen Hispanics
• Foreign-born, non-Hispanics

37. To forecast the population margins of each group within each state (e.g., percent Hispanic), I used the individual-level data in the American Community Survey (ACS) from 2007-2016 to forecast the 2020 population distributions using the same approach that I used to forecast state populations. Individual-level data in the ACS is not readily available below the state-level (e.g., for counties and cities). As a result, I used population tables published by the Census based on the five-year ACS samples (2012-2016) to estimate the demographic distributions within counties and cities.\textsuperscript{12} I did not attempt to estimate how these substate population distributions are likely to change between 2016 and 2020. Thus, my estimates of the percentage of county and city population that are members of immigrant communities are probably low due to the general growth of these populations.

A. State-level Effects of Undercount - Effect of Undercount on State Population Enumerations

38. I analyzed the effects of each undercount scenario on the enumerated population of each state in 2020. The results are shown in Table 5. Column (1) shows the baseline apportionment population projections for each state. Column (2) shows the average change in the enumerated population if 5.8\% of people in non-citizen households are not counted due to

\textsuperscript{11} It is important to note that the Census has found that the ACS might be drastically undercounting the number of households with noncitizens. The ACS implies that about 10\% of people live in households with a noncitizen in them. However, Census Bureau found that many people may be misreporting their citizenship status on the ACS. Based on administrative records, they estimate that 28.6\% of all households could potentially contain at least one noncitizen. So my estimate of the percentage of people that reside in households with a noncitizen based on the ACS is likely conservative.

\textsuperscript{12} For the selection of cities and counties in Tables 2, 7, and 8, I converted the number of non-citizens to the number of people in households with a non-citizen using the ratio of these groups in the individual-level 5-year ACS sample (2012-16) for people in the PUMAs that overlapped each city and county. This analysis is necessarily approximate since PUMAs in the ACS micro-data contain multiple cities and counties.
the citizenship question. Column (3) shows the average change in the enumerated population if 5.8% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (4) shows the average change in the enumerated population if 10% of people in non-citizen households are not counted due to the citizenship question. Column (5) shows the average change in the enumerated population if 10% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (6) shows the average change in the enumerated population in each state based on the results of the survey experiment. Specifically, this scenario assumes that 5.9% of Hispanics and 11.3% of foreign-born, non-Latinos are not counted in the enumerated population.

39. For the analysis of apportionment, I also incorporated estimates of the overseas military population and federal employees, and their dependents living with them. Specifically, I used the 2010 population figures for the overseas military population and federal employees, and their dependents living with them, for each state, and divided this number by half to approximately reflect the reduction in the nation’s military deployments over the past decade. See https://www.census.gov/data/tables/2010/dec/2010-apportionment-data.html, for 2010 population figures. See also Pew Foundation study, http://www.pewresearch.org/fact-tank/2017/08/22/ u-s-active-duty-military-presence-overseas-is-at-its-smallest-in-decades/, for more information on the reduction in the number of overseas military personnel over the past decade.
<table>
<thead>
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<th>State</th>
<th>Baseline Apportionment Pop. Projection</th>
<th>5.8% Undercount Noncitzens</th>
<th>5.8% Undercount Noncitzens + Hispanic</th>
<th>10% Undercount Noncitzens</th>
<th>10% Undercount Noncitzens + Hispanic</th>
<th>Survey Experiment Foreign-born + Hispanics</th>
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<tr>
<td>(1)</td>
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<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
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<td>-0.7%</td>
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<td>-0.9%</td>
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<td>-2.2%</td>
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<td>-0.9%</td>
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<td>-0.4%</td>
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<td>-0.8%</td>
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</tr>
<tr>
<td>Tennessee</td>
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<td>-0.5%</td>
<td>-0.6%</td>
<td>-0.9%</td>
<td>-0.8%</td>
</tr>
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<td>Texas</td>
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<td>-2.2%</td>
<td>-4.6%</td>
<td>-3.8%</td>
</tr>
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<td>-1.1%</td>
<td>-1.9%</td>
<td>-1.6%</td>
</tr>
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<td>-0.5%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Virginia</td>
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<td>-1.7%</td>
<td>-1.6%</td>
</tr>
<tr>
<td>Washington</td>
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<td>-2.1%</td>
</tr>
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<td>-0.2%</td>
<td>-0.3%</td>
<td>-0.2%</td>
</tr>
<tr>
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<td>-0.6%</td>
<td>-1.1%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Wyoming</td>
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<td>-0.8%</td>
<td>-0.5%</td>
<td>-1.3%</td>
<td>-1%</td>
</tr>
</tbody>
</table>

40. Overall, Table 5 indicates that each state would be affected by an undercount on the Census. The largest impacts would be in states with large numbers of Hispanics, non-Citizens, and foreign-born residents. For example, California would be undercounted by 1.7-5.0% in these scenarios; Florida would be undercounted by 1-3.4%; New Jersey would be undercounted by...
1.2-3.3%, New York would be undercounted by 1.2-3.2%; and Texas would be undercounted by 1.3-4.6%.

41. Figure 1 shows a map of the results from the survey experiment (column 6 in Table 5). This map graphically shows that heavily Latino states on the southern border have the largest impacts from an undercount. States in the northeast, such as New York, New Jersey, and Massachusetts, with significant foreign-born populations also have significant impacts.

![Figure 1: Effects on State Populations](image)

42. I used the population projections and estimated effects of the various undercount scenarios on the enumerated population of each state to examine the likely effect of the citizenship question on the apportionment of seats in the House of Representatives. Article 1, Section 2, of the United States Constitution states: “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.”

43. Since the first census in 1790, five methods of apportionment have been used. The government currently uses a method called the Method of Equal Proportions, which was
adopted by Congress in 1941 following the census of 1940. This method first assigns each state one seat. Then, additional seats in the House of Representatives are signed to a “priority” value. The priority value for each seat is determined by multiplying the population of a state by a “multiplier.” The multiplier is $1/\sqrt{n(n-1)}$. So the formula for calculating the multiplier for the second seat is $1/\sqrt{2(2-1)}$ or 0.70710678, the formula for calculating the multiplier for the third seat is $1/\sqrt{3(3-1)}$ or 0.40824829, and so on. The Census provides an official table of these multipliers, which I used for my calculations.\footnote{See https://www.census.gov/population/apportionment/about/computing.html}

44. The next step is to multiply the multipliers by the population total for each of the 50 states (the District of Columbia is not included in these calculations). The resulting numbers are the priority values. Multipliers and priority values must be calculated for the largest number of seats that could be assigned to a state. In my analysis, I calculated the priority values for each state for seats 2 through 60. The next step is to rank and number the resulting priority values starting with seat 51 until all 435 seats have been assigned. The final step is to tally the number of seats for each state to arrive at the total number of seats in the House of Representatives apportioned to each state.

45. I conducted these steps for 500 simulations of the population projections and undercount scenarios in each state. Table 6 shows the results. Column (1) shows the baseline projections for the number of seats that each state is likely to receive in 2020 if there is a full population enumeration. Column (2) shows the average change in the number of congressional seats if 5.8% of people in non-citizen households are not counted due to the citizenship question. Column (3) shows the average change in seats if 5.8% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (4) shows the average
change in seats if 10% of people in non-citizen households are not counted due to the citizenship question. Column (5) shows the average change if 10% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (6) shows the average change in seats in each state based on the results of the survey experiment. Specifically, this scenario assumes that 5.9% of Hispanics and 11.3% of foreign-born, non-Latinos are not counted in the enumerated populations. Also, each column includes 95% confidence intervals for the seat projections in parentheses. This means that there is a 95% chance that the true number of seats gained or lost in each scenario will be in this range.

46. First, we can examine Columns (2) and (3) of Table 6, which show the effects of a 5.8% undercount of people in non-citizens households and Hispanics. In these scenarios, California is extremely likely to lose a seat. Additionally, if there is an undercount of 5.8% of both people in non-citizen households and Hispanics, there is more than a 51% chance that Texas will lose a seat. There is also a risk that Arizona, Florida, Illinois, and New York could lose seats in some simulations.

47. Columns (4) and (5) of Table 6 show the effects of a 10% undercount of non-citizen households and Hispanics. If only people in non-citizen households are undercounted, California and Texas would be more likely than not to lose a seat. Arizona, Florida, Illinois, and New York would also be at risk of losing seats. If both non-citizens and Hispanics are undercounted, Arizona, California, Florida, and Texas would be likely to lose seats. Illinois and New York would also be at risk of losing a seat.
Table 6: Effect of Undercount on Congressional Apportionment

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Seats</th>
<th>5.8% Undercount Noncitizens</th>
<th>5.8% Undercount Noncitizens Hispanic</th>
<th>10% Undercount Noncitizens</th>
<th>10% Undercount Noncitizens Hispanic</th>
<th>Survey Experiment Foreign-born Hispanics</th>
</tr>
</thead>
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<td>Alabama</td>
<td>6</td>
<td>0 (0,1)</td>
<td>1 (0,1)</td>
<td>1 (0,1)</td>
<td>1 (0,1)</td>
<td>1 (0,1)</td>
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<tr>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
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<td>0 (-1,0)</td>
<td>0 (-1,0)</td>
<td>0 (-1,0)</td>
<td>0 (-1,0)</td>
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<td>0 (0,0)</td>
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<td>-1 (-1,0)</td>
<td>-1 (-1,0)</td>
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<td>0 (0,0)</td>
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<td>0 (0,0)</td>
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<td>6</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>17</td>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1</td>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>South Carolina</td>
<td>7</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>South Dakota</td>
<td>1</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Tennessee</td>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Texas</td>
<td>39</td>
<td>0 (-1,0)</td>
<td>-1 (-1,0)</td>
<td>-1 (-1,0)</td>
<td>-1 (-1,0)</td>
<td>-1 (-1,0)</td>
</tr>
<tr>
<td>Utah</td>
<td>4</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
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</tr>
<tr>
<td>Vermont</td>
<td>1</td>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Virginia</td>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Washington</td>
<td>10</td>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>West Virginia</td>
<td>2</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>8</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
</tbody>
</table>

48. Column (6) shows the effects of the undercount of Hispanics and foreign-born residents found in the survey experiment. In this scenario, California, Florida, and Texas would most likely all lose seats. Arizona, Illinois, and New York could lose a seat as well.
49. The states that lose seats in Congress would likely see decreases in their share of outlays of federal funding due to their reduction in voting power in Congress. See Elis, Malhotra, and Meredith 2009 (PX-325). The Elis article attached here is just an example. It is a well-established finding in political science and political economy that the loss of political power as a result of the loss of representation leads to the loss of funding. This finding is based on a body of research showing that counties in areas of states that were underrepresented in state legislatures or Congress due to malapportionment received substantially lower shares of distributive spending. In the wake of the Baker v. Carr family of Supreme Court cases that required one-person, one-vote, counties that were underrepresented due to malapportionment saw both their representation in legislatures and their share of spending increase substantially when the equal populace district requirement was implemented. See Ansolabehere, Gerber, and Snyder 2002 (PX-326). Additionally, it is also based on another body of research comparing states that barely gain or lose Representatives in Congress. See PX-325. The census thresholds sometimes are quite close where a state could gain or lose seats. So this research compares those states that are just above and below the population thresholds to gain or lose a seat, and it has found that the states that just barely gain a seat receive more money than the states that barely lose a seat.

B. City and County Effects of Undercount

50. I also examined the effects of the various undercount scenarios for cities and counties. Irrespective of state-level impacts on apportionment, the enumeration of subnational areas is crucially important for a number of purposes. It affects the distribution of federal and state funds that are tied to population formulas. In addition, it affects the allocation of legislative seats within states since legislative districts are required to be equipopulous.
51. This allocation of voting power within states, in turn, affects distributive spending programs influenced by the legislature. See PX-326. Areas with greater population enumerations, and thus more voting power, are likely to receive more funding. This article is just another example of this well-established finding in political science. There is a large body of political science research concluding that vote dilution due to malapportionment leads to a reduction in voting power and less distributive spending.

52. It is reasonable to assume that undercounts like those addressed in my report will more likely than not impact intrastate redistricting because there is no reason to think that a state legislature would correct an undercount on the Census. I think it’s a reasonable assumption that state governments would not consciously try to remedy an undercount.

53. Table 7 shows the impact on the counties and cities that are involved in the lawsuits regarding the citizenship question. The left column shows the baseline 2020 population projection. It also shows the absolute change in population and percentage change in the geographic unit’s population due to three undercount scenarios. First, I examine a 2% undercount scenario. Second, I examine a 5.8% undercount scenario. For each of these scenarios, I examine undercounts among people in non-citizen households and among non-citizens households + Hispanics. Finally, I examine a scenario based on the results of the survey experiment.

54. Table 7 shows the effects on a selection of cities and counties involved in the lawsuits regarding the citizenship question. All of these local governments would most likely face smaller population enumerations due to an undercount from the addition of a citizenship question. Some of the largest effects would be in Miami, FL, New York, NY, Central Falls,
RI, and Providence RI. In the survey experiment scenario (right-hand column), each of these cities could see a reduction of around 4% or more in their enumerated populations.

Table 7: Effect on Population Counts in Select Counties and Cities

<table>
<thead>
<tr>
<th>County</th>
<th>2020 Population</th>
<th>4% Undercount Non-Latino</th>
<th>4% Undercount Latino+Hispanic</th>
<th>5% Undercount Non-Latino</th>
<th>5% Undercount Latino+Hispanic</th>
<th>Survey Experiment Non-Latino</th>
<th>Survey Experiment Latino+Hispanic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, AZ</td>
<td>1,089,258</td>
<td>7,002 -6.8%</td>
<td>15,809 -40.0%</td>
<td>27,644 -2.9%</td>
<td>46,223 -2.7%</td>
<td>65,308 -2.3%</td>
<td></td>
</tr>
<tr>
<td>Los Angeles County, CA</td>
<td>10,205,370</td>
<td>74,037 -0.7%</td>
<td>118,902 -12.7%</td>
<td>214,079 -2.1%</td>
<td>444,888 -2.4%</td>
<td>669,163 -2.5%</td>
<td></td>
</tr>
<tr>
<td>Monterey County, CA</td>
<td>448,046</td>
<td>7,841 -0.8%</td>
<td>13,922 -1.2%</td>
<td>11,539 -2.5%</td>
<td>14,022 -0.4%</td>
<td>18,210 -0.4%</td>
<td></td>
</tr>
<tr>
<td>San Francisco, CA</td>
<td>906,414</td>
<td>6,893 -0.7%</td>
<td>11,679 -1.3%</td>
<td>12,657 -1.8%</td>
<td>17,986 -2.7%</td>
<td>37,609 -4.1%</td>
<td></td>
</tr>
<tr>
<td>San Jose, CA</td>
<td>1,015,453</td>
<td>7,637 -0.7%</td>
<td>13,742 -1.3%</td>
<td>18,845 -1.8%</td>
<td>31,153 -2.5%</td>
<td>57,766 -3.5%</td>
<td></td>
</tr>
<tr>
<td>Washington, DC</td>
<td>722,621</td>
<td>9,997 -0.3%</td>
<td>4,993 -0.6%</td>
<td>5,972 -0.8%</td>
<td>7,607 -1.1%</td>
<td>11,401 -1.0%</td>
<td></td>
</tr>
<tr>
<td>Miami, FL</td>
<td>491,095</td>
<td>4,868 -1.1%</td>
<td>7,734 -1.6%</td>
<td>14,118 -2.8%</td>
<td>22,428 -4.6%</td>
<td>24,713 -5.5%</td>
<td></td>
</tr>
<tr>
<td>Chicago, IL</td>
<td>2,796,074</td>
<td>14,334 -0.5%</td>
<td>20,652 -0.7%</td>
<td>25,709 -1.3%</td>
<td>59,152 -2.4%</td>
<td>75,859 -2.8%</td>
<td></td>
</tr>
<tr>
<td>Prince George's County, MD</td>
<td>391,412</td>
<td>4,888 -0.5%</td>
<td>6,054 -0.5%</td>
<td>12,724 -1.4%</td>
<td>14,868 -1.6%</td>
<td>21,692 -2.3%</td>
<td></td>
</tr>
<tr>
<td>New York, NY</td>
<td>8,941,147</td>
<td>45,200 -0.6%</td>
<td>84,738 -1.1%</td>
<td>106,230 -1.6%</td>
<td>242,811 -2.8%</td>
<td>306,647 -4.6%</td>
<td></td>
</tr>
<tr>
<td>Columbus, OH</td>
<td>924,498</td>
<td>2,755 -0.3%</td>
<td>2,768 -0.3%</td>
<td>6,866 -0.9%</td>
<td>8,027 -0.9%</td>
<td>12,490 -1.4%</td>
<td></td>
</tr>
<tr>
<td>Philadelphia, PA</td>
<td>1,209,672</td>
<td>5,414 -0.4%</td>
<td>7,266 -0.6%</td>
<td>11,658 -0.7%</td>
<td>21,585 -1.2%</td>
<td>32,146 -2.2%</td>
<td></td>
</tr>
<tr>
<td>Pittsburgh, PA</td>
<td>257,240</td>
<td>359 -0.3%</td>
<td>611 -0.3%</td>
<td>1,292 -0.2%</td>
<td>1,789 -0.2%</td>
<td>3,121 -1.3%</td>
<td></td>
</tr>
<tr>
<td>Central Falls, RI</td>
<td>19,250</td>
<td>100 -1.1%</td>
<td>363 -1.4%</td>
<td>610 -2.3%</td>
<td>989 -1.7%</td>
<td>1,259 -1.4%</td>
<td></td>
</tr>
<tr>
<td>Providence, RI</td>
<td>191,532</td>
<td>1,140 -0.7%</td>
<td>1,204 -1.1%</td>
<td>3,022 -0.9%</td>
<td>5,631 -1.2%</td>
<td>8,651 -1.3%</td>
<td></td>
</tr>
<tr>
<td>Cameron County, TX</td>
<td>429,083</td>
<td>5,355 -0.8%</td>
<td>7,509 -1.7%</td>
<td>16,253 -2.4%</td>
<td>23,591 -3.2%</td>
<td>37,272 -4.3%</td>
<td></td>
</tr>
<tr>
<td>El Paso County, TX</td>
<td>851,008</td>
<td>3,613 -0.3%</td>
<td>11,257 -1.2%</td>
<td>16,047 -2.5%</td>
<td>41,290 -2.8%</td>
<td>66,062 -2.5%</td>
<td></td>
</tr>
<tr>
<td>Hidalgo County, TX</td>
<td>892,203</td>
<td>6,655 -0.9%</td>
<td>16,540 -1.9%</td>
<td>24,520 -2.7%</td>
<td>47,965 -4.8%</td>
<td>74,000 -7.0%</td>
<td></td>
</tr>
<tr>
<td>Bexar, TX</td>
<td>870,350</td>
<td>5,483 -0.6%</td>
<td>7,387 -0.9%</td>
<td>7,860 -0.9%</td>
<td>8,661 -1.1%</td>
<td>17,693 -2.2%</td>
<td></td>
</tr>
</tbody>
</table>

55. The three Texas counties would also face particularly negative impacts. Each of these heavily Latino counties could have a reduction in their enumerated populations of over 5%.

56. Figure 2 shows the reduction in the enumerated population for every county in the country based on the survey experiment (last column of Table 7). It shows that the largest effects are in counties on the southern border, the California coast, and in the region around New York City. The counties and cities that are plaintiffs in this suit are labeled on the graph. All of these geographic units are in the most heavily impacted areas of the country.
Figure 2: Effects on County Populations

57. Table 8 shows the change in each area’s share of its state population due to the undercount. This statistic is important for estimating the potential effects of the undercount on state-level formula grants, as well as on the relative voting power of each geographic area in congressional and state legislative elections. Geographic areas that see a reduction in their share of the state population are likely to get less representation in Congress and their state legislature. This reduction in voting power is likely to lead to less distributive spending. See PX-326. As stated before, this article is just an example. There is a large body of political science research that finds localities have their vote diluted because they are malapportioned. This implies that if the enumerated populations used for redistricting are smaller than their actual populations, then this reduction in voting power is very likely to lead to less distributive spending.
Table 8: Effect on Relative Representation in Select Counties and Cities

<table>
<thead>
<tr>
<th></th>
<th>2% Undercount Nocitizens</th>
<th>2% Undercount Nocitizens+Hispanics</th>
<th>5.8% Undercount Nocitizens</th>
<th>5.8% Undercount Nocitizens+Hispanics</th>
<th>Survey Experiment Foreign-born+Hispanics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, AZ</td>
<td>-0.4%</td>
<td>-0.4%</td>
<td>-0.9%</td>
<td>-0.8%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Los Angeles County, CA</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.5%</td>
<td>-0.6%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Monterey County, CA</td>
<td>-0.4%</td>
<td>-0.4%</td>
<td>-1%</td>
<td>-0.9%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>San Francisco, CA</td>
<td>0%</td>
<td>0.2%</td>
<td>0.1%</td>
<td>0.8%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>San Jose, CA</td>
<td>-0.2%</td>
<td>-0.1%</td>
<td>-0.9%</td>
<td>-0.2%</td>
<td>-1.1%</td>
</tr>
<tr>
<td>Miami, FL</td>
<td>-0.9%</td>
<td>-1.1%</td>
<td>-2.1%</td>
<td>-2.9%</td>
<td>-2.6%</td>
</tr>
<tr>
<td>Chicago, IL</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.6%</td>
<td>-0.9%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Prince Georges County, MD</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.6%</td>
<td>-0.5%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>New York, NY</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.8%</td>
<td>-1.1%</td>
<td>-1.6%</td>
</tr>
<tr>
<td>Columbus, OH</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.6%</td>
<td>-0.6%</td>
<td>-0.8%</td>
</tr>
<tr>
<td>Philadelphia, PA</td>
<td>-0.2%</td>
<td>-0.3%</td>
<td>-0.8%</td>
<td>-0.7%</td>
<td>-1%</td>
</tr>
<tr>
<td>Pittsburgh, PA</td>
<td>-0.2%</td>
<td>-0.1%</td>
<td>-0.2%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Central Falls, RI</td>
<td>-0.9%</td>
<td>-1.3%</td>
<td>-2.3%</td>
<td>-3.5%</td>
<td>-2.9%</td>
</tr>
<tr>
<td>Providence, RI</td>
<td>-0.6%</td>
<td>-0.7%</td>
<td>-1.4%</td>
<td>-1.9%</td>
<td>-1.9%</td>
</tr>
<tr>
<td>Cameron County, TX</td>
<td>-0.6%</td>
<td>-1.1%</td>
<td>-1.3%</td>
<td>-2.8%</td>
<td>-2.5%</td>
</tr>
<tr>
<td>El Paso County, TX</td>
<td>-0.5%</td>
<td>-1%</td>
<td>-0.9%</td>
<td>-2.4%</td>
<td>-2.1%</td>
</tr>
<tr>
<td>Hidalgo County, TX</td>
<td>-0.7%</td>
<td>-1.2%</td>
<td>-1.7%</td>
<td>-3%</td>
<td>-2.7%</td>
</tr>
<tr>
<td>Seattle, WA</td>
<td>-0.2%</td>
<td>-0.1%</td>
<td>-0.2%</td>
<td>0%</td>
<td>-0.2%</td>
</tr>
</tbody>
</table>

58. Table 8 shows the relative change in each area’s population using three undercount scenarios. First, I examine a 2% undercount scenario. Second, I examine a 5.8% undercount assumption. For each of these scenarios, I examine undercounts among people in non-citizen households and among non-citizens households + Hispanics. Finally, I examine a scenario based on the results of the survey I discussed in depth above.

59. Under nearly every scenario, each of the cities and counties would face declines in their share of their respective state populations due to an undercount from the citizenship question. Once again, some of the largest effects would be in Miami, FL, New York, NY, Central Falls, RI, Providence RI, and the three Texas counties. Each of these areas would have a reduction in their ‘relative populations’ (i.e., share of the state population) of several percentage points based on the survey experiment.
V. Aggregate Effects on Share of Population in Different Types of Counties

60. I examined the macro effects of an undercount due to the addition of a citizenship question on the distribution of the enumerated population across urban and rural areas. For simplicity, I use the survey estimates on foreign-born people and Hispanics. But the results are broadly similar for other undercount scenarios.\textsuperscript{14} The best available definition of urban and rural areas is based on a classification system developed by the National Center for Health Statistics (NCHS).\textsuperscript{15} This classification system is often used to study the associations between the urbanization level of residence and health and to monitor the health of urban and rural residents. NCHS has developed a six-level urban-rural classification scheme for U.S. counties and county-equivalent entities. The most urban category consists of “central” counties of large metropolitan areas and the most rural category consists of nonmetropolitan “noncore” counties. Figure 3 shows a map of the NCHS classification scheme.

\textsuperscript{14} For confidentiality reasons, it is not possible to match the ACS micro-data to smaller cities and counties. So, for this analysis, I calculated the ratio of people in non-citizen households to individual non-citizens for each state in the 2016 ACS. I then multiplied these ratios by the estimates of the number of non-citizens in each city and county to estimate the number of people in households with a non-citizen.

\textsuperscript{15} See https://www.cdc.gov/nchs/data_access/urban_rural.htm
Figure 3: 2013 Urban-Rural Classification Scheme for Counties

61. Figure 3 shows that an undercount due to a citizenship question would have the most substantial impact in large metropolitan counties with major cities. Based on the survey experiment, these counties would have a reduction in their enumerated population of 2.9%.\(^{16}\) This group of counties would also have a reduction in their share of the national population of 1.1%. This reduction in urban areas’ relative population would likely lead to dilution in their voting power and a reduction in their representation in Congress and state legislatures. At the other end of the continuum, noncore rural counties would only have a reduction in their enumerated population of .5%. Moreover, they would actually see a sizable 1.4% increase in their share of the national population. This would lead to an increase in their representation in the legislature. Thus, the undercount caused by a citizenship question on the

\(^{16}\) The patterns are broadly similar in the other scenarios.
Census would lead to a redistribution of political power in America. It would reduce the representation of urban counties, and increase the voting power of rural counties.

Table 9: Effect on Distribution of Enumerated Population Across Urban and Rural Counties

<table>
<thead>
<tr>
<th>County</th>
<th>2020 Population Projection</th>
<th>Percentage Change Due to Undercount</th>
<th>Percentage Change in Relative Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large central metro</td>
<td>103,025,259</td>
<td>-2.9%</td>
<td>-1.1%</td>
</tr>
<tr>
<td>Large fringe metro</td>
<td>83,761,694</td>
<td>-1.8%</td>
<td>.1%</td>
</tr>
<tr>
<td>Median metro</td>
<td>69,737,033</td>
<td>-1.5%</td>
<td>.3%</td>
</tr>
<tr>
<td>Small metro</td>
<td>30,116,705</td>
<td>-1%</td>
<td>.9%</td>
</tr>
<tr>
<td>Micropolitan</td>
<td>27,375,961,605</td>
<td>-.8%</td>
<td>1.1%</td>
</tr>
<tr>
<td>Noncore</td>
<td>18,760,860</td>
<td>-.5%</td>
<td>1.4%</td>
</tr>
</tbody>
</table>

VI. Conclusion

62. I have reached the following conclusions:

a. The undercount caused by the inclusion of a citizenship question on the Census is likely to have effects on the population counts of each state, and the apportionment of representatives across states for the U.S House. There is a very high probability that California will lose a congressional seat, and it is more likely than not that Texas will lose a congressional seat. There is also a substantial risk that Arizona, Florida, Illinois, and New York could lose a seat.

b. The citizenship question is also likely to have effects on the population counts of large counties and cities within each state. This will affect the distribution of voting power within states, and lead to the dilution of the voting power of New York, NY, Miami, FL, Providence, RI, and other large cities with substantial immigrant populations.
c. Overall, the citizenship question will lead to a large-scale shift in the
distribution of political power in the United States. It would dilute the
voting power of urban counties, and increase the voting power of rural
counties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 26, 2018

Washington, DC

Christopher Warshaw
Appendix

Table A1: Effect of 2% Undercount on State Population Enumerations in 2020

<table>
<thead>
<tr>
<th>State</th>
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<td>New York</td>
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<td>Oregon</td>
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<td>South Carolina</td>
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<td>Wisconsin</td>
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<td>Wyoming</td>
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</tr>
</tbody>
</table>
Christopher S. Warshaw

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Washington, D.C. 20052

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Fax: 202-994-1974
Email: warshaw@gwu.edu
Homepage: www.chriswarshaw.com

Academic Employment

**George Washington University**, Washington, DC
Associate Professor (starting September 1, 2020)
Assistant Professor, 2017 - 2020

**Massachusetts Institute of Technology**, Cambridge, MA
Associate Professor of Political Science (without tenure), 2016 - 2017
Assistant Professor of Political Science, 2012 - 2016

Education

**Stanford University**, Ph.D., Political Science, 2012
Fields: American Politics, Comparative Politics, and Political Methodology (Statistics)

**Stanford Law School**, Juris Doctorate, 2011
**Williams College**, B.A., magna cum laude, 2002

Research Interests

American Politics, Representation, Elections, Public Opinion, State & Local Politics, Environmental Politics and Policy, Statistical Methodology

Research

Publications

**Peer Reviewed Articles**


Christopher S. Warshaw


**Editor Reviewed Articles in Journals and Law Reviews**


**Book Chapters**


**Policy Reports**


**Unpublished Work**

**Book Project**


**Articles Under Review**

"The Effect of Local COVID-19 Fatalities on Americans’ Political Preferences." (with Lynn Vavreck and Ryan Baxter-King)

**Works in Progress**

"Electoral Accountability for Ideological Extremism in American Elections" (with Devin Caughey)
"Gerrymandering in Local Governments" (with Laura Royden)
"Moderates" (with Anthony Fowler, Seth Hill, Jeff Lewis, Chris Tausanovitch, Lynn Vavreck)
"Partisan Selection in California City Councils" (with Justin de Benedictis-Kessner and Dan Jones)
"The Effect of Television Advertising in United States Elections" (with John Sides and Lynn Vavreck)
"When Mass Opinion Goes to the Ballot Box: A National Assessment of State Level Issue Opinion and Ballot Initiative Results" (with Jonathan Robinson and John Sides)
"Inequalities in Participation, Voting, and Representation in Local Governments" (with Justin de Benedictis-Kessner and John Sides)
"Sexism and the Election of Female Candidates in American Elections" (with Alex Kurtz and Brian Schaffner)
"The Ideology of State Party Platforms " (with Justin Phillips and Gerald Gamm)

Non-Academic Writing


"The Supreme Court is deciding a gerrymandering case. Here’s the social science that the Justices need to know." Washington Post, Monkey Cage. June 1, 2019.

"New research shows just how badly a citizenship question would hurt the 2020 Census." Washington Post, Monkey Cage. April 22, 2019. (with Matt Barreto, Matthew A. Baum, Bryce J. Dietrich, Rebecca Goldstein, and Maya Sen)


Invited Talks

2019-2020: Princeton, UC Berkeley, University of Maryland
2018-2019: Stanford; Northeast Political Methodology Meeting at NYU; University of Maryland
2017-2018: USC PIPE Symposium on Studying Subnational Policy Making; BYU; University of Chicago Conference on Political Polarization
2016-2017: University of Virginia; UCLA
2015-2016: Washington University in St. Louis; Texas A&M; Arizona State University Conference on Campaigns, Elections and Representation
2014-2015: Yale; Columbia; Duke
2013-2014: Princeton; Boston University; Rochester University
2012-2013: MIT American Politics Conference; Columbia Representation Conference; Princeton Media & Politics Conference; Annual Meeting of the Society for Political Methodology
Grants

Russell Sage Foundation, 2019-2021 ($119,475)
GW UFF, 2019-2020 ($14,433)
MIT Elections Lab, 2019-2020 ($14,000)
Jeptha H. and Emily V. Wade Award, 2014-2016 ($59,686)
MIT Energy Institute (MITEI) Seed Grant, 2014-2016 ($137,147)
MIT SSHSS Research Fund, 2012-2014 ($8,734)

Software


Awards and Honors

OVPR Early Career Scholar at George Washington University, 2019.
APSA award for best journal article on State Politics & Policy in 2016.
Award for best paper on State Politics & Policy at the 2014 American Political Science Conference.
Graduate Fellowship, Dept. of Political Science, Stanford University, 2006-2012
David A. Wells Prize in Political Economy for Best Undergraduate Economics Thesis, Williams College, 2002
Phi Beta Kappa, Williams College, 2002

Teaching Experience

Instructor:

Measurement Models (Graduate-level) (GW), 2020
Political Representation (Graduate-level) (GW), 2019
Elections (GW), 2018, 2019
Multi-level and Panel Models (Graduate-level) (GW), 2017, 2018, 2019
Public Opinion (GW), 2017
American Political Institutions (Graduate-level) (MIT), 2014, 2016
Public Opinion and Elections (MIT), 2016
Energy Policy (MIT), 2013
Democracy in America (MIT), 2013, 2014
Constitutional Law & Judicial Politics (MIT), 2013, 2015
Making Public Policy (MIT), 2012, 2014

Teaching Assistant:
Introduction to American Law (Stanford University), 2010
Judicial Politics and Constitutional Law (Stanford University), 2009
Political Economy of Energy Policy (Stanford University), 2008
Introduction to International Relations (Stanford University), 2008
Introduction to Public Policy (Stanford University), 2007
Introduction to Econometrics (Williams College), 2002

Graduate Advising

George Washington University:
Alex Beck (Dissertation committee chair)
Colin Emrich (Dissertation committee member)
Jared Heern (Dissertation committee member)

Massachusetts Institute of Technology:
Leah Stokes (Graduated in 2015, Dissertation committee member)
Krista Loose (2016, Dissertation committee member)
Tom O'Grady (2017, Dissertation committee member)
Justin de Benedictis-Kessner (2017, Dissertation committee member)
Alex Copulsky (2017, Masters thesis committee member)
James Dunham (2018, Dissertation committee member)
Parrish Bergquist (2018, Dissertation committee member)
Meg Goldberg (2019, Dissertation committee member)

University Service

George Washington University:
Coordinator, Graduate Political Science Admissions Committee, 2019-2020
Coordinator, American Politics Workshop, 2018-2020
Member, Methods Exam Committee, 2017-2020
Member, Graduate Political Science Admissions Committee, 2018-2019
Massachusetts Institute of Technology:
Member, Energy Education Task Force, 2012-2017
Parking and Transit Committee, 2013-2017
Member, Graduate Political Science Admissions Committee, 2013-2015
Faculty Fellow, Burchard Scholars, 2013-2015

Stanford University (as graduate student):
President, Stanford Environmental Law Society, 2009-2010
Executive Board Member, Stanford Environmental Law Society 2008-2010
Member, University Committee on Graduate Studies, 2007-2009
Member, University Library Committee, 2007-2008
President, Political Science Graduate Students Association, 2007-2008

Professional Service

Reviewer: American Political Science Review, American Journal of Political Science, Journal of Politics,
Political Analysis, Political Behavior, Econometrica, Quarterly Journal of Political Science, Legislative
Studies Quarterly, Political Research Quarterly, American Politics Research, British Journal of Political
Science, Journal of Law and Courts, Public Opinion Quarterly, Political Science Research and Methods,
State Politics and Policy Quarterly, Journal of Experimental Political Science, Nature Climate Change,
University Press

Member, Program Committee, Midwest Political Science Association Conference, 2020

Lead Organizer, Local Political Economy APSA Pre-Conference at George Washington University, 2019

Member, Planning Committee, Cooperative Congressional Election Study (CCES), 2018

Member, Best Paper Committee, State Politics Section of the American Political Science Assoc., 2018

Editorial Board, Journal of Politics, 2017-18

Executive Committee, Urban Politics Section of the American Political Science Association, 2015-2017


Member, Best Paper Committee, Urban Politics Section of the American Political Science Assoc., 2015

Consulting

Consultant, Abell Foundation, Report on Potential Institutional Reforms for Baltimore’s City Elections


Community Service


Last updated: August 2, 2020
STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United
States, et al.,

Defendants.

NEW YORK IMMIGRATION
COALITION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United
States, et al.,

Defendants.

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


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.


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.


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.


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.*


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

/s/ Dale Ho
Dale E. Ho
Davin Rosborough
Adriel I. Cepeda Derieux
Jonathan Topaz
Sophia Lin Lakin*
American Civil Liberties Union Foundation
125 Broad St.
New York, NY 10004
(212) 549-2693
dho@aclu.org
drosborough@aclu.org
acedadervieux@aclu.org
jtopaz@aclu.org
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/s/ Sarah Brannon***
Ceridwen Cherry*
American Civil Liberties Union Foundation
915 15th Street, NW

Respectfully submitted,

/s/ John A. Freedman
John A. Freedman
R. Stanton Jones**
Daniel F. Jacobson**
Chase Raines**
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Washington, D.C. 20001
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Andre Segura**  
Edgar Saldivar**  
Thomas Buser-Clancy**  
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Fax: (713) 942-8966  
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esaldivar@aclutx.org  
tbuser-clancy@aclutx.org

* Admitted pro hac vice

** Designates pro hac vice application forthcoming.

*** Not admitted in the District of Columbia; practice limited pursuant to D.C. App. R. 49(c)(3).

Attorneys for the Plaintiffs in 20-CV-5781

LETITIA JAMES  
Attorney General of the State of New York

By: /s/ Elena Goldstein  
Elena Goldstein  
Deputy Chief, Civil Rights Bureau

Matthew Colangelo  
Chief Counsel for Federal Initiatives

Morenike Fajana, Special Counsel  
Fiona J. Kaye, Assistant Attorney General  
Office of the New York State Attorney General  
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Phone: (212) 416-6057
elena.goldstein@ag.ny.gov

Attorneys for the Plaintiffs in 20-CV-5770
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,

DIANA MARTINEZ, et al.,

Defendant-Intervenors,

and

COUNTY OF SANTA CLARA,
CALIFORNIA, et al.,

Defendant-Intervenors,

and

STATE OF NEW YORK, et al.,

Defendant-Intervenors.

Case No.: 2:18-cv-00772-RDP

Opening Brief in Response to the Court’s July 21, 2020 Order
INTRODUCTION

The County of Santa Clara, California; King County, Washington; the City of San José, California; the City of Atlanta, Georgia; and the County of Arlington, Virginia (collectively the “Local Government Defendant-Intervenors”), and the States of New York, California, Colorado, Connecticut, the District of Columbia, Illinois, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Virginia, and Washington; the cities and counties of Cameron County, Texas; Central Falls, Rhode Island; Chicago, Illinois; Hidalgo County, Texas; Monterey County, California; New York, New York; Philadelphia, Pennsylvania; Providence, Rhode Island; and Seattle, Washington; and the United States Conference of Mayors (collectively the “State and other Government Defendant-Intervenors”), by and through their undersigned counsel, respectfully request that the Court stay Plaintiffs’ action in light of the President’s July 21, 2020 Presidential Memorandum titled “Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census” (“Memorandum”), 85 Fed. Reg. 44679 (July 23, 2020), which has effectively afforded Plaintiffs the relief they seek in this litigation. Staying Plaintiffs’ action would conserve judicial resources and would cause no harm to Plaintiffs.

PROCEDURAL HISTORY

This case began over two years ago on May 21, 2018, when Plaintiffs filed their Complaint. Dkt. 1. Soon after, Local Government Defendant-Intervenors moved to intervene on July 17, 2018, and were granted leave to intervene on December 13, 2018. Dkts. 9, 54. The State and Other Government Defendant-Intervenors moved to intervene
on August 12, 2019, and the Court granted their motion on September 9, 2019. Dkts. 96, 110. Discovery began on September 9, 2019. Dkt. 111. The Court issued a Second Amended Scheduling Order on June 16, 2020, setting as the close of discovery, September 23, 2020, with dispositive motions to follow by October 21, 2020. Dkt. 147. On July 21, 2020, the President issued the Memorandum at issue.

**ARGUMENT**


Consideration of the pertinent factors warrants a stay of Plaintiffs’ action. First, Plaintiffs will not be harmed. Executive action outside of this litigation has overtaken their case. The exclusion of undocumented persons from the apportionment base, which would resolve Plaintiffs’ identified harms, is the purpose and effect of President Trump’s Memorandum. *See* Memorandum at 44680 (authorizing the exclusion “from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act . . . to the maximum extent feasible and consistent with the discretion delegated to the executive branch”).

Certainly, the Memorandum’s validity is questioned in several recently filed lawsuits that contest the legality of the Memorandum on statutory and constitutional grounds. *See* Dkt. 155 (Defendants’ list of those lawsuits). Unless and until the Memorandum is invalidated, however, there is nothing further that Plaintiffs could obtain
from this lawsuit. Any concrete relief awarded to Plaintiffs would duplicate the Memorandum’s effect, and any ruling on the constitutional questions Plaintiffs present would be an improper advisory opinion, or at a minimum, an unnecessary constitutional ruling. The point is not that Plaintiffs have prevailed—they most certainly have not—but independent Executive action has overtaken the basis for Plaintiffs’ lawsuit, at least for now.

Because Plaintiffs’ case may become pertinent again if the Memorandum is invalidated, Local Government Defendant-Intervenors and State and Other Government Defendant-Intervenors do not seek dismissal, but a temporary stay the Court could lift if a live question is presented anew.

A stay of Plaintiffs’ action is further warranted as it would conserve judicial resources. There is no reason for the Court to decide a case that can no longer have any effect. If the Memorandum is struck down, the Court would once again be presented with a live case and could lift the stay as appropriate at that time.

CONCLUSION

For these reasons, the Court should stay Plaintiffs’ action pending the resolution of lawsuits challenging the Memorandum.

DATED: August 3, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2020, a true and correct copy of the foregoing was served electronically to counsel of record agreed to by the parties.

/s/ Robert S. Vance

Dated: August 3, 2020
IN THE UNITED STATES DISTRICT COURT FOR
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and

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Defendant-Intervenors,

and

JOEY CARDENAS, et. al.,

Cross-Claimants,

v.

BUREAU OF CENSUS, et al.,

Cross-Defendants.

Civil Action No. 2:18-cv-00772-RDP

PLAINTIFFS’ BRIEF IN RESPONSE TO THE COURT’S
JULY 23, 2020 BRIEFING ORDER (DOC. # 153)
This brief is in response to the Court’s order requesting briefing regarding the effect, if any, that President Trump’s recent Memorandum (Doc. 152-1) “may have on the claims asserted in this case.” (Doc. 153). While the Memorandum might ultimately cause Defendants to redress Plaintiffs’ asserted injuries, Defendants have not yet done so and it is not yet clear whether they will do so. Plaintiffs’ claims, therefore, are not moot, and this litigation should proceed.

BACKGROUND

The decennial census is designed to serve “the constitutional goal of equal representation.” Franklin v. Massachusetts, 505 U.S. 788, 804 (1992). To that end, Congress has delegated to the Secretary of Commerce the authority to conduct the census to ensure that congressional representatives and Electoral College votes are “apportioned among the several States according to their respective numbers.” U.S. Const. amend. XIV, § 2.

In May 2018, Plaintiffs the State of Alabama and Representative Morris Brooks brought this suit against the Secretary, the Department of Commerce, the Census Bureau, and the Bureau’s Acting Director. (See Docs. # 1, 112). Plaintiffs contend that both the Constitution and the Administrative Procedure Act prohibit Defendants from including illegal aliens as part of the apportionment base. And Plaintiffs have alleged that if illegal aliens are included in the 2020 census apportionment base, Alabama is substantially likely to lose a congressional seat and Electoral College vote that the State would maintain if the apportionment base included only citizens and lawfully present aliens.

Plaintiffs seek declaratory and injunctive relief that would prevent this representational harm. Plaintiffs request that the Census Bureau’s Residence Rule¹ be declared unlawful and be

vacated insofar as it permits or requires the Census Bureau to include illegal aliens in the apportionment base used to apportion congressional seats and Electoral College votes among the states. (Doc. # 112, ¶ 144(a), (c)). Plaintiffs further request that the Court declare that an apportionment that “does not use the best available methods to exclude illegal aliens from the apportionment base used to apportion congressional seats and Electoral College votes among the states would be unconstitutional.” (Id. ¶ 144(b)). Plaintiffs ask for a remand to permit Defendants to issue a new rule that complies with that declaration. (Id. ¶ 144(d)). And Plaintiffs request any additional relief, including injunctive relief, that the Court deems appropriate. (Id. ¶ 144(e)).

On July 21, 2020, the President issued a Presidential Memorandum entitled “Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census.” 85 Fed. Reg. 44,679 (July 23, 2020) (Doc. # 152-1). The Memorandum states that “[t]he Constitution does not specifically define which persons must be included in the apportionment base,” that the Constitutional “term ‘persons in each State’ has been interpreted to mean that only the ‘inhabitants’ of each State should be included,” and that “[d]etermining which persons should be considered ‘inhabitants’ for the purpose of apportionment requires the exercise of judgment.” (Doc. # 152-1 at 2). The Memorandum concludes that Congress has delegated to the executive branch the “discretion … to determine who qualifies as an ‘inhabitant,’” which “includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status.” (Id.).

The Memorandum then declares that “it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), to the maximum extent feasible and consistent with the discretion delegated to the executive branch.” (Id. at 3). The Memorandum orders the Secretary of Commerce to “take all appropriate action, consistent with the Constitution
and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President’s discretion to carry out” that policy. (Id. at 4). Finally, the Memorandum makes clear that it 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.” (Id.).

Three days after the President issued the Memorandum, the Defendants provided responses to interrogatories served by the Martinez Intervenors. See Ex. A. In those responses, the Defendants stated that the Census Bureau is “evaluat[ing] whether it is possible to use … data sources, such as administrative records, to determine the number of undocumented immigrants,” but that “Defendants have not yet reached a final determination about the full extent of their ability to produce an actual count of undocumented immigrants in the 2020 census.” Id. at 7.

**ANALYSIS**

The President’s recent Memorandum raises questions of mootness as the Memorandum increases the likelihood that Defendants might ultimately provide Plaintiffs relief that would redress Plaintiffs’ claims. But Defendants have not yet provided Plaintiffs that relief. And at this moment, it is far from certain whether Defendants will do so. Plaintiffs’ claims thus are not moot.

“‘Mootness arises when an issue presented in a case is ‘no longer “live” or the parties lack a legally cognizable interest in the outcome.’” *Keohane v. Fla. Dep't of Corr. Sec’y*, 952 F.3d 1257, 1267 (11th Cir. 2020) (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969)). “But a case ‘becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.’” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quoting *Knox v. Serv. Empls.*, 132 S. Ct. 2277, 2287 (2012)). Thus, “[a]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.” Id.
Under this framework, Plaintiffs’ claims are not moot, for the President’s Memorandum has not yet made “it impossible for [the] court to grant any effectual relief whatever to” Plaintiffs. *Id.* While mootness may sometimes arise after a plaintiff has obtained her requested relief from a defendant, Plaintiffs do not yet possess their requested relief. A defendant’s stated intent to try to provide a plaintiff relief is not the same as an action that delivers that relief.

For example, in *National Association of Manufacturers v. Department of Defense*, 138 S. Ct. 617 (2018), petitioners challenged the federal defendants’ rule defining “waters of the United States” (the “WOTUS Rule”). While litigation was pending, the defendants proposed two rules, one that would rescind the WOTUS Rule and another that would delay the WOTUS Rule’s effective date. *Id.* at 627 n.5. Those developments, however, did not render petitioners’ challenge moot. Petitioners wanted the WOTUS Rule vacated, and “[b]ecause the WOTUS Rule remains on the books for now, the parties retain a concrete interest in the outcome of this litigation, and it is not impossible for a court to grant any effectual relief ... to the prevailing party.” *Id.* (cleaned up). Conversely, in *New York State Rifle & Pistol Association v. City of New York*, 140 S. Ct. 1525 (2020), the government defendant (New York City) did more than show an intent to remedy plaintiffs’ harms. The City amended its challenged rule to provide “the precise relief that petitioners requested in the prayer for relief in their complaint.” *Id.* at 1526. That action rendered plaintiffs’ “claim for declaratory and injunctive relief with respect to the City’s old rule ... moot.” *Id.* In this case, Plaintiffs have not yet received the relief they seek, and an order from this Court could help deliver that relief. Plaintiffs’ claims therefore are not moot.

Even if Defendants’ intent were relevant to the jurisdictional inquiry, the Memorandum at most suggests that Defendants might provide Plaintiffs their requested relief, not that Defendants will do so. Defendants may now be working toward remedying Plaintiffs’ harms, but they have
not yet shown that they will be able to provide that relief. *See* Ex. A at 7. In short, there is good reason to think Defendants might not prepare a report for the President that would allow him to exclude illegal aliens from the apportionment count that he will send to Congress. And if Defendants fail to take actions that redress Plaintiffs’ harms, this Court could still issue an order that creates “‘a substantial likelihood’ of redressability.” *Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1126-27 (11th Cir. 2019) (quoting *Duke Power Co. v. Carolina Envtl. Study Grp., Inc.*, 438 U.S. 59, 79 (1978)). The parties thus retain “a concrete interest … in the outcome of the litigation,” *Chafin*, 568 U.S. at 172, and this case should proceed.

Moreover, even if the Court determines that the Memorandum has redressed Plaintiffs’ claims, the case should continue, for “[t]he doctrine of voluntary cessation provides an important exception to the general rule that a case is mooted by the end of the offending behavior.” *Troiano v. Supervisor of Elections in Palm Beach Cty.*, 382 F.3d 1276, 1282 (11th Cir. 2004). This exception too has its own exception: A defendant’s voluntary actions can moot a case “when there is no reasonable expectation that the voluntarily ceased activity will, in fact, actually recur after the termination of the suit.” *Id.* at 1283. “The test for determining that no such reasonable expectation exists is ordinarily a stringent one and, accordingly, the party asserting mootness generally bears a heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again.” *Flanigan’s Enters., Inc. of Ga. v. City of Sandy Springs*, 868 F.3d 1248, 1256 (11th Cir. 2017) (cleaned up). But courts grant “governmental entities and officials … considerably more leeway than private parties in the presumption that they are unlikely to resume illegal activities.” *Id.* Accordingly, “a challenge to a government policy that has been unambiguously terminated will be moot in the absence of some reasonable basis to believe that the policy will be reinstated if the suit is terminated.” *Id.*
Here, even if the policy announced in the Memorandum constitutes a voluntary cessation of Defendants’ challenged conduct—as opposed to just a stated intent to cease that conduct—there is still “a ‘reasonable expectation’ … that the government defendant ‘will reverse course and reenact’ the repealed rule.” *Keohane*, 952 F.3d at 1268 (quoting *Flanigan’s*, 868 F.3d at 1256). The Eleventh Circuit has highlighted three non-exhaustive factors for courts to consider in making this determination. First, courts “consider whether the termination of the offending conduct was unambiguous.” *Rich v. Sec’y, Fla. Dep’t of Corr.*, 716 F.3d 525, 531 (11th Cir. 2013) (quoting *Nat’l Ass’n of Bds. of Pharmacy v. Bd. of Regents of the Univ. Sys. of Ga.*, 633 F.3d 1297, 1310 (11th Cir. 2011)). Second, courts consider “whether the change in government policy or conduct appears to be the result of substantial deliberation, or is simply an attempt to manipulate jurisdiction.” *Id.* at 532. And, third, courts consider “whether the government has ‘consistently applied’ a new policy or adhered to a new course of conduct.” *Id.* At least two of those factors suggest a substantial likelihood that the Defendants will not redress Plaintiffs’ harms absent some action by this Court.

The first factor favors further litigation of Plaintiffs’ claims because the termination of Defendants’ offending conduct is ambiguous. As discussed above, Defendants have not yet determined whether they will be able to carry out the policy announced in the Memorandum. *See* Ex. A at 7. Thus, there is good reason to think Defendants may resort to their earlier approach “at some point in the future.” *Rich*, 716 F.3d at 532. The third factor likewise suggests that Defendants’ conduct may recur; Defendants are still attempting to apply the new policy, so it is too soon to say that they have “‘consistently maintained’ and applied” it. *Keohane*, 952 F.3d at 1270. The second factor (deliberation vs. litigation manipulation) favors a finding of mootness, as there is little indication that issuance of the Memorandum “was an attempt to manipulate
jurisdiction.” *Id.* at 1269. But Plaintiffs’ claims are not moot, for “the remaining considerations tip the scale decisively in the other direction.” *Id.*

Respectfully submitted,

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2 The Martinez Intervenors have also filed a cross-claim seeking declaratory relief and an injunction that would bar Defendants from reporting to the President or Congress “an altered tabulation for the purposes of congressional apportionment that attempts to exclude the undocumented population.” (Doc. # 119 at 40). Plaintiffs take no position on the effect, if any, the Memorandum has on the cross-claim.
CERTIFICATE OF COUNSEL

I certify, as an officer of the Court, that I have affirmatively and diligently sought to submit to the Court only those documents, factual allegations, and arguments that are material to the issues to be resolved in the motion, that careful consideration has been given to the contents of Plaintiffs’ submission to ensure that it does not include vague language or an overly broad citation of evidence or misstatements of the law, and that the submission is non-frivolous in nature.

/s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
Solicitor General

CERTIFICATE OF SERVICE

This is to certify that on the 3rd day of August, 2020, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, which will electronically send a copy of the same to all counsel of record electronically registered with the Clerk.

/s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
Solicitor General
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
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Intervenor-Defendants.

Case No. 2:18-cv-00772-RDP

DEFENDANTS' BRIEF IN RESPONSE TO THE COURT’S
JULY 21, 2020 ORDER AND REQUEST FOR SCHEDULING ORDER

Defendants, the United States Department of Commerce, Wilbur Ross, in his official capacity as Secretary of Commerce, the United States Census Bureau, and Steven Dillingham, in his official capacity as Director of the Census Bureau (Defendants), respectfully submit this brief pursuant to the Court’s July 21, 2020 Order, which directed the parties to address what effect the July 21, 2020 Presidential Memorandum, *Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679 (July 21, 2020), has on the parties’ claims in this case. *See* Order, ECF No. 153. As we explain below, because that Memorandum alters the posture of those claims, Defendants respectfully request that the Court stay all ongoing discovery and enter a scheduling order directing parties to file summary judgment briefs addressing both threshold jurisdictional arguments and the merits of their claims.
ARGUMENT

This case involves a disagreement about the meaning of the Constitution’s Apportionment Clause. Plaintiffs, the State of Alabama and Representative Mo Brooks, allege that the Clause requires excluding all illegal aliens from the apportionment base for seats in the U.S. House of Representatives. See generally Am. Compl. ¶¶ 1–5, ECF No. 112. Some of the Intervenor-Defendants have filed a cross-claim asserting the reverse—i.e., that the Clause requires including all such aliens. See Martinez Intervenors Ans. and Cross-Claim at 29–31, ¶¶ 1–9, ECF No. 119 (Cross-Claim). Because legal disagreements in the abstract are not justiciable, see, e.g., Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992), Plaintiffs have sought to establish standing by framing their claims as a challenge to the Census Bureau’s Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525 (Feb. 8, 2018) (Residence Rule). That Rule, Plaintiffs have argued, compels the inclusion of illegal aliens in the apportionment base—and would be likely to result in Alabama losing a representative. See, e.g., Am Compl. ¶¶ 1, 18, 20–23 (alleging that the apportionment count will be a product of the Residence Rule); id. ¶ 50 (alleging that application of the Rule will cause Alabama to lose a seat in the House of Representatives); see also Cross-Claim ¶ 52 (alleging that Intervenors will be injured if illegal aliens are excluded from the apportionment base). Whatever the merits of those claims may have been previously, Plaintiffs can no longer establish that they stand to suffer harm.

The Presidential Memorandum makes clear that the Residence Rule does not, as a legal matter, stand in the way of excluding illegal aliens from the apportionment count transmitted to Congress. See 85 Fed. Reg. at 44,679–80. To the contrary, the Memorandum states that “it is the policy of the United States to exclude” illegal aliens from the apportionment base “to the extent feasible and to the maximum extent of the President’s discretion under the law,” and directs the Secretary of Commerce to provide “information tabulated according to the methodology set forth in” the Residence Rule alongside “information permitting the President, to the extent practicable,” to carry out the stated
policy. *Id.* at 44,680. With this directive, the President has asserted his authority to determine the apportionment base separate and apart from the count governed by the Residence Rule. Any claim that Plaintiffs or Intervenor-Defendants may have about apportionment therefore depends on what is feasible and on how the President exercises his discretion.

At this point, however, those questions remain open. The Census Bureau has not yet completed the task of enumerating people for the 2020 census. Neither the total numbers of people that reside in each state, nor the number of illegal aliens that the Census Bureau may ultimately identify, are known. Nor is it known how such aliens may be distributed across the various states, or how their exclusion may affect any particular state’s number of Representatives. Indeed, whether a state’s representation is ultimately increased, diminished, or unaffected, is completely undetermined, because it depends not only on how many aliens are included in the state’s final count, but also on how many such aliens are included in all the other states’ population bases. *See generally Utah v. Evans*, 536 U.S. 452, 461–62 (2002) (addressing how a change in one state’s apportionment base may affect another state’s number of representatives). Until Defendants generate and transmit the information required under the Presidential Memorandum, and the President acts on the information, neither Plaintiffs nor Intervenor-Defendants will know whether they have suffered, or stand to suffer, any injury. *See generally Franklin v. Massachusetts*, 505 U.S. 788, 802 (1992) (to establish standing to challenge an apportionment calculation plaintiffs must establish diminution of representation).

As a legal matter, this uncertainty renders all of the parties’ current claims unripe. Ripeness, the Eleventh Circuit has explained, requires that there be “sufficient injury to meet Article III’s requirement of a case or controversy and, if so, [that] the claim [be] sufficiently mature, and the issues sufficiently defined and concrete, to permit effective decisionmaking by the court.” *Cheffer v. Reno*, 55 F.3d 1517, 1524 (11th Cir. 1995) (*citing Johnson v. Sikes*, 730 F.2d 644, 648 (11th Cir. 1984)). A “claim is not ripe for adjudication”—and thus not justiciable—“if it rests upon contingent future events that
may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotes and citations omitted); see also *Natl’l Advert. Co. v. City of Miami*, 402 F.3d 1335, 1339 (11th Cir. 2005) (“When a plaintiff is challenging a governmental act, the issues are ripe for judicial review if a plaintiff . . . show[s] he has sustained, or is in immediate danger of sustaining, a direct injury as the result of that act.” (internal quotes and citations omitted)). The doctrine is “designed ‘to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *Natl’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 807–08 (2003) (quoting *Abbott Labs v. Gardner*, 387 U.S. 136, 148-49 (1967)).

Where, as here, there is no certainty that any party will suffer an injury, a Court may not proceed with a case without first satisfying itself that doing so is proper. See, e.g., *Sikes*, 730 F.2d at 647–48 (because the “question of ripeness affects [] subject matter jurisdiction,” the Court must consider it independently even if the parties fail to address it or ask the Court to render a decision notwithstanding the issue (citing cases)); see also *Cheffer*, 55 F.3d at 1523 (“Neither party raises the issue of ripeness. However, as we do not have subject matter jurisdiction to address unripe claims . . . we must nevertheless confront the issue” (internal citation omitted)). This is especially true when parties ask the Court to resolve Constitutional questions. See *Sikes*, 730 F.2d at 647–48.

That the parties are currently in the process of conducting jurisdictional discovery does not alter this imperative. For one thing, that discovery aims to determine whether Plaintiffs would suffer injury under their old theory of standing, and whether that injury is redressable. See, e.g., Order, ECF No. 111 (setting discovery schedule on jurisdictional issues). But, as explained above, Plaintiffs’ theory of standing has now been displaced by the Presidential Memorandum, and is legally insufficient today. Further, to the extent such discovery previously provided a means for the parties to determine the
Census Bureau’s capabilities in the event this Court ordered redress for Alabama, such exploration is no longer necessary because the Presidential Memorandum establishes a time certain when the Census Bureau’s capabilities, and how that capability may impact parties, will be known: namely, when the Defendants deliver the numbers the Presidential Memorandum requires.

Meanwhile, to the extent the discovery could be used to give the parties a vehicle to explore the Census Bureau’s ongoing efforts to comply with the Presidential Memorandum, such discovery would be improper. *See generally Kansas State Network, Inc. v. F.C.C.*, 720 F.2d 185, 191 (D.C. Cir. 1983) ("The predecisional process leading to an agency decision, is worthy of protection where a formal opinion is issued." (internal quotes and citations omitted)). As a general matter, materials reflecting "the deliberative process leading to an agency decision are privileged from discovery." *Id.* (citing cases). Indeed, it is well established that neither courts nor parties should interfere with ongoing administrative deliberations whose effects are, as yet, unknown. *See, e.g., Nat’l Advert. Co.*, 402 F.3d at 1339 ("[T]he ripeness doctrine not only protects courts from abusing their role within the government and engaging in speculative decision-making, but that it also protects the other branches from judicial meddling."). Ongoing discovery can thus serve no valid purpose.

The only questions that remain in this case are legal ones. If the Court concludes that the dispute before it is ripe and justiciable, the ultimate issue it would have to resolve is whether implementation of the Presidential Memorandum, to whatever extent such implementation is determined to be feasible, is lawful.\(^1\) The current discovery cannot—and will not—shed light on this

---

\(^1\) To the extent this case proceeds beyond the jurisdictional and justiciability questions, Defendants anticipate that the three-judge court requirement of 28 U.S.C. § 2284 could apply. *See, e.g., Shapiro v. McManus*, 136 S. Ct. 450, 455 (2015) (recognizing that a “three-judge court is not required where the district court lacks jurisdiction of the complaint or the complaint is not justiciable in the federal courts” but that a three-judge court “shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts . . . .”) (emphasis added). Defendants may therefore request that such a court be convened.
issue. Instead, it will merely burden the parties and the Court, and delay ultimate resolution of this matter. The interests of judicial economy countermand this course.

In sum, both jurisdictional and prudential principles preclude continuing the case in its current posture. Accordingly, the appropriate course in this matter is for the Court to stay all ongoing discovery, and enter a scheduling order directing the parties to submit briefing addressing the ripeness and justiciability of the parties’ claims. In the interests of judicial economy, this briefing should also allow the parties to address the merits of their claims, so that the Court can promptly decide those issues if the Court determines that it may properly reach them.

**CONCLUSION**

For these reasons, Defendants respectfully request that the Court stay all ongoing discovery and enter a scheduling order directing parties to file summary judgment motions, which may include arguments on both jurisdiction and the merits.

Dated: August 3, 2020

Respectfully submitted,

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\[
\text{b(6)}
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August, 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing.

/s/ Alexander V. Svedlov
ALEXANDER V. SVERDLOV
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 DEFENDANT-INTERVENORS’ BRIEF REGARDING THE EFFECT
THAT THE PRESIDENT’S JULY 21, 2020, MEMORANDUM HAS
ON THE PARTIES’ CLAIMS

Defendant-Intervenors Diana Martinez, et al. (“Martinez Intervenors”) file this brief to
address the effect of the President’s July 21, 2020 Memorandum (“Memo”). If the Court holds
that Plaintiffs State of Alabama and Representative Morris Brooks’s (“Plaintiffs”) claims are
moot, then Martinez Intervenors’ cross-claim against Federal Defendants may proceed on its
own. See Dkt. 119 at 29. Martinez Intervenors reserve comment on the mootness of the
Alabama claims until the plaintiffs’ and defendants’ views are presented.
BACKGROUND

Plaintiff’s allege that Federal Defendants’ practice of including undocumented immigrants in the Census “has repeatedly resulted in the unlawful distribution of additional House seats and electoral votes to states with high numbers of illegal aliens from states with low numbers of illegal aliens, depriving those states and their citizens of their rightful share of representation and political power.” Plaintiff’s First Amended Complaint (Dkt. 112) at ¶ 37. In order to prevent this alleged harm from repetition, Plaintiff’s seek an injunction regarding the Census Bureau’s Final 2020 Census Residence Criteria and Residence Situations Rule (“Residence Rule”) that would prevent Defendants from including undocumented immigrants in the apportionment base. See Plaintiff’s FAC at ¶ 1, 144 (“Vacating and setting aside the Residence Rule insofar as it permits or requires the Census Bureau to include illegal aliens in the apportionment base used to apportion congressional seats and Electoral College votes among the states”).

On October 1, 2019, Martinez Intervenors filed a cross-claim against Federal Defendants, seeking declaratory relief that any exclusion of undocumented immigrants from the Congressional apportionment count is unconstitutional. Martinez Intervenors’ Amended Answer and Cross-Claim at 40 (Dkt. 119).

On July 21, 2020, President Donald J. Trump issued his “Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census.” The Memo instructs Defendant Secretary of Commerce “to provide information permitting the President, to the extent practicable, to exercise the President’s discretion to carry out the policy” of using the estimate of undocumented immigrants to exclude them from the enumeration. See Memo § 3. The Memo further reads that “[e]xcluding these illegal aliens from the apportionment base is more
consonant with the principles of representative democracy underpinning our system of Government.” *Id.* at § 2.

**ARGUMENT**

I. **Whether or Not Plaintiffs’ Case is Moot, Martinez Intervenors’ Cross-Claim against Federal Defendants is Unaffected**

Martinez Intervenors alleged a cross-claim against Federal Defendants on October 1, 2019. *See* Martinez Intervenors’ Cross-Claim Against Defendants, Dkt. 119 at 29. This Court has jurisdiction over that cross-claim under 28 U.S.C. §§ 1331, 1343, and 1346.

In *Maseda v. Honda Motor Co., Ltd.*, the Eleventh Circuit held that where the original claim was dismissed, the court could still retain jurisdiction over the related cross-claim where there was an independent basis for federal jurisdiction. *Maseda v. Honda Motor Co., Ltd.*, 861 F.2d 1248, 1254 (11th Cir. 1988) (“In this case, since independent grounds exist to support the federal court’s jurisdiction, we need not decide whether retaining jurisdiction of the cross-claim was in the best interests of judicial economy, convenience and fairness to litigants.”); *see also* *Prudential Ins. Co. of Am. v. Tolbert*, 320 F. Supp. 2d 1378, 1382 (S.D. Ga. 2004) (holding that because an independent basis for federal jurisdiction for the cross-claim existed, the court need not decide whether supplemental jurisdiction was proper).

Here, Martinez Intervenors allege a claim with independent bases for federal jurisdiction, which is not affected by the continuance of the main claim or its dismissal. The cross-claim brought by Martinez Intervenors remains relevant and live after the Memo. Martinez Intervenors sued Federal Defendants for declaratory relief that the subtraction of undocumented immigrants from the Apportionment count violates the U.S. Constitution. The President announced that he will carry out the very action that Martinez Intervenors sued to prevent. Here, one basis for the
Court’s jurisdiction over Martinez Intervenors’ claim is the existence of a federal question.

Whether or not Plaintiff’s case is moot, Martinez Intervenors’ claim may proceed.

CONCLUSION

For the foregoing reasons, regardless of whether this case is moot or not, Martinez Intervenors’ cross-claim remains proper.

Dated: August 3, 2020

Respectfully Submitted,

/s/ Andrea Senteno

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2020, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all CM/ECF registrants.

Date: August 3, 2020

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Counsel for Martinez Defendant-Intervenors
The Honorable Steven Dillingham  
Director  
U.S. Census Bureau  
4600 Silver Hill Rd  
Suitland-Silver Hill, MD 20746

Dear Director Dillingham:

In light of alarming news about additional efforts to rush and politicize the 2020 Census, the Committee on Oversight and Reform requests the appearance of Census Bureau employees for transcribed interviews.

Last night, you issued a statement that the Census Bureau will be ending Non-Response Follow-Up (NRFU) and online responses on September 30, 2020—a full month earlier than previously announced. You did not mention this change during your testimony last week before the Committee. This move will rush the enumeration process, result in inadequate follow-up, and undercount immigrant communities and communities of color who are historically undercounted. As Former Director John Thompson testified to the Committee:

The career people who are experts at taking the census requested a four month extension of the deadlines that’s in their Title. They know what they are doing. They know what it’s going to take to get the census done. Not extending those deadlines is going to put tremendous pressure on the Census Bureau. It’s not clear what kind of quality counts they can produce if they don’t get the extension. So it could be a really big problem.

Senior career staff at the Census Bureau have publicly stated that meeting the statutory deadlines is impossible because of the delays that have already occurred. On July 8, 2020, Al Fontenot, Associate Director for Decennial Census Programs, stated of the December 31, 2020, statutory deadlines: “We are past the window of being able to get those counts by those dates at


this point.” On May 26, 2020, Tim Olson, Associate Director for Field Operations, said publicly: “We have passed the point where we could even meet the current legislative requirement of December 31. We can’t do that anymore.”

Testimony on July 29, 2020, during the Committee’s emergency hearing underscored the Committee’s concerns about the administration of the 2020 Census. Four former Directors of the Census Bureau testified that the President’s memorandum issued on July 21, 2020, directing the Secretary of Commerce to exclude undocumented immigrants from the apportionment count, is unconstitutional.

In addition, your testimony at that hearing revealed new and troubling information about the White House’s inappropriate partisan influence over how the 2020 Census is conducted. For example, when you were asked whether you or anyone else at the Census Bureau contributed to the President’s July 21, 2020, legal memorandum or provided any input on it before it was released, you responded, “Madam Chairwoman, I certainly did not, and I’m not aware of others in the Census Bureau that did.” When you were asked when you first became aware of the President’s intention to exclude undocumented immigrants from the Apportionment count, you responded, “As I recall, someone from the press reported that a directive may be coming down.”

For the foregoing reasons, the Committee requests that Census Bureau officials appear for virtual transcribed interviews on the following dates:

- **August 10, 2020**: Enrique Lamas, Chief Advisor to the Deputy Director;
- **August 11, 2020**: Timothy P. Olson, Associate Director for Field Operations;
- **August 12, 2020**: Victoria Velkoff, Associate Director for Demographic Programs;
- **August 14, 2020**: Albert Fontenot, Jr, Associate Director for Decennial Census Programs;
- **August 17, 2020**: John Abowd, Chief Scientist and Associate Director for Research and Methodology;
- **August 19, 2020**: Adam Korzeniewski, Assistant Deputy Director for Policy;
- **August 20, 2020**: Nathaniel Cogley, Deputy Director for Policy; and
- **August 21, 2020**: Ron S. Jarmin, Deputy Director and Chief Operating Officer.

---


6 *Id.*
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. In addition, the Committee has jurisdiction over “Population and demography generally, including the Census.”\(^7\)

Please confirm whether the requested witnesses will appear voluntarily by August 7, 2020. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,

Carolyn B. Maloney
Chairwoman

cc: The Honorable James R. Comer, Ranking Member

\(^7\) House rule X, clause 1(n)(8).
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)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION
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Legislative Materials

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71 Cong. Rec. 1910 (May 25, 1929)..............................................................................19

71 Cong. Rec. 1958 (May 27, 1929)..............................................................................19

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Cong. Globe, 39th Cong., 1st Sess. 2767 (1866)................................................................16, 17

Cong. Globe, 39th Cong., 1st Sess. 705 (1866).................................................................17

Cong. Rec. H4372 (Apr. 11, 1940)...............................................................................20

H.R. Rep. No. 1787 (1940)...........................................................................................19

Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 31 (Mar. 14, 2019).................................................................21
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Statement from the President Regarding Apportionment (July 21, 2020),
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Other Authorities

1 The Records of the Federal Convention of 1787 (Max Farrand ed., 1911) ................................................................. 14
Cambridge Dictionary,
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Joseph T. Sneed III, Footprints on the Rocks of the Mountain: An Account of the
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Remarks by President Trump Before Marine One Departure (July 5, 2019),
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INTRODUCTION

This lawsuit challenges Defendants’ flagrantly unconstitutional and unlawful decision to exclude undocumented immigrants from the total-population base that is used to apportion congressional seats among the States. This decision violates the unambiguous mandate in Article I and the Fourteenth Amendment that all “persons in each State” be included “according to their respective numbers” in the apportionment base. U.S. Const. amend. XIV, § 2; id. art. I, § 2, cl. 3. Both this Court and the Supreme Court have already determined that this language requires the federal government “to count every single person residing in the United States, whether citizen or noncitizen, whether living here with legal status or without.” New York v. U.S. Dep’t of Commerce, 351 F. Supp. 3d 502, 514 (S.D.N.Y. 2019), aff’d 139 S. Ct. 2551 (2019); accord Evenwel v. Abbott, 136 S. Ct. 1120, 1129 (2016). The inclusion of all immigrants was expressly discussed and endorsed in the debates over the Fourteenth Amendment. And every decennial census since the Fourteenth Amendment’s adoption has counted all residents without regard to their citizenship or immigration status.

The sheer clarity of this constitutional command entitles Plaintiffs to summary judgment on their constitutional claims against Defendants’ exclusionary policy. Defendants have no discretion or authority to disregard the Constitution’s plain text and extensive history, to flout prior rulings from this Court and the Supreme Court, or to break with more than two hundred years of settled practice.

Plaintiffs are also entitled to summary judgment because Defendants’ exclusion of undocumented immigrants from the apportionment base is an ultra vires violation of the statutory provisions that Congress enacted to implement the Constitution’s clear requirements. Congress has mandated that the decennial enumeration count all persons, regardless of immigration status, and that the President’s apportionment report to Congress must be based
solely on this enumeration of all persons. See 13 U.S.C. § 141(a), (b); 2 U.S.C. § 2a.

Defendants’ exclusionary policy will necessarily conflict with these statutory requirements.

Finally, in the alternative, Plaintiffs are entitled to a preliminary injunction on their constitutional and statutory claims. Such relief is essential because Plaintiffs and their residents or constituents are suffering immediate and irreparable injury from Defendants’ sudden announcement of their exclusionary policy. Most immediately, Defendants’ actions are deterring immigrant households from responding to the ongoing enumeration for the 2020 census by sowing confusion, mistrust, and fear among immigrant households about the consequences of responding to the census. That deterrent effect is heightened by the plainly xenophobic and discriminatory purpose animating Defendants’ exclusionary policy—the latest in a long string of open attacks by this administration on immigrant communities and the cities and States where they reside. And Defendants have only exacerbated these immediate harms to the ongoing enumeration and underscored the need for immediate relief with their recent announcement that they are unilaterally curtailing census follow-up operations by a full month, from October 31 to September 30.

Under these unusual and pressing circumstances, Plaintiffs are entitled to expedited summary judgment on their constitutional and statutory claims, or a preliminary injunction to avert immediate harm.

BACKGROUND

1. Constitutional and statutory framework.

The Constitution requires that seats in the House of Representatives “shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2; see id. art. I, § 2, cl. 3. The number of Representatives apportioned to each State, along with the two Senators
given to each State, determines the allocation among the States of electors in the Electoral College. *Id.* art. II, § 1, cl. 2; *see also* 3 U.S.C. § 3. To apportion Representatives among the States, and in turn to allocate electors among the States, the Constitution requires a decennial “actual Enumeration” of all persons living here—the resulting numbers from which must constitute the apportionment base. U.S. Const. art. I, § 2, cl. 3.

The Constitution provides that the decennial enumeration shall be made “in such manner as [Congress] shall direct by law.” *Id.* In the Census Act, Congress has assigned the responsibility of conducting the enumeration to the Secretary of Commerce, who may delegate authority for establishing census procedures to the Census Bureau. 13 U.S.C. §§ 2, 4, 141.

The Census Act sets specific deadlines for conducting the enumeration and corresponding apportionment of Representatives. The Act requires that the decennial census be taken on April 1, 2020, the “decennial census date.” *Id.* § 141(a). Within nine months of the decennial census date, *i.e.*, by January 1, 2021, the Secretary of Commerce must report to the President “[t]he tabulation of total population by States” that is “required for the apportionment of Representatives in Congress among the several States.” *Id.* § 141(b). Between January 3 and January 10, 2021, the President must transmit to Congress “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” using the method of equal proportions, with each State receiving at least one Member. 2 U.S.C. § 2a(a). Within fifteen days of receiving the President’s statement, the Clerk of the House of Representatives must transmit “to the executive of each State a certificate of the number of Representatives to which such State is entitled.” *Id.* § 2a(b).
II. The Presidential Memorandum.

On July 21, 2020, President Trump issued a memorandum declaring that “[i]n order to obtain or the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude” undocumented immigrants from the congressional apportionment base “to the maximum extent feasible and consistent with the discretion delegated to the executive branch.” 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).

The Memorandum asserts 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,” and that “[s]tates adopting policies . . . that hobble Federal efforts to enforce the immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives.” Id.

The Memorandum makes clear that the President both understands and intends that excluding undocumented immigrants from the apportionment base will reallocate political power between the States, and specifically that it will weaken political influence for States with larger undocumented immigrant populations. See id. Referring to one State whose residents include more than two million undocumented immigrants, the Memorandum notes that “[i]ncluding 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.

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1 All docket references are to 20-CV-5770 (JMF) unless otherwise specified.

2 This State is California, but Texas is similarly situated. See Pls.’ Rule 56.1 Stmt. ¶¶ 3-4. The Governmental Plaintiffs include two local jurisdictions in California and three counties in Texas; and the NGO Plaintiffs have members residing in those States, see id. ¶¶ 23-51.
The Memorandum accordingly directs the Secretary of Commerce, “[i]n preparing his report to the President under section 141(b) of title 13,” to “take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable,” to exclude undocumented immigrants from the final determination regarding the “whole number of persons in each State” that the President transmits to Congress pursuant to 2 U.S.C. § 2(a). Memorandum, 85 Fed. Reg. at 44,679-80.

III. Events precipitating the Presidential Memorandum.

The Presidential Memorandum was not issued in a vacuum, but against the backdrop of prior litigation about the census. In New York v. Department of Commerce, this Court held that Secretary of Commerce Wilbur Ross’s decision to add a citizenship question to the 2020 census violated the Administrative Procedure Act and enjoined the addition of the question, 351 F. Supp. 3d—a decision affirmed in part by the Supreme Court on the ground that the reason the Secretary provided for adding the citizenship question was pretextual. Dep’t of Commerce v. New York, 139 S. Ct. 2551 (2019). After trial, new evidence emerged about the reason for adding the question.

In August 2015, Republican redistricting strategist Thomas Hofeller authored a study advising that a citizenship question on the census was necessary to gather data to exclude noncitizens from the redistricting population base, a result “advantageous to Republicans and Non-Hispanic Whites.”\(^3\) He then helped ghostwrite a letter to the Commerce Department requesting a citizenship question that was funneled through several intermediaries before

\(^3\) Pls.’ Mot. for Order to Show Cause, 18-cv-2921 (JMF), ECF No. 595-1 at 63 (May 30, 2019) (citing exhibits).
becoming part of the Secretary’s effort to add a citizenship question.\textsuperscript{4} Less than a week after the Supreme Court’s decision, Defendant Trump confirmed that efforts to add the citizenship question was intended to curtail the growing political power of immigrant communities of color. He first stated that the citizenship question was “very important [] to find out if someone is a citizen as opposed to an illegal.”\textsuperscript{5} A few days later, Defendant Trump said: “Number one . . . you need it for Congress, for districting. You need it for appropriations. Where are the funds going? How many people are there?”\textsuperscript{6} The following week, he noted that “[s]ome states may want to draw state and local legislative districts based upon the voter-eligible population.”\textsuperscript{7}

In announcing the Presidential Memorandum, Defendant Trump expressly linked the Presidential Memorandum to the citizenship question effort, proclaiming he was fulfilling his promise that he would “not back down in [his] effort to determine the citizenship status of the United States population.”\textsuperscript{8} Defendant Trump has also linked the Memorandum to a broader campaign against so-called sanctuary cities and States—jurisdictions that elect in some circumstances to limit their cooperation with federal immigration enforcement.\textsuperscript{9} The Presidential

\begin{footnotes}
\item[5] \emph{Remarks by President Trump at Signing of H.R. 3401} (July 1, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-3401/.
\item[7] \emph{Remarks by President Trump on Citizenship and the Census} (July 11, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/.
\item[8] \emph{Statement from the President Regarding Apportionment} (July 21, 2020), https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/.
\item[9] Defendant Trump has sought by executive order to bar “sanctuary jurisdictions” from receiving
\end{footnotes}
Memorandum states that one of its objectives is to punish States for enacting policies that the federal government disfavors. Memorandum, 85 Fed. Reg. at 44,680.

The Presidential Memorandum is part of a broader pattern of Defendant Trump’s “expressed animus against non-white, non-European immigrants.” Ramos v. Nielsen, 336 F. Supp. 3d 1075, 1098 (N.D. Cal. 2018); see also id. at 1100 (citing such statements). To take just one example, he asked during a meeting concerning “immigrants from Haiti, El Salvador, and African countries,” why the United States was “‘having all these people from shithole countries come here?’” and “‘suggested that the United States should instead bring more people from countries such as [mostly white] Norway.’” Id. He also asked: “‘Why do we need more Haitians?’ and insisted they be removed from an immigration deal.” Saget v. Trump, 345 F. Supp. 3d 287, 303 (E.D.N.Y. 2018). In 2018, he referred to certain immigrants as “animals.”

ARGUMENT

I. Standard of review.

Summary judgment is warranted when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

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To obtain a preliminary injunction, Plaintiffs must establish that they are likely to suffer irreparable harm absent preliminary relief; they are likely to succeed on the merits; the balance of the equities tips in their favor; and an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

II. **Plaintiffs include jurisdictions and residents of jurisdictions that would lose representation if undocumented immigrants were excluded from the population base used for congressional apportionment.**

Plaintiffs have standing to bring this challenge because—among other injuries—the exclusion of undocumented immigrants from the apportionment base will cause Plaintiffs or the jurisdictions in which Plaintiffs operate to lose seats in the House of Representatives. Such a loss “undoubtedly satisfies the injury-in-fact requirement of Article III standing.” *New York*, 351 F. Supp. 3d at 607 (quotation marks omitted); see also *Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 330 (1999) (holding that the plaintiffs demonstrated standing for purposes of summary judgment by submitting an expert affidavit showing that “it is a virtual certainty that Indiana will lose a seat . . . under the Department’s Plan”).

The Memorandum expressly states that the policy of excluding undocumented immigrants from the apportionment base is intended to, and is certain to cause, California to lose at least one seat in the House of Representatives. And it is certain to have the same effect on Texas. The Memorandum states that “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.” Memorandum, 85 Fed. Reg. at 44,680. According to the Department of Homeland Security, as of 2015, California had 2.9 million undocumented residents and Texas had 1.9 million undocumented residents in 2015. Pls.’ 56.1 Stmt. ¶ 4. According to the Census Bureau’s
most recent estimates, as of July 1, 2019, the total population of California was 39,512,223 and the total population of Texas was 28,995,881. Pls.’ 56.1 Stmt. ¶¶ 12, 14. These estimates from the Census Bureau and DHS indicate that undocumented immigrants constitute approximately 7.3% of the population of California and approximately 6.6% of the population of Texas. 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. Pls.’ 56.1 Stmt. ¶ 5. Based on these facts alone, there can be no dispute that the exclusion of undocumented immigrants will cause California and Texas to lose at least one seat in the House.

Additionally, Plaintiff’s expert, Dr. Christopher Warshaw, confirms that the Memorandum will “almost certainly” cause certain States to lose seats in Congress. Warshaw Decl. ¶ 11 (Ex. 58).\textsuperscript{11} Dr. Warshaw modeled the effects of excluding undocumented immigrants from the population count used to calculate congressional reapportionment after the 2020 census. Pls.’ 56.1 Stmt. ¶ 20; Warshaw Decl. ¶ 11 (Ex. 56). According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment base, there is a 98.3% probability that Texas will lose a seat in the House of Representatives, and a 72.1% probability for California. Pls.’ 56.1 Stmt. ¶¶ 21–22; Warshaw Decl. ¶ 47 tbl. 8 (Ex. 58).

The Governmental Plaintiff’s include jurisdictions in California (the City and County of San Francisco, and Monterey County) and Texas (Cameron, El Paso, and Hidalgo Counties). See Governmental Plaintiff’s Am. Compl. ¶¶ 42, 44–46, 48 (ECF No. 34). The NGO Plaintiff’s include organizations with members residing in both States. Pls.’ 56.1 Stmt. ¶¶ 33–34 (ADC); \textit{id.} ¶¶ 40–41 (FIEL Houston, Inc.); \textit{id.} ¶¶, 46–47 (Ahri). Residents of these Plaintiff counties

\textsuperscript{11} Citations in this Memorandum to “Ex. ___” are to the exhibits to the accompanying Declaration of Matthew Colangelo dated August 7, 2020.
and the Texas- and California-based members of Plaintiff organizations will suffer a loss of political power if Texas or California lose a congressional seat. Indeed, ADC has members in all 50 states—any change to apportionment is certain harm a member of ADC. Pls.’ 56.1 Stmt.
¶ 34.12

These injuries are traceable to Defendants’ recent actions and redressable by a favorable ruling from this Court. There is no question that the exclusion of undocumented immigrants from the apportionment base will directly affect the apportionment. Indeed, the Presidential Memorandum itself both acknowledges and intends this effect on apportionment, see Memorandum, 85 Fed. Reg. at 44,680. Moreover, this Court previously found—and the Supreme Court agreed—that the predictable effects of defendants’ actions on the accuracy of the ongoing enumeration are sufficient to establish traceability. New York, 351 F. Supp. 3d at 619–25. And all of these injuries will plainly be redressed by a favorable ruling that requires Defendants to do what the Constitution mandates: “counting the whole number of persons in each State.” U.S. Const. amend. XIV, § 2.

III. Defendants’ decision to exclude undocumented immigrants from the apportionment base violates Article I and the Fourteenth Amendment.

A. The Constitution explicitly requires the population base for apportionment to include the whole number of persons in each State.

Defendants’ blanket exclusion of undocumented immigrants from the apportionment base, without regard to their physical residence here, flagrantly violates the Constitution. The Constitution’s plain language requires that all “persons” physically living “in each State” be

12 Plaintiffs’ representational harms alone suffice to establish injury-in-fact for standing purposes. To the extent Defendants oppose summary judgment on standing grounds, Plaintiffs intend to present additional evidence establishing the other injuries alleged in their complaints. See Governmental Plaintiffs’ Am. Compl. ¶¶ 117–36 (ECF No. 34); NGO Plaintiffs’ First Am. Compl. ¶¶ 19–83 (ECF No. 62).
included in the apportionment count—regardless of their citizenship or immigration status. U.S. Const. amend. XIV, § 2; id. art. I, § 2, cl. 3 (requiring apportionment “according to [the States’] respective Numbers”). The Framers of the Fourteenth Amendment specifically chose to refer to “persons” rather than “citizens” in the Fourteenth Amendment’s text to ensure that noncitizens residing in this country are included in apportioning House seats. The Supreme Court confirmed four years ago that the Constitution requires congressional apportionment based on each State’s total population, including undocumented immigrants. See Evenwel. 136 S. Ct. at 1123. And settled practice for more than two hundred years has adhered to this rule.

Defendants have turned this constitutional and historical consensus on its head. They have treated as dispositive a factor that has always been considered immaterial for apportionment (immigration status). And they have treated as immaterial a factor that has consistently determined the apportionment base since the first census in 1790 (physical residence). Defendants cannot fundamentally alter the constitutional order by decreeing that millions of undocumented immigrants who indisputably live in this country are not “persons.”

1. The Constitution’s text unambiguously mandates counting all persons, including undocumented immigrants, in the apportionment base.

The constitutional mandate to base apportionment on all persons living in the United States, without regard to their immigration status, is clear. Section 2 of the Fourteenth Amendment requires that U.S. House seats “shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2 (emphasis added). And Article I requires that the “respective Numbers” of each State be determined by an “actual Enumeration” of the total population. Id. art. I, § 2, cl. 3.
The Supreme Court has held that the term “person” in the Fourteenth Amendment includes undocumented immigrants. *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The Court explained that, “[w]hatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sentence of that term.” *Id.* Because undocumented immigrants “are clearly ‘persons,’” the plain text of the Fourteenth Amendment is “not ambiguous” in mandating that undocumented immigrants living in this country must be included for apportionment. *Fed’n for Am. Immigration Reform (FAIR) v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C. 1980) (three-judge court). This Court has recognized as much: “[b]y its terms, . . . the Constitution mandates that every ten years the federal government endeavor to count every single person residing in the United States, whether citizen or noncitizen, whether living here with legal status or without,” and “[t]he population count derived from that effort is used . . . to apportion Representatives among the states.” *New York*, 351 F. Supp. 3d at 514 (emphases added).

By contrast, the Constitution uses distinct language when referring to a subset of persons. For example, the Constitution repeatedly uses the term “citizens” rather than “persons” to describe the subset of persons living here who hold citizenship. See, e.g., U.S. Const. art. 1, § 2, cl. 2 (“No Person shall be a Representative who shall not have . . . been seven Years a Citizen of the United States”). The same distinction appears in Section 2 of the Fourteenth Amendment, which requires the apportionment base to include “the whole number of persons in each State,” but then provides that a State that denies the right to vote to “citizens of the United States” will have its basis of representation reduced. U.S. Const. amend. XIV, § 2 (emphasis added).

Similarly, the Constitution originally contained two express exclusions from the apportionment base, neither of which turned on immigration status. First, the original Apportionment Clause excluded all “Indians not taxed,” U.S. Const. art. I, § 2, cl. 3, an
exception that became irrelevant after the Indian Citizenship Act of 1924, Pub. L. No. 68-175, 43 Stat. 253. Second, it infamously counted slaves as only three-fifths of a person for apportionment, U.S. Const. art. I, § 2, cl. 3, an exception overturned by the Fourteenth Amendment. “By making express provision for Indians and slaves, the Framers demonstrated their awareness that” the otherwise “all-inclusive” language delineating the population base for apportionment does not permit the exclusion of any other residents. FAIR, 486 F. Supp. at 576.

2. The Constitution’s broad terms reflected a conscious intent to include all persons, including all immigrants, in the apportionment base.

The choice to base apportionment on total population, regardless of citizenship or immigration status, was no accident. Both the original Framers and the Framers of the Fourteenth Amendment chose to “allocat[e] House seats to States” with “total population as the congressional apportionment base,” a mandate based on their fundamental “theory of the Constitution.” Evenwel, 136 S. Ct. at 1128–29.

“At the time of the founding, the Framers confronted the question” of how to allocate seats in the new government to the States. Id. at 1127. “The Framers’ solution, now known as the Great Compromise, was to provide each State the same number of seats in the Senate, and to allocate House seats based on States’ total population,” that is, “[a]ccording to their respective Numbers.” Id. (quoting U.S. Const. art. I, § 2, cl. 3) (emphasis in original). In selecting all residents as the basis for apportionment, the Framers specifically considered and rejected other proposals, such as allocating House “representation based on wealth or property.” 1 The Records of the Federal Convention of 1787 (“Farrand’s Records”), at 542 (Max Farrand ed., 1911) (Pierce Butler). As James Madison explained, “[i]t is a fundamental principle of the proposed Constitution that as the aggregate number of representatives allotted to the several
States, is to be … founded on the aggregate number of inhabitants.” The Federalist No. 54 (James Madison) (emphasis added).

The Framers made clear that basing apportionment on total population guaranteed every person representation in the House, regardless of their legal status, thus ensuring that the House will “be the most exact transcript of the whole Society,” 1 Farrand’s Records, supra, at 142 (James Wilson), and provide representation to “every individual of the community at large,” id. at 473 (Alexander Hamilton). Thus, as the Supreme Court has explained, “the basis of representation in the House was to include all inhabitants,” Evenwel, 136 S. Ct. at 1127, including women, children, indentured servants, and many other individuals who did not have the right to vote or full legal status. See Garza v. County of Los Angeles, 918 F.2d 763, 774 (9th Cir. 1990); see also Wesberry v. Sanders, 376 U.S. 1, 13 (“[W]hen the delegates agreed that the House should represent ‘people’ they intended that in allocating Congressmen the number assigned to each State should be determined solely by the number of the State’s inhabitants.”).

When drafting the Fourteenth Amendment, Congress reconsidered the proper basis for apportioning House seats and reaffirmed that apportionment must be based on all persons living in each State—including noncitizens. “Concerned that Southern states would not willingly enfranchise freed slaves, and aware that ‘a slave’s freedom could swell his state’s population for purposes of representation in the House,’” the Fourteenth Amendment’s Framers “considered at length the possibility of allocating House seats to states on the basis of voter population” or citizen population. Id. (quoting Joseph T. Sneed III, Footprints on the Rocks of the Mountain: An Account of the Enactment of the Fourteenth Amendment 28 (1997)). For example, on December 5, 1865, Thaddeus Stevens proposed apportioning Representatives among the States “according to their respective legal voters,” specifying that “for this purpose none may be named
as legal voters who are not either natural-born citizens or naturalized foreigners.” Cong. Globe, 39th Cong., 1st Sess. 10 (1865).

Later, on January 16, 1866, the Joint Committee of Fifteen on Reconstruction that drafted the Fourteenth Amendment initially voted to adopt a proposal that would have required apportioning House seats based on “the whole number of citizens of the United States in each state.” Benjamin B. Kendrick, The Journal of the Joint Committee of Fifteen on Reconstruction, 39th Congress, 1865-1867, 49–52 (Ex. 52).13 After further deliberations, however, Representative Conkling “moved to amend the proposed article by striking out the words ‘citizens of the United States in each state,’ and inserting in lieu thereof the words, ‘persons in each State, including Indians not taxed.” Id. at 52. The Joint Committee adopted Conkling’s amendment by a vote of 11-3. Id.

Representative Conkling explained that basing apportionment on “persons” rather than “citizens” was essential to passage of the Fourteenth Amendment:

It has been insisted that “citizens of the United States” and not “persons” should be the basis of representation and apportionment. These words were in the amendment as I originally drew it and introduced it, but my own judgment was that it should be “persons,” and to this the committee assented.

There are several answers to the argument in favor of “citizens” rather than “persons.” The present Constitution is, and always was opposed to this suggestion. ‘Persons,’ and not ‘citizens,’ have always constituted the basis.

Again, it would narrow the basis for taxation and cause considerable inequalities in this response, because the number of aliens in some States is very large, and growing larger now, when emigrants reach our shores at the rate of more than a State a year.

13 Where indicated, Plaintiffs have filed certain of the original sources cited in this discussion as Exhibits to these papers. Plaintiffs can provide the Court with copies of other legislative or historical materials if it would assist the Court’s review.
Again, many of the large States now hold their representation in part by reason of their aliens, and the Legislatures and people of these States are to pass upon the amendment. It must be acceptable to them.


The Framers of the Fourteenth Amendment further made clear that the Amendment requires including all immigrants in the apportionment base. As Representative John Bingham explained, the “whole immigrant population should be numbered with the people and counted as part of them” because “[u]nder the Constitution as it now is and as it always has been, the entire immigrant population of this country is included in the basis of representation.” Id. at 432 (emphasis added); see also id. at 2944 (Sen. Williams) (“Representation is now based upon population,” including “foreigners not naturalized.”). Proponents of maintaining the total-population apportionment base repeatedly declared their refusal to “throw[] out of the basis at least two and a half millions of unnaturalized foreignborn men and women.” Id. at 1256 (Sen. Henry Wilson); see also, e.g., id. at 2987 (proposal to apportion based on voting population was “blow which strikes the two million one hundred thousand unnaturalized foreigners who are now counted in the basis of representation from that basis”); id. at 411 (Rep. Burton Cook) (representation based on voters improperly “takes from the basis of representation all unnaturalized foreigners”).

The Framers believed that excluding residents from the apportionment base, including immigrants, would fatally undermine a cornerstone of the Constitution—“equal representation for equal numbers of people.” Wesberry, 376 U.S. at 18. A basic “idea of the Constitution” has always been, and continues to be, that “the whole population is represented; that although all do not vote, yet all are heard.” Cong. Globe, 39th Cong., 1st Sess. 705 (1866) (Sen. William Fessenden). No matter a person’s legal status, the Framers emphasized, “[a]ll the people, or all the members of a State or community, are equally entitled to protection; they are all subject to its
laws; they must all share its burdens, and they are all interested in its legislation and

government.” *Id.* at 2962 (1866) (Sen. Luke Poland). As Senator Jacob Howard explained when
introducing the amendment’s final language on the Senate Floor:

> Its basis of representation is numbers . . . that is, the whole population. The
> committee adopted numbers as the most just and satisfactory basis, and this is the
> principle upon which the Constitution itself was originally framed, that the basis
> of representation should depend upon numbers; and such . . . is the safest and
> most secure principle upon which the Government can rest. Numbers, not voters;
> numbers, not property; this is the theory of the Constitution.


Defendants’ actions to exclude an entire category of persons living in this country from
apportionment break this foundational promise and flout the explicit intent of the Framers of the
Fourteenth Amendment.

3. **The Supreme Court has determined that the Constitution requires counting all persons, including undocumented immigrants, for apportionment.**

Just four years ago, the Supreme Court confirmed that the Fourteenth Amendment
requires including all immigrants in apportioning House seats. In *Evenwel*, the plaintiff’s argued
that Texas was required to exclude noncitizens—many of whom are undocumented—in
equalizing population for legislative districts within the State. The Supreme Court rejected this
claim on the ground that, with respect to *inter*-state apportionment, Section 2 of the Fourteenth
Amendment “retained total population as the congressional apportionment base.” *Evenwel*, 136
S. Ct. at 1128. The Court emphasized: “[i]t cannot be that the Fourteenth Amendment calls for
the apportionment of congressional districts based on total population, but simultaneously
prohibits States from apportioning their own legislative districts on the same basis.” *Id.* at 1128–
29. The concurring Justices agreed that “House seats are apportioned based on total population.”
Id. at 1148 (Alito, J., concurring in the judgment); see also id. at 1138 (Thomas, J., concurring in
the judgment) (similar).

Thus, all nine Justices in Evenwel agreed that apportionment of House seats among the
States must be based on total population, including noncitizens. And that constitutional
determination was central to the Court’s rejection of the plaintiffs’ claim there. The Presidential
Memorandum thus defies the Supreme Court’s decision of just four years ago.

4. Centuries of established practice further confirm that the
apportionment base must include undocumented immigrants.

Evenwel is consistent with not only the Constitution’s clear text and extensive history, but
also more than two hundred years of unbroken practice that has always included all persons
residing in each State, regardless of their citizenship or immigration status, in the apportionment
base. See Evenwel, 136 S. Ct. at 1133 (relying on “settled practice”). Judicial “interpretation of
the Constitution” may be “guided by a Government practice that has been open, widespread, and
unchallenged since the early days of the Republic.” Dep’t of Commerce, 139 S. Ct. at 2567
(internal quotation marks and citations omitted). And the Supreme Court has emphasized “the
importance of historical practice in” understanding the Enumeration Clause specifically.

Since the first census in 1790, “[t]he Census Bureau has always attempted to count every
person residing in a state on Census day, and the population base for purposes of apportionment
has always included all persons, including aliens both lawfully and unlawfully within our
borders.” FAIR, 486 F. Supp. at 576; see, e.g., Census Act of 1790, S. 101, 1st Cong. § 5,
(1790). Both Congress and the Executive Branch have long made clear that this unbroken
historical practice is constitutionally required.
Congress has repeatedly rejected statutory proposals to exclude all noncitizens or undocumented immigrants from the apportionment base on the ground that the Constitution forbids any such exclusion. For example, in 1929, Congress rejected proposals to amend the Census Act to exclude noncitizens from apportionment after members of the House and Senate repeatedly declared that “the plain mandate of the Constitution” requires counting all persons, including all noncitizens, for apportionment. 71 Cong. Rec. 1910 (May 25, 1929) (Sen. Bratton); see, e.g., id. at 1958 (May 27, 1929) (Sen. Reed), 2451-52 (June 6, 1929) (Rep. Griffith). The Senate’s legislative counsel provided a legal opinion confirming that all immigrants living here must be included given the Constitution’s “‘natural and obvious’ meaning,” “the history of the fourteenth amendment, the evidence of the records of the Constitutional Convention, and the uniform past congressional construction of the term by Congress in its apportionment legislation.” Id. at 1822 (May 23, 1929).

In 1940, in enacting a bill to amend the 1929 Act, see Pub. L. No. 76-481, Congress again rejected a proposal to exclude noncitizens from apportionment. See H.R. Rep. No. 1787, at 1 (1940) (Ex. 55) (committee report showing proposed exclusion of noncitizens). As Representative Emanuel Celler explained in opposing the proposal:

For 150 years we have included aliens in the count. We cannot, by mere resolution of this body or the adjoining body, change that constitutional requirement. If you strike out aliens you have parted with a principle of government upon which the fathers agreed some 150 years ago...When we use the word “persons” we include all peoples.

Cong. Rec. H4372 (Apr. 11, 1940); 86 Cong. Rec. at 4384-86 (voting 209-23 to strike exclusion).

And in 1980, a bill to exclude undocumented immigrants from the apportionment base failed after New York Senator Jacob Javits explained that there is no plausible way to construe the Constitution’s words as meaning “anything other than as described in Federalist papers, the

The Executive Branch has likewise consistently maintained that the Constitution requires counting all persons, regardless of immigration status, in the apportionment base. For example, in FAIR v. Klutznick, the Department of Justice, on behalf of the President, Secretary of Commerce, and Director of the Census Bureau, urged a district court to reject claims demanding exclusion of undocumented immigrants from the apportionment base. Defs.’ Mem. of Points & Authorities in Support of Mot. to Dismiss or for Summary Judgment, No. 79-3269 (D.D.C.), reprinted in 1980 Census, supra, at 125-156. The government explained that “the plain language of the Constitution, as well as the intent of its framers, establishes that all inhabitants, including illegal aliens, must be enumerated for the purpose of apportioning Representatives.” Id. at 131.

Similarly, the Department of Justice’s Office of Legislative Affairs has opined that the Constitution “require[s] that inhabitants of States who are illegal aliens be included in the census count.” Letter from Assistant Attorney Gen. Carol T. Crawford to Honorable Jeff Bingaman (Sept. 22, 1989), in 135 Cong. Rec. S22,521 (daily ed. Sept. 29, 1989).

Defendants have acknowledged that the decennial enumeration that necessarily determines the apportionment base must count all persons living in the United States, without any exclusions. For example, on March 14, 2019, Secretary Ross testified under oath during a congressional committee hearing that “[t]he constitutional mandate, sir, for the census is to try to count every person residing in the U.S. at their place of residence on the dates when the census is conducted.” Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. 31 (Mar. 14, 2019) (emphasis added); see id. (“We intend to try to count every person taking all necessary
actions to do so.” (emphasis added)). During a congressional committee hearing in February 2020, Census Bureau Director Dillingham testified that the Bureau will “count everyone, wherever they are living,” including undocumented immigrants. *Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 12 (Feb. 12, 2020) (emphasis added).

In multiple filings in this Court, many of the Defendants here repeatedly admitted that the Constitution requires enumerating every person residing in the United States, no matter their immigration status, for inclusion in the apportionment base. See, e.g., *New York v. Dep’t of Commerce*, Defs.’ Post-Trial Proposed Findings of Fact and Conclusions of Law 1, 18-CV-2921 (JMF) (S.D.N.Y. Nov. 21, 2018), ECF No. 546 (“Constitution requires the federal government to conduct a Decennial Census counting the total number of ‘persons’—with no reference to citizenship status—residing in each state.” (internal citations omitted)).

And, under a final rule adopted for the 2020 census, the Census Bureau has already decided to count undocumented immigrants for apportionment purposes. *See Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525, 5533 (Feb. 8, 2018).

Defendants’ attempt to reverse course at the last minute after the actual enumeration is already underway, and to exclude undocumented immigrants from the apportionment base for the first time in our country’s history, reflects a radical break from the consistent understanding and practice of the federal government for more than two centuries. There is simply no textual or historical support for this abrupt break in one of our country’s foundational principles.

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14 See also, e.g., *New York v. Dep’t of Commerce*, Memo. of Law in Support of Defs.’ Mot. to Dismiss 25, 18-CV-2921 (JMF) (S.D.N.Y. May 25, 2018), ECF No. 155 (“Constitution supplies a simple judicial standard for determining the constitutionality of [Census Bureau] practices—the Secretary must perform a person-by-person headcount” (emphasis added)).
5. Defendants do not have any "discretion" to exclude undocumented immigrants from the apportionment base.

Contrary to the President’s Memorandum, the Executive Branch does not have "discretion" to categorically exclude undocumented immigrants from the "whole number of persons in each State" based solely on their immigration status, without any regard to their physical residence here. 85 Fed. Reg. at 44,679.

The Memorandum reasons that apportionment should be based only on the number of "inhabitants" of each State, and that the President purportedly has discretion to deem undocumented immigrants who reside here as not "inhabitants." Id. But even if being an "inhabitant" were the relevant criterion, millions of undocumented immigrants who live in this country are indisputably inhabitants because they live here, many for years or even decades. An "inhabitant" is "a person . . . that lives in a particular place." Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/inhabitant. The President has no discretion to declare that undocumented residents of this country are not "inhabitants."

The text of the Constitution and an unbroken line of history also foreclose any discretion here. The Supreme Court has held that "[u]sual residence" is "the gloss given the constitutional phrase ‘in each State’" in Section 2 of the Fourteenth Amendment—meaning all persons whose "usual residence" is in the United States "must be included in the enumeration of the population and the apportionment of House seats." Franklin v. Massachusetts, 505 U.S. 788, 805 (1992). And "usual residence" has always been the criterion for enumeration and apportionment since "the first enumeration Act." Id. Conversely, the Framers specifically considered and rejected the notion that a person’s legal status—including voter, citizenship, or immigration status—could ever override their physical residence in the United States and result in their exclusion from the apportionment base. See 85 Fed. Reg, at 44,680. Defendants lack any authority to
exclude undocumented immigrants who maintain their usual residence in the United States from the apportionment.

The Memorandum’s conclusory attempts to support its invocation of “discretion” rely on inapposite examples. For example, the Memorandum asserts that noncitizens who are only temporarily in the United States for a vacation or a business trip are not included in the decennial enumeration used for apportionment even though they may be “physically present.” 85 Fed. Reg. at 44,679. But temporary visitors are not included in the apportionment base precisely because the United States is not their “usual residence.” See 83 Fed. Reg. at 5533. By contrast, the millions of undocumented immigrants whom Defendants seek to exclude from apportionment are not merely “physically present” as a fleeting matter but rather are residents here—many for years or even decades. The policy of excluding temporary visitors provides no support for Defendants’ attempt to exclude actual residents of this country who happen to be undocumented immigrants.

Defendants also point to the Secretary of Commerce’s decision, “at various times, to include” in the apportionment federal military and civil personnel who are not physically present in this country but are temporarily serving overseas. 85 Fed. Reg. at 44,679. But the policy of including overseas federal personnel takes as a given the principle that all persons living in the United States must be counted for apportionment purposes, and simply extends that principle to persons who can be deemed to maintain a “usual residence” in the country—because they have “retained their ties to the States”—even though they have been “temporarily stationed abroad” by the government. Franklin, 505 U.S. at 806 (emphasis added). In no sense does this inclusionary policy to include persons who are not currently physically present in their home
States authorize Defendants to exclude persons who indisputably reside here and thus are part of the “whole number of persons in each State.” U.S. Const. amend. XIV.

B. Apportioning Representatives based on numbers other than the actual enumeration from the decennial census is also unconstitutional.

The Presidential Memorandum violates the Constitution for a second, independent reason: it requires the use of data other than the “actual Enumeration” of the population ascertained by the decennial census to apportion Representatives. The actual enumeration in the 2020 census indisputably will include undocumented immigrants, and the Constitution requires Defendants to rely solely on this “actual Enumeration” for congressional apportionment. The subtraction of undocumented immigrants to create an apportionment base that is different from the population included in the actual enumeration violates this constitutional requirement.

Article 1, Section 2 mandates that House seats be allocated based on the “numbers” determined by the “actual Enumeration” of the decennial census. U.S. Const. art 1, § 2. While the Executive Branch may maintain some discretion over the manner of conducting the census, see Franklin, 505 U.S. at 799; Utah v. Evans, 536 U.S. 452 (2002), once the decennial census determines the “actual Enumeration,” Defendants must use those numbers—and only those numbers—to apportion House seats. As the Supreme Court has explained, “the Constitution provides that the results of the census shall be used to apportion the Members of the House of Representatives among the States.” Wisconsin, 517 U.S. at 5 (emphasis added). And “[t]he decennial census is the only census that is used for apportionment purposes.” Dep’t of Commerce v. U.S. House of Representatives, 525 U.S. 316, 341 (1999) (quotation marks omitted) (emphasis added).

The Framers required that apportionment be based solely on the numbers from the actual enumeration to provide a fixed rule “that would limit political chicanery.” Utah, 536 U.S. at 500
(Thomas, J., concurring in part and dissenting in part). The Framers’ “principal concern was that the Constitution establish a standard resistant to manipulation.” Id. at 503. George Mason described having a “permanent and precise standard as essential to fair representation,” because absent such a standard, “those who have power in their hands will not give it up while they can retain it.” Id. at 502 (quoting The Founders’ Constitution 102-03 (P. Kurland & R. Lerner eds. 1987)). Roger Sherman agreed that “the rule of revising the Representation ought to be fixt by the Constitution.” Id. (quoting The Founders’ Constitution 104). And Alexander Hamilton, writing about the Enumeration Clause’s apportionment of direct taxes among the States, explained that “an actual Census or enumeration of the people must furnish the rule,” so as to “shut[] the door to partiality or oppression.” The Federalist No. 36 at 220 (emphasis added).

For the 2020 census, the actual Enumeration will continue to include undocumented immigrants. Defendant Dillingham recently confirmed in congressional testimony that the Memorandum “does not change the Census Bureau’s plans for field data collection across the nation,” and that the Bureau will “continue full steam ahead with . . . counting every person,” including undocumented immigrants. Prepared Statement of Dr. Steven Dillingham Before the House Oversight and Reform Committee (July 29, 2020). Dillingham reaffirmed that the Census Bureau will continue to adhere to its Residence Rule for the 2020 census, see id., which requires enumerating undocumented immigrants “at the U.S. residence where they live and sleep most of the time.” 83 Fed. Reg. at 5533. And Defendants confirmed to this Court in this case that “[t]he Census Bureau is conducting a complete enumeration of the total population and

15 https://docs.house.gov/meetings/GO/GO00/20200729/110948/HHRG-116-GO00-Wstate-DillinghamS-20200729.pdf.

The Presidential Memorandum, however, directs the use of population totals excluding undocumented immigrants for apportionment—which are different from the actual Enumeration. To implement the Memorandum, Defendants would need to take the actual Enumeration numbers and subtract some estimate of the undocumented immigrants who live in each State, using administrative data or statistical models from sources other than the decennial actual Enumeration. See 85 Fed. Reg. at 44,679-80. Defendants would then use the resulting figures—rather than the actual Enumeration numbers—as the apportionment base. See id. Defendants’ recent submission to this Court confirmed that, under the Memorandum, “an apportionment number . . . will be chosen by the President after the census is complete.” Joint Letter 5, New York v. Trump, 20-CV-5770 (JMF), ECF No. 37 (S.D.N.Y. filed Aug. 3, 2020). In other words, the President will “choose” a “number” for the apportionment base that differs from the “complete enumeration of the total population.” Id. at 9.

The Constitution prohibits Defendants from apportioning seats in this manner. The President does not have “discretion” to add to, subtract from, or otherwise alter the numbers of persons actually enumerated through the decennial census to “choose” a separate apportionment base of his own liking. As the Census Bureau has recognized for decades, there is unbroken

16 If Defendants assert, contrary to Dillingham’s congressional testimony, the Residence Rule, and Defendants’ recent submission, that the “actual Enumeration” is the numbers derived after subtracting undocumented immigrants from the 2020 census count, that also would violate the Enumeration Clause. The Enumeration Clause prohibits Defendants from subtracting enumerated people out of the actual Enumeration numbers, and it certainly prohibits Defendants from doing so based on statistical estimates that rely on sampling and administrative data from outside agencies. See, e.g., U.S. House of Representatives, 525 U.S. at 346-47 (Scalia, J., concurring in part) (“an ‘enumeration’ requires an actual counting”).
“historical precedent of using the actual Enumeration for purposes of apportionment” rather than any other population count. *U.S. House of Representatives*, 525 U.S. at 340. The Constitution’s fixed “rule” bars the President from using an apportionment base that differs from the actual Enumeration numbers. The Federalist No. 36 at 220.

Indeed, Defendants’ scheme to deviate from the actual Enumeration numbers in shaping political power for the next decade represents precisely the type of “political chicanery” and “manipulation” that the Framers prevented by adopting the Enumeration Clause. *Utah*, 536 U.S. at 500, 503 (Thomas, J., concurring in part and dissenting in part). The Memorandum makes no secret that Defendants seek to exclude undocumented immigrants from the apportionment base for political reasons. The Memorandum explicitly seeks to prevent certain States from being “rewarded with greater representation in the House of Representatives,” and even singles out a particular state—California—whose political power Defendants wish to reduce. 85 Fed. Reg. at 44,680. The Framers foresaw that leaders could seek to manipulate congressional apportionment for their own political benefit, and they guarded against such abuse by mandating that apportionment be determined by the actual Enumeration of the population ascertained through a decennial census, and nothing else.

IV. The Memorandum is *ultra vires* under the statutory scheme Congress enacted to implement the required decennial census and reapportionment of House seats.

The President’s Memorandum also violates statutory provisions Congress enacted to implement those constitutional requirements. See 13 U.S.C. § 141(a), (b); 2 U.S.C. § 2a. The Memorandum is *ultra vires* under these statutes in at least three ways.

A. The Memorandum violates the statutory requirements to count the total population, and to report and use that total for apportionment purposes.

Congress enacted a statutory scheme directing that the whole population of the States—including undocumented immigrants who reside here—must be counted in the decennial census
and then used to apportion representatives. 13 U.S.C. § 141; 2 U.S.C. § 2a. As Congress explained in enacting predecessors to these two provisions in a single statute,17 “the functions served by them interlock,” because “there is but one basic constitutional function served by the census. It is to provide an enumeration of the people for the purpose of redistributing congressional representatives proportioned thereto.” S. Rep. No. 71-2, at 2 (1929) (Ex. 53).

As codified at 13 U.S.C. § 141(a), the Census Act instructs that the Secretary of Commerce “shall . . . take a decennial census of population . . . .” Subsection (b) then specifies that “[t]he tabulation of total population by States under subsection (a) . . . as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.” Id. § 141(b); see also Act of June 18, 1929, § 2, 46 Stat. 21, 21 (requiring same tabulation). These provisions together require that there be a “census of population” under subsection (a), that this census include a “tabulation of total population by States as required for” apportionment, and that this tabulation then be provided in a report to the President.

In turn, 2 U.S.C. § 2a(a) directs the President to provide Congress an apportionment report that is based solely on the census’s tabulation of population and application of a mathematical apportionment method to that result. As the statute provides, “the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent 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 . . . .” 2 U.S.C. § 2a (emphases added); see also Act

17 See Act of June 18, 1929, §§ 2, 22.
of June 18, 1929, § 2, 46 Stat. 21, 21; Pub. L. No. 77-291, § 1 (amending provision of 1929 Act to require use of “equal proportions” method). The “method of equal proportions” is a method of apportionment based on each State’s population designed to minimize disparities in “population per Representative” among States. 71 Cong. Rec. at 4965 (Mar. 2 1929) (“Memorandum on the Method of Equal Proportions” by Professor Edward Huntington noting unanimous adoption of method by Advisory Committee of the Census); 67 Cong. Rec. at 7078 (Apr. 7, 1926) (Advisory Committee report describing method as providing “an apportionment in which the ratios between the representation and the population of the Several States are as nearly alike as possible”). The Department of Justice has recognized that the method of equal proportions relies on each State’s population. Br. for Appellants, Dep’t of Commerce v. Montana, 503 U.S. 442 (1992), 1992 WL 672939, at *9-*11 (“Under all of the methods, the formula for establishing each State’s priorities has as its numerator the population of the State.”).

By requiring the exclusion of undocumented immigrants from the statutory phrases “total population” and “whole number of persons in each State,” the Memorandum directs the President and the Secretary of Commerce to perform unlawful, ultra vires actions.

The Commerce Secretary is not empowered to provide the President with information “as required for the apportionment” other than a “tabulation of total population.” 13 U.S.C. § 141(b) (emphasis added). And the President is not empowered to exclude undocumented immigrants from “the whole number of persons in each State” or from the apportionment numbers in his apportionment report to Congress. 2 U.S.C. § 2a(a). The reason is simple: undocumented immigrants are persons. As a matter of plain language, the word “person” in § 2a makes no distinction based on citizenship or immigration status. See also supra Part III.A. (same discussion in context of Fourteenth Amendment). At no point has Congress had trouble
distinguishing among persons, citizens, and noncitizens when it wishes to do so—and it certainly had no such trouble in 1929 when §§ 141 and 2a were initially enacted. See, e.g., Pub. L. No. 71-962, § 6(b) (prohibiting “alien” from “being admitted to citizenship” without being “a person of good moral character” as shown by, inter alia, testimony of two “citizens of the United States”). Similarly, the single exception reflected in § 2a’s text—“Indians not taxed”—suggests no other exclusions were intended. See Greene v. United States, 79 F.3d 1348, 1355 (2d Cir. 1996) (“mention of one impliedly excludes others”).

Congress is also “presumed to legislate with familiarity of the legal backdrop for its legislation.” Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela, 863 F.3d 96, 114 (2d Cir. 2017). That backdrop speaks volumes. Congress adopted the “whole number of persons” statutory language in 1929 (and again in 1941) against (1) its own unbroken legislative practice to count noncitizens, including undocumented immigrants, for apportionment purposes18; and (2) Supreme Court precedent holding that “person” in the Fourteenth Amendment includes undocumented immigrants. See supra Part III.A. This further shows that the statute requires including such individuals in apportionment. When “Congress used the materially same language [in a statute] it presumptively was aware of the longstanding judicial interpretation of the phrase and intended for it to retain its established meaning.” See Lamar, Archer & Cofrin, LLP v. Appling, 138 S. Ct. 1752, 1762 (2018) (unanimous court on this point); see also New York v. U.S. Dep’t of Homeland Sec., __ F.3d __, 2020 WL 4457951, at *21 (2d Cir. Aug. 4, 2020) (Congress “ratified the settled meaning” of a term in immigration law “[i]n light of the judicial, administrative, and legislative treatments” of that term from 1882 to 1996).

18 For the vast majority of the nation’s history, Congress apportioned seats in the House by statute enacted shortly after the decennial census. See Br. for Appellants, Dep’t of Commerce v. Montana, 503 U.S. 442 (1992), 1992 WL 672929, at *4–*15.
The Memorandum also contradicts Congress’s unambiguous rejection of proposals to exclude noncitizens from the apportionment base. As discussed above, in enacting the 1929 Act in which 2 U.S.C. § 2a originated, both the Senate and House considered and rejected amendments to exclude noncitizens from the “whole number of persons in each State” for apportionment purposes.\(^{19}\) Congress again rejected such a bill in 1940, and again in 1980. See supra Part III.A.4. These votes show that Congress understood that the ordinary meaning of the phrase “persons in each state” included noncitizens: “at the time of the [Fourteenth Amendment’s adoption] and since, an alien was and has been a ‘person.’” 71 Cong. Rec. at 1821 (May 23, 1929). They also show that Congress understood that its own historical legislative practice had “been uniformly in favor of inclusion of aliens,” id. at 1822, such that enactment of the “whole number of persons” language would continue that unbroken practice.

The Census Bureau’s longstanding interpretation of its statutory obligations further confirms that undocumented immigrants residing in the United States are part of the enumerated population used to apportion House seats. “Congress is presumed to be aware of an administrative . . . interpretation of a statute.” Lorillard v. Pons, 434 U.S. 575, 580 (1978); see also New York, ___ F.3d ___, 2020 WL 4457951, at *21. On February 8, 2018, after notice-and-comment rulemaking, the Census Bureau promulgated its “Residence Rule” for the 2020 census, which is used to “determine where people are counted during each decennial census” in order “to apportion the seats in the U.S. House of Representatives among the States.” Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018). Its

\(^{19}\) See 71 Cong. Rec. 2065 (vote on amendment by Sen. Sackett fails, 29-48) (1929); id. at 2360-63 (House adopts alienage exclusion as amendment to section 22 on June 4, 1929); id. at 2448-2445 (Rep. Tilson of Connecticut offers substitute for section 22 of the bill without alienage exclusion, House by vote of 202-129 sustains ruling of the chair against point of order against Tilson amendment, House adopts Tilson amendment 212-102, and House passes bill).
purpose is “to ensure that the concept of usual residence is interpreted and applied, consistent with the intent of the Census Act of 1790, which was authored by a Congress that included many of the framers of the U.S. Constitution and directed that people were to be counted at their usual residence.” Id. at 5526.

Under the Residence Rule, “[c]itizens of foreign countries living in the United States” must be “[c]ounted at the U.S. residence where they live and sleep most of the time.” Id. at 5533. The Census Bureau elaborated that the “Census Bureau is committed to counting every person in the 2020 Census,” including citizens of foreign countries living in the United States. Id. at 5526. And it considered comments “express[ing] concern about the impact of including undocumented people in the population counts for redistricting because these people cannot vote,” id. at 5530, but declined to make any changes to its residence criteria and indicated that it “will retain the proposed residence situation guidance for foreign citizens in the United States.” Id.

The Memorandum attempts to manufacture ambiguity on whether undocumented immigrants “inhabit” a State such that they constitute a “person[] in each State” for constitutional purposes. 85 Fed. Reg. at 44,679. But there is no such ambiguity: the phrase “whole number of persons in each State,” as used in 2 U.S.C. § 2a, has always been understood to include people who reside in a particular State regardless of alienage or immigration status. See supra Part III.A. Congress has repeatedly rejected measures to exclude aliens from § 2a—measures that would have made little sense if § 2a already excluded categories of aliens. Moreover, it would be inconsistent with § 2a—under which the President has a ministerial role to report the census’s count of total population and mandated to use a method designed to minimize per-district population disparities—to grant him discretion to exclude whole classes of persons.
B. The Memorandum violates the Census Act by producing apportionment figures that are not based solely on the decennial census.

The Memorandum’s reliance on non-census data to determine the number of undocumented immigrants to be removed from the apportionment base violates the requirement under 2 U.S.C. § 2a to use census data only.

Section 2a is clear that both the “whole number of persons” and the apportionment data must be ascertained from the decennial census.\textsuperscript{20} The provision specifies that this number must be “ascertained under the . . . decennial census of the population.” In \textit{Franklin v. Massachusetts}, 505 U.S. 788 (1992), the Supreme Court affirmed that “Section 2a . . . expressly require[s] the President to use . . . the data from the ‘decennial census.’” \textit{Id.} at 797.\textsuperscript{21}

The broader statutory scheme makes clear that the apportionment data reported by the President must come from the census alone. The Census Act specifies that “[t]he tabulation of total population by States” is “required for the apportionment of Representatives in Congress among the several States.” 13 U.S.C. § 141(b). As the Senate Report for the 1929 bill explained, “[t]he census would be taken in November, 1929. One year later, \textit{with these figures in}

\textsuperscript{20} The President’s statement must “show[] the whole number of persons in each State . . . as ascertained under the seventeenth and each subsequent decennial census of the population.” 2 U.S.C. § 2a. Apportionment must be based on “the method of equal proportions,” relying on that data. \textit{Id.}

\textsuperscript{21} \textit{Franklin} held that certain elements of 2 U.S.C. § 2a(a) are non-ministerial, but the Court appeared to limit those to circumstances in which the Secretary of Commerce has exercised policy judgment. \textit{See} 505 U.S. at 799 (“§ 2a does not curtail the President’s authority to direct the Secretary in making policy judgments that result in ‘the decennial census’; he is not expressly required to adhere to the policy decisions reflected in the Secretary’s report.”). Whatever those non-ministerial duties may be, \textit{Franklin} is equally clear that use of the census data and the calculation of apportionment figures are ministerial. \textit{Id.} at 797 (“Section 2a does not expressly require the President to use the data in the Secretary’s report, but, rather, the data from the “decennial census.”); \textit{id.} at 799 (the President’s apportionment calculation is of a “ministerial nature”).
hand, the President would report the census figures, together with a table showing how, under these figures, the House would be apportioned.” S. Rep. 71-2 at 4 (emphases added) (Ex. 53).

The President’s use of the census’s count of the whole number of persons in each State, and application of the chosen mathematical method (equal proportions), are not discretionary matters. “The Department of Commerce counts the people (as it always has done),” and “the President reports upon a problem in mathematics which is standard, and for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer.” S. Rep. 71-2, at 4-5 (Ex. 53); see also H.R. Rep. 70-2010, at 7 (official providing report “is left with no discretionary power” and must use “without deviation, the population of each State” as reported in census) (Ex. 54). The Supreme Court has made equally clear that, under 2 U.S.C. § 2a, the President must use census data and that an apportionment based on that data is “admittedly ministerial.” Franklin, 505 U.S. at 797, 799.

The Supreme Court has further confirmed that the President’s apportionment report must be based on the population figures from the census, noting that the Apportionment and Census Acts “mandat[e] a population count that will be used to apportion representatives.” Dep’t of Commerce, 139 S. Ct. at 2568-69; see also U.S. House of Representatives, 525 U.S. at 321-22 (“Using this information [from the Census], the President must then “transmit to the Congress a statement showing the whole number of persons in each State . . . and the number of Representatives to which each State would be entitled.”).

The Department of Justice has also historically recognized that the apportionment must be based on the total population figures produced by the census. Reply Br. for the Federal Appellants at 15, Franklin v. Massachusetts (“[I]t is true that the method of equal proportions calls for application of a set mathematical formula to the state population totals produced by the
census”). Tr. of Oral Argument at 12, *Franklin*, 505 U.S. 788 (Deputy Solicitor General Roberts) ("The law directs [the President] to apply, of course, a particular mathematical formula to the population figures he receives . . . ."); *id.* at 12 ("It would be unlawful [for the President] . . . just to say, these are the figures, they are right, but I am going to submit a different statement."); *id.* at 13 ("I think under the law he is supposed to base his calculation on the figures submitted by the Secretary.").

The President’s Memorandum violates these requirements. To exclude undocumented immigrants from the apportionment base, see 85 Fed. Reg. at 44,680, the President will necessarily have to rely on information that is not contained within the census, because the 2020 census questionnaire is not gathering information concerning citizenship or immigration status. *See, e.g.*, Order, *New York v. U.S. Dep’t of Commerce*, 18-CV-2921 (JMF) (S.D.N.Y. Aug. 7, 2019), ECF No. 653 (permanently enjoining the inclusion of a citizenship question on the 2020 decennial census questionnaire).

Further, the Memorandum itself concedes that it will rely on information other than that obtained by the census. The Memorandum distinguishes between the enumeration information gathered by the census under the governing Residence Rule, and the information the President will use to exclude undocumented immigrants from the census count of whole persons:

"[T]he Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President’s discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary shall also include in that report information tabulated according to the methodology set forth in [the Residence Rule]."

85 Fed. Reg. at 44,680 (emphasis added). The Memorandum additionally indicates that other “data on illegal aliens . . . relevant for the purpose of conducting the apportionment” may be available as a result of Executive Order 13,880, in which the President “instructed executive
departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country.” 85 Fed. Reg. at 44,680.

Simply put, the Memorandum violates statutory requirements by requiring the reporting to the President and the subsequent Presidential use of non-census data to calculate a whole number of persons in each State that is different from census results, and to apportion seats in Congress according to that latter figure.

C. The Memorandum violates 2 U.S.C. § 2a by producing apportionment figures that are not based solely on a ministerial calculation.

The President is required to report an apportionment calculation “by the method known as the method of equal proportions.” 2 U.S.C. § 2a. In Franklin, the Supreme Court made clear that the President’s apportionment calculation is of a “ministerial nature.” See Franklin, 505 U.S. at 799. Franklin noted that the Senate Report for the bill that presaged 2 U.S.C. § 2a, states that the President is to report “upon a problem in mathematics which is standard, and for which rigid specifications are provided by Congress itself, and to which there can be but one mathematical answer.” Id. (quoting S. Rep. No. 2, 71st Cong., 1st Sess., at 4–5) (emphasis added).

The legislative history confirms the point. In 1920, for the first time, Congress failed to pass a reapportionment act. Montana, 503 U.S. at 451–52. Accordingly, in 1929, in passing the modern precursor to 13 U.S.C. § 141 and 2 U.S.C. § 2a, Congress ensured “an automatic reapportionment through the application of a mathematical formula to the census.” Franklin, 505 U.S. at 809 (Stevens, J., concurring in part and concurring in the judgment). “The automatic connection between the census and the reapportionment was the key innovation of the Act.” Id.
In 1941, the Act was modified to change the allocation formula to the current method of equal proportions. *See id.* at 809 n.5 (citing *Montana*, 503 U.S. at 451–52 & n.25).

Indeed, congressional debate makes clear that Congress intended to give the President no discretion in how reapportionment figures would be calculated. The sponsor of the bill, Senator Vandenberg, explained that the President had no discretion in such a calculation and that “as a matter of indisputable fact, th[e] function served by the President is as purely and completely a ministerial function as any function on earth could be.” 71 Cong. Rec. 1858 (1929); *see also supra* IV.B. (noting similar statements in committee reports).

As discussed *supra*, the Memorandum establishes a policy under which the President will perform additional calculations beyond those set forth by the method of equal proportions in order to derive an apportionment figure that excludes undocumented immigrants. 85 Fed. Reg. at 44,680 (“[I]t is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”). But Congress designed a system with only “one mathematical answer” to the question of apportionment, S. Rep. 71-2, at 4–5 (Ex. 53). By altering Congress’s required apportionment computation to add calculations not specified by 2 U.S.C. § 2a, the Memorandum causes the President to violate his ministerial duty to report apportionment figures under the “rigid specifications” provided by the method of equal proportions. S. Rep. No. 71-2, at 4–5 (Ex. 53). Such calculations therefore violate the “automatic connection between the census and the reapportionment” that Congress established. *Franklin*, 505 U.S. at 809 (Stevens, J., concurring in part and concurring in the judgment).
D. This Court has equitable authority to correct the Presidential Memorandum’s *ultra vires* mandates.

Because the Memorandum requires Defendants Trump and Ross to act beyond the plain scope of their statutory authority, the equitable jurisdiction of this Court is available to correct this *ultra vires* action and provide redress to Plaintiffs.

The Supreme Court has long recognized that federal courts have inherent equitable authority to grant relief to enjoin *ultra vires* action, such as that ordered by the Memorandum, even in the absence of an express statutory provision. The Court most recently reaffirmed this authority in *Armstrong v. Exceptional Child Center*, which explained that federal courts may grant injunctive relief absent a statutory cause of action “with respect to violations of federal law by federal officials.” 575 U.S. 320, 326-27 (2015). This inherent equitable authority, the Court noted in *Armstrong*, has been recognized for centuries “and reflects a long history of judicial review of illegal executive action, tracing back to England.” *Id.* at 327; *see also generally Am. Sch. of Magnetic Healing v. McAnulty*, 187 U.S. 94, 108, 110 (1902); *Carroll v. Safford*, 44 U.S. 441, 463 (1845).

The core purpose of inherent equitable authority is not just to provide redress for individuals whose statutory or constitutional rights are violated, but also to ensure the proper separation of powers and require “the executive to obey [Congress’s] statutory commands.” *Bowen v. Mich. Acad. of Family Physicians*, 476 U.S. 667, 681 (1986); *see also Leedom v. Kyne*, 358 U.S. 184, 191 (1958) (“This Court cannot lightly infer that Congress does not intend judicial protection of rights it confers against agency action taken in excess of delegated powers.”).

The modern doctrine of *ultra vires* review provides inherent, nonstatutory review for executive action in excess of statutory authority. *See, e.g., Mountain States Legal Found. v. Bush*, 306 F. 3d. 1122, 1136 (D.C. Cir. 2002) (“the Supreme Court has indicated generally that
review is available to ensure that the Proclamations are consistent with constitutional principles and that the President has not exceeded his statutory authority”); *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1327-28 (D.C. Cir. 1996) (“When an executive acts *ultra vires*, courts are normally available to reestablish the limits on his authority”). Such review exists independently from the Administrative Procedure Act (“APA”), and the APA does not restrict or “repeal the review of *ultra vires* actions.” *Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988); see also *Hawaii v. Trump*, 878 F.3d 662, 682 (9th Cir. 2017) (finding equitable cause of action “which exists outside of the APA”), *rev’d on other grounds*, 138 S. Ct. 2392 (2018); *Mittleman v. Postal Regulatory Comm’n*, 757 F.3d 300, 307 (D.C. Cir. 2014) (“the absence of a cause of action for judicial review under the APA does not necessarily foreclose all judicial review”); *Reich*, 74 F.3d at 1326-27 (engaging in *ultra vires* review where APA claim not pled).

Further, courts have consistently acknowledged that *ultra vires* review extends to review of actions taken by the *President*, not just subsidiary executive branch actors. See, e.g., *Hawaii*, 878 F.3d at 682-83 (finding equitable cause of action “allows courts to review *ultra vires* actions by the President that go beyond the scope of the President’s statutory authority”); *Mountain States Legal Found.* , 306 F.3d at 1136 (finding equitable review generally available to determine whether presidential executive memoranda exceed statutory authority); *Reich*, 74 F.3d at 1327-28 (finding, under equitable review, that presidential executive order violated National Labor Relations Act). Indeed, the Supreme Court has often reviewed whether presidential actions comply with congressional statutes without specifying or identifying a cause of action. See, e.g., *Sale v. Haitian Ctrs. Council*, 509 U.S. 155 (1993) (reviewing presidential actions relating to Haitian migrants for compliance with the INA without discussing cause of action); *Dames &
Moore v. Regan (453 U.S. 654 (1981)) (upholding executive orders, including their conformity with various statutes, without discussing causes of action).

Ultra vires review may be inappropriate in two circumstances, but neither exception applies here. First, inherent equitable authority is unwarranted where Congress has demonstrated an “intent to foreclose” equitable relief by providing alternate enforcement mechanisms and because the statute is judicially unadministrable. See Armstrong, 575 U.S. at 327-29. Here, there is no alternate mechanism for enforcing the statutory provisions at issue, and the statutory mandate and remedy—to include undocumented immigrants with all other people in the apportionment base—is eminently administrable.

Second, equitable review may be inappropriate “[w]here a statute . . . commits decisionmaking to the discretion of the President.” Dalton v. Specter, 511 U.S. 462, 477 (1994). But that is plainly not the case here, where Congress has mandated that the Secretary and the President perform specifically prescribed actions without any meaningful discretion. Indeed, the Supreme Court has held that by “mandating a population count that will be used to apportion representatives” under 13 U.S.C. § 141(b) and 2 U.S.C. § 2a, Congress did not commit unreviewable discretion the executive. Dep’t of Commerce, 139 S. Ct. at 2568-69.

It is beyond any question that the Memorandum requires action in excess of the authority granted by statute to the President and the Commerce Secretary. As such, this Court has ample power to grant the requested relief to ensure compliance with the law.

V. Alternatively, a preliminary injunction is warranted to prevent irreparable harm.

In the alternative, Plaintiffs are entitled to a preliminary injunction on their claims that the Memorandum violates the Constitution and federal law. Plaintiffs are likely to succeed on the merits of their claims that the decision to exclude undocumented immigrants from the apportionment base violates the Constitution and federal law, and that the Presidential
Memorandum violates Article I and Section 2 of the Fourteenth Amendment and violates the Census Act, for the reasons set out in Part III and Part IV above.

As this Court has recognized, “[a] showing of irreparable harm ‘is the single most important prerequisite for the issuance of a preliminary injunction.’” *XL Specialty Ins. Co.* v. *Level Glob. Inv’rs, L.P.*, 874 F. Supp. 2d 263, 270 (S.D.N.Y. 2012) (quoting *Faiveley Transport. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009)). Plaintiffs need only show a “threat of irreparable harm, not that irreparable harm already [has] occurred.” *Mullins v. City of New York*, 626 F.3d 47, 55 (2d Cir. 2010).

Plaintiffs will suffer irreparable and imminent harm because the Memorandum discourages immigrant households from responding to the 2020 census. The well-publicized Memorandum will produce a chilling effect on response rates by sowing confusion, mistrust, and fear among immigrant households about the consequences of responding to the census. The resulting decline in response rates will both degrade the quality of census data—thereby compromising the Governmental Plaintiffs’ policy and planning decisions that rely on that data—and result in an ultimate undercount of immigrant communities that will reduce the federal funds flowing to those communities.22 Plaintiffs will also suffer imminent, irreparable harm because the Memorandum will dilute the political power of Plaintiffs’ constituents.

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22 This Court may take judicial notice of the evidentiary record from the related case of *State of New York v. Department of Commerce*, 18-CV-2921 (JMF), under the “established . . . approach that permits courts in subsequent related cases to rely upon the evidence presented in earlier litigation . . . to reach their own, independent findings of fact in the cases before them.” *Haim v. Islamic Republic of Iran*, 784 F. Supp. 2d 1, 6 (D.D.C. 2011); see *Hake v. Citibank, N.A.*, No. 19-MC-125 (JGK), 2020 WL 1467132, at *5 (S.D.N.Y. Mar. 26, 2020) (“[T]he court could ‘take judicial notice of the evidentiary record in another similar case and, from that, make certain factual findings that obviate the need for Plaintiffs to re-present the same evidence.’”) (citation, brackets, and internal quotation marks omitted).
A. The Presidential Memorandum will deter immigrants and their households from responding to the 2020 census.

The Memorandum, and Defendants’ corresponding public statements, are already predictably deterring participation in the ongoing decennial census and undermining the Census Bureau’s efforts to count immigrants and their families. Just as adding a citizenship question to the decennial census would have made non-citizen and Hispanic households “unlikely to respond (or to give a complete response) to in-person NRFU enumerators,” New York, 351 F. Supp. 3d at 585, so too will the exclusion of undocumented immigrants from the apportionment base make immigrant households less willing to respond to the census or to NRFU enumerators. Barreto Decl. ¶ 85 (Ex. 56).

Defendants’ decision to exclude undocumented immigrants from the apportionment base sends a clear message that this community does not count and should be left out of the democratic process. Bird Decl. ¶ 9 (Ex. 9); Choi Decl. ¶¶ 16-18 (Ex. 14); Colon Decl. ¶ 11 (Ex. 16); Cullinane Decl. ¶ 7 (Ex. 17); Espinosa Decl. ¶ 11 (Ex. 18); Khalaf Decl. ¶¶ 12 (Ex. 26); Matos Decl. ¶ 11 (Ex. 30); Mostofi Decl. ¶ 8 (Ex. 34); Oshiro Decl. ¶¶ 12-13 (Ex. 36); Sarmiento Decl. ¶ 5 (Ex. 42); Seon Decl. ¶¶ 13-14 (Ex. 43); Soto Decl. ¶ 12 (Ex. 45); Torres Decl. ¶ 19 (Ex. 47). This message, and its import, is widely known across immigrant communities, particularly those that consume Spanish-language media. Barreto Decl. ¶ 14 (Ex. 56); Oshiro Decl. ¶ 12 (Ex. 36); Torres Decl. ¶ 18 (Ex. 47). The Memorandum undercuts Plaintiffs’ messaging that “everyone counts” and effectively discourages immigrant households from responding to the census at all. Alvarez Decl. ¶ 11 (Ex. 1); Baldwin Decl. ¶ 8 (Ex. 4); Bird Decl. ¶ 12 (Ex. 9); Broughton Decl. ¶ 6 (Ex. 10); Brower Decl. ¶ 11 (Ex. 11); Bysiewicz Decl. ¶ 8 (Ex. 12); Choi Decl. ¶¶ 16-18 (Ex. 14); Colon Decl. ¶ 7 (Ex. 16); Espinosa Decl. ¶¶ 7, 12-13 (Ex. 18); Matos Decl. ¶ 9, 12 (Ex. 30); Murray Decl. ¶ 5 (Ex. 35); Oshiro Decl. ¶¶ 12-13 (Ex. 36);
Sarmiento Decl. ¶ 5 (Ex. 42); Seon Decl. ¶¶ 9, 14 (Ex. 43); Sivongxay Decl. ¶ 12 (Ex. 44); Soto Decl. ¶ 6 (Ex. 45); Torres Decl. ¶¶ 12, 13, 19 (Ex. 47); Barreto Decl. ¶¶ 33, 54 (Ex. 56). As the Chief Demographer for New York City has explained, the Memorandum “discredits the essential message that everyone’s response matters and makes an already fearful group more apprehensive about the perceived risks associated with responding [to the census].” Salvo Decl. ¶ 10 (Ex. 41). As Dr. Matthew A. Barreto, a Chicano/a Studies professor with decades of experience in public opinion research in the Latino community, writes, the Memorandum both reduces the benefits and raises the risks of Census participation for undocumented immigrants because “the July 21 PM states they won’t count, and there is now a risk of their information being linked to immigration records and facing immigration enforcement.” Barreto Decl. ¶ 62 (Ex. 56); see also Torres Decl. ¶ 20 (Ex. 47). Following the issuance of the Memorandum, immigrant community members living in Monterey County, for example, expressed that “[w]e don’t matter, why be counted if at the end of the day being counted doesn’t matter in terms of political power, which is where we need it most.” Soto Decl. ¶ 12 (Ex. 45). And immigrant community members in Virginia explained that “they don’t see a benefit in filling out the [census] form if they will not be counted.” Sarmiento Decl. ¶ 6 (Ex. 42).

Furthermore, the Memorandum sows fear that the Trump Administration is again seeking to identify the location and numbers of undocumented immigrants, ostensibly for exclusion from apportionment (a grave harm in its own right), but also potentially for immigration enforcement purposes. Alvarez Decl. ¶ 10 (Ex. 1); Bird Decl. ¶ 6 (Ex. 9); Cullinane Decl. ¶ 8 (Ex. 17); Espinosa Decl. ¶¶ 12-13 (Ex. 18); Matos Decl. ¶ 12 (Ex. 30); Mostofi Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 10, 14 (Ex. 36); Roche Decl. ¶ 6 (Ex. 38); Sarmiento Decl. ¶ 12 (Ex. 42); Sivongxay Decl. ¶ 13 (Ex. 44). As Dr. Barreto explains, the Memorandum is likely to “generate a chilling
effect and incentivize households with undocumented immigrants to provide no additional information to the Federal Government that they feel would implicate their immigration status,” particularly with respect to census questionnaire items “asking about nativity or ethnic/racial group.” Barreto Decl. ¶ 31 (Ex. 56). Since the Memorandum was issued, mixed-status families have questioned “whether they should participate in the Census as a result of their fears that the Government could probe into the undocumented individuals in [their] extended famil[ies].” Espinosa Decl. ¶ 13 (Ex. 18); see also Choi Decl. ¶ 19 (Ex. 14); Oshiro Decl. ¶ 10 (Ex. 36); Torres Decl. ¶ 20 (Ex. 47). As with the citizenship question, these fears will predictably reduce census response rates in these communities, particularly with respect to government-related NRFU efforts.

Plaintiffs have already begun to see signs that the Memorandum is deterring census response in their own communities. See Baldwin Decl. ¶¶ 8-9 (Ex. 4); Bird Decl. ¶ 12 (Ex. 9); Choi Decl. ¶ 27 (Ex. 14); Espinosa Decl. ¶¶ 10-13 (Ex. 18); Khalaf Decl. ¶¶ 11-12 (Ex. 26); Mostofi Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 11-14 (Ex. 36); Sarmiento Decl. ¶ 7 (Ex. 42); Seon Decl. ¶¶ 13-17 (Ex. 43); Sivongxay Decl. ¶ 13 (Ex. 44); Soto Decl. ¶ 12 (Ex. 45); Torres Decl. ¶¶ 2, 16 (Ex. 47); Aranda-Yanoc Decl. ¶ 7 (Ex. 51). Plaintiffs have also observed an appreciable increase in the number of questions from immigrant and Latinx constituents and media (particularly Spanish-language media) about the privacy and confidentiality of their census responses, Barreto Decl. ¶ 16 (Ex. 56); Baldwin Decl. ¶ 8 (Ex. 4); Banerji Decl. ¶ 5 (Ex.5); Choi Decl. ¶ 19 (Ex. 14); Mostofi Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 10, 12, 14 (Ex. 36); Seon Decl. ¶ 16 (Ex. 43); Sivongxay Decl. ¶ 22 (Ex. 44); Torres Decl. ¶ 18 (Ex. 47); Aranda-Yanoc Decl. ¶ 7 (Ex. 51); as well as how the Administration would identify undocumented immigrant populations for exclusion from the apportionment count. Alvarez Decl. ¶ 10 (Ex. 1); Choi Decl.
¶ 18, 27 (Ex. 14); Cullinane Decl. ¶ 8 (Ex. 17); Espinosa Decl. ¶¶ 12-13 (Ex. 18); Oshiro Decl. ¶ 10 (Ex. 36); Seon Decl. ¶ 16 (Ex. 43). These concerns about privacy, confidentiality, and potential immigration consequences reflect further reluctance to respond to the census among an already hard-to-count population at a critical point in the enumeration—right before the start of NRFU operations.  

Because of the Memorandum’s chilling effect on immigrant communities, the NGO Plaintiffs will have to divert resources from mission critical programs—including education, housing, and pandemic-related assistance—to additional census outreach. See New York, 351 F. Supp. 3d at 616-17; Choi Decl. ¶¶ 20-26 (Ex. 14); Espinosa Decl. ¶¶ 14-17 (Ex. 18); Khalaf Decl. ¶¶ 14-15 (Ex. 26); Oshiro Decl. ¶¶ 15-16 (Ex. 36); Seon Decl. ¶¶ 17-18 (Ex. 43); Torres Decl. ¶ 23 (Ex. 47). Plaintiffs’ census outreach efforts have centered on publicizing the importance of counting every person, regardless of citizenship or immigration status, including for apportionment purposes. See Choi Decl. ¶ 12; Espinosa Decl. ¶ 7 (Ex. 18); Oshiro Decl. ¶ 7 (Ex. 36); Seon Decl. ¶ 9 (Ex. 43); Torres Decl. ¶ 12 (Ex. 47). The Memorandum directly contradicts these messages, which has resulted in members of the communities that the NGO Plaintiffs serve expressing reluctance to respond to the census. Choi Decl. ¶¶ 17, 27 (Ex. 14); Espinosa Decl. ¶¶ 13-14 (Ex. 18); Khalaf Decl. ¶¶ 12-15 (Ex. 26); Oshiro Decl. ¶¶ 10-14 (Ex. 36); Seon Decl. ¶¶ 12-15 (Ex. 43). The NGO Plaintiffs are diverting resources to increase or revise their outreach efforts to overcome the Memorandum’s damage because once the enumeration period closes the opportunity for Plaintiffs to ensure their communities are counted—and receive the political power and government funding to which they are entitled—is


Defendants’ recent decision to accelerate the conclusion of nonresponse followup operations heightens the urgency—and exacerbates these injuries—because it limits the timeframe in which this Court can grant meaningful relief to redress these harms. The Bureau announced earlier this year that it would collect census responses through October 30. Thompson Decl. ¶ 14 (Ex. 57). On August 3, Defendants abruptly reversed course, opting to end field operations even earlier—on September 30, just 54 days from the date of this filing. *See Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count* (Aug. 3, 2020), https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html. This change dramatically reduces the remaining time during which individuals can respond to the census and the time for Plaintiffs to conduct outreach efforts to ensure a complete count. Bird Decl. ¶¶ 10-11 (Ex. 9); Choi Decl. ¶ 24 (Ex. 14); Espinosa Decl. ¶¶ 15, 21 (Ex. 18); Oshiro Decl. ¶ 18 (Ex. 36); Seon Decl. ¶ 22 (Ex. 43); Torres Decl. ¶ 24 (Ex. 47); Thompson Decl. ¶ 16 (Ex. 57). Furthermore, many of the Governmental Plaintiffs’ jurisdictions have already observed low response rates in immigrant communities. Alvarez Decl. ¶ 9 (Ex. 1); Baldwin Decl. ¶ 7 (Ex. 4); Brower Decl. ¶ 10 (Ex. 11); Bysiewicz Decl. ¶ 10 (Ex. 12); Hardcastle Decl. ¶ 5 (Ex. 21); Mohamed Decl. ¶ 8 (Ex. 33); Murray Decl. ¶ 7 (Ex. 35); Salvo Decl. ¶ 4 (Ex. 41); Sivongxay Decl. ¶ 10 (Ex. 44). The compounding deterrent effect of the Memorandum on response rates and the short window of time remaining to encourage response requires emergency relief.
B. By depressing response rates, the Presidential Memorandum will irreparably degrade the quality of census data vital to public policymaking and cause Plaintiffs to lose federal funding.

The Memorandum’s harm to response rates will inflict irreparable injury on Plaintiffs by degrading the quality of the resulting Census Bureau data and reducing the funding streams guided by that data. First, the decline in self-response and the decreased NRFU effectiveness resulting from the Memorandum’s chilling effect on immigrant communities will degrade the quality of the data that the Governmental Plaintiffs rely upon to “allocate educational and public health resources efficiently and effectively,” New York, 351 F. Supp. 3d at 610-11, as well as other critical public resources. Salvo Decl. ¶ 8 (Ex. 41); Aragon Decl. ¶ 5 (Ex. 2); Arway Decl. ¶ 4 (Ex. 3); Baldwin Decl. ¶ 28 (Ex. 4); Bayer Decl. ¶ 6 (Ex. 6); Bell Decl. ¶ 5 (Ex. 7); Bird Decl. ¶ 13 (Ex. 9); Brower Decl. ¶ 13 (Ex. 11); Bysiewicz Decl. ¶ 9 (Ex. 12); Cassidy Decl. ¶ 5 (Ex. 13); Cline Decl. ¶ 5 (Ex. 15); Freedman Decl. ¶ 5; ¶ 5 (Ex. 20); Hardcastle Decl. ¶ 6 (Ex. 21); Jimenez Decl. ¶¶ 3-4 (Ex. 24); Kaneff Decl. ¶¶ 5-6 (Ex. 25); Lundine Decl. ¶ 4 (Ex. 29); Medina Decl. ¶ 4 (Ex. 32); McCaw Decl. ¶ 7 (Ex. 31); Rapoza Decl. ¶ 7 (Ex. 37); Rodriguez Decl. ¶ 5 (Ex. 39); Rynerson Decl. ¶ 13; Sternesky Decl. ¶ 9 (Ex. 46); Wheeler Decl. ¶ 9 (Ex. 48); Wyatt Decl. ¶ 13 (Ex. 49); Wortman Decl. ¶ 5 (Ex. 50). Indeed, the decennial census is the “statistical backbone of our country”; census data allows the Government Plaintiffs to “guide[] policy decisions, assists in the direction of city resources generally, and informs responses to public health emergencies and disasters.” Salvo Decl. ¶ 13 (Ex. 41). The Governmental Plaintiffs rely upon the census to produce accurate characteristics data to make decisions about housing (Wyatt Decl. ¶¶ 3, 6-7, 11-12 (Ex. 49); Lopez Decl. ¶ 12 (Ex. 20); Sternesky Decl. ¶ 3 (Ex. 46)); school resources (Bird Decl. ¶¶ 14-15 (Ex. 9); Cassidy Decl. ¶ 3 (Ex. 13); Howell Decl. ¶ 2 (Ex. 23); Lane Decl. ¶ 5 (Ex. 27); Lopez Decl. ¶¶ 14-15 (Ex. 28); McCaw Decl. ¶ 6 (Ex. 31); Mohamed Decl. ¶ 6 (Ex. 33); Salvo Decl. ¶ 15 (Ex. 41)); public
health (Arwady Decl. ¶ 6 (Ex. 3); Hammond Decl. ¶ 3 (Ex. 20); (Ex. 29); McCaw Decl. ¶ 6 (Ex. 31); Salvo Decl. ¶ 14 (Ex. 41)) and infrastructure and transportation (Aragon Decl. ¶ 5 (Ex. 2); Baldwin Decl. ¶ 16 (Ex. 4); Biagi Decl. ¶ 4-5 (Ex. 8); Brower Decl. ¶ 15 (Ex. 11); Lopez Decl. ¶ 13 (Ex. 28); Kaneff Decl. ¶ 3 (Ex. 25); McCaw Decl. ¶ 6 (Ex. 31); Mohamed Decl. ¶ 6 (Ex. 33); Salvo Decl. ¶ 17 (Ex. 41); Wheeler Decl. ¶ 4 (Ex. 48)), among other key decisions. A decline in the quality of that data will impair the Governmental Plaintiffs’ “ability to make and implement such policies.” New York, 351 F. Supp. 3d at 600.

Moreover, as with the citizenship question, reduced response rates among immigrant households due to the Memorandum will result in a net differential undercount of these households, as “each of NRFU’s steps will replicate or exacerbate the effects of the net differential decline in self-response rates among noncitizen households.” New York, 351 F. Supp. 3d at 583; Barreto Decl. ¶ 70 (Ex. 56) (“[T]he PM increases the likelihood that Latinos, immigrants, and noncitizens are less likely to self-respond to the 2020 census” and that “non-responding individuals are also unlikely to respond after household visits by census enumerators because of fear of government interaction.”); Thompson Decl. ¶ 13 (Ex. 57) (explaining that the Memorandum will impact the macro environment and undermine NRFU, “significantly increasing the risk of larger total and differential undercounts”). This undercount will disproportionately deprive Plaintiffs and their constituents of federal funding for education and social services. New York, 351 F. Supp. 3d at 597-98; see also Aragon Decl. ¶ 6 (Ex. 2); Baldwin Decl. ¶ 15 (Ex. 4); Brower Decl. ¶ 25 (Ex. 11); Kaneff Decl. ¶ 4 (Ex. 22); Lopez Decl. ¶ 11 (Ex. 28).
C. Plaintiffs will be irreparably harmed by Defendants’ efforts to reallocate political power away from their jurisdictions.

The Memorandum’s stated goal—to shift political power away from jurisdictions that are home to substantial numbers of undocumented immigrants, 85 Fed. Reg. at 44,680—effectively concedes that Plaintiffs will be irreparably harmed by Defendants’ actions. “The Supreme Court has squarely held that the loss of a seat or seats in the House of Representatives” imposes direct harms “because of the dilution of political power that results from such an apportionment loss.” New York, 351 F. Supp. 3d at 595, 607; see also Carey v. Klutznick, 637 F.2d 834, 836-38 (2d Cir. 1980) (finding irreparable harm based on the “deprivation of [the plaintiffs’] right to a fair apportionment” based on the likelihood that New York would lose a congressional seat). The likely loss of political power as a result of the exclusion of undocumented immigrants in the apportionment count constitutes a “concrete,” “actual or imminent” injury that is “not ‘conjectural’ or ‘hypothetical.’” U.S. House of Representatives, 525 U.S. at 332 (quoting Whitmore v. Arkansas, 495 U.S. 149, 155 (1990)).

There is no dispute that an apportionment excluding undocumented immigrants will result in the loss of congressional seats in states in which at least some of the Plaintiffs are located—this is the express purpose of the Memorandum. Dr. Christopher Warshaw confirms that the Memorandum will “almost certainly” cause states with large undocumented immigrant populations to lose congressional seats—its intended impact. Warshaw Decl. § 11 (Ex. 58); see U.S. House of Representatives, 525 U.S. at 330 (affirming summary judgment based on expert testimony concerning the loss of congressional seats in apportionment). Dr. Warshaw found that if undocumented immigrants are excluded from the apportionment count, Texas—home to three of the Governmental Plaintiffs’ jurisdictions and numerous members of the NGO Plaintiffs—has a 98.3% chance of losing a congressional seat. Warshaw Decl. § 43, Tbl. 7 (Ex. 58). Dr.
Warshaw further found that New Jersey and California are highly likely to lose seats under the Memorandum, and Florida, Illinois, New York and Arizona are also at risk of losing seats. *Id.*

These harms require immediate relief, as “time is of the essence,” and “[d]elayed review would cause hardship to Plaintiffs.” *New York*, 351 F. Supp. 3d at 502. The President must report to the Clerk of the House the apportionment population counts for each state within one week of the opening of the next session of Congress, and the Clerk of the House must inform each state governor within fifteen days of receiving the apportionment population counts. 2 U.S.C § 2a(a). Where an invalid apportionment base count threatens to yield a misallocation of congressional seats, “the possibility of irreparable harm . . . is likely, if not certain.” *U.S. House of Representatives v. U.S. Dep’t of Commerce*, 11 F. Supp. 2d 76, 88 (D.D.C. 1998). Waiting until Defendants actually alter the apportionment in January 2021 by excluding undocumented immigrants will only create confusion and disruption.

**D. The balance of equities and public interest favor a preliminary injunction.**

In deciding a motion for a preliminary injunction against the federal government, the inquiries into the “balance of equities” and whether “an injunction is in the public interest” merge. *See Make the Road N.Y. v. Cuccinelli*, 419 F. Supp. 3d 647, 665 (S.D.N.Y. 2019) (citations omitted). In this merged inquiry, the court must “balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief,” as well as “the public consequences in employing the extraordinary remedy of injunction.” *Id.* (quoting *Winter*, 555 U.S. at 24). Here, the balance of the equities and public interest tip sharply in Plaintiffs’ favor.

The public interest in a complete and accurate census is paramount. “The integrity of the census is a matter of national importance. As noted, the population count has massive and lasting consequences. And it occurs only once a decade, with no possibility of a do-over if it turns out to
be flawed.” *New York*, 351 F. Supp. 3d at 517. Defendants’ actions drive immigrants away from responding to the census and, in so doing, degrade the accuracy and integrity of the resulting headcount. This harm is cumulative and irreparable; each day the Memorandum remains in effect, it will continue to drive down response rates and undermine the “statistical backbone” of the country. *Salvo Decl. ¶ 13 (Ex. 41).* Likewise, Plaintiffs and the public have an interest in ensuring that the apportionment count and resulting distribution of political power accurately reflects the population at large.

By contrast, Defendants will suffer no injury at all if the Memorandum is enjoined pending a final decision on the merits. As discussed *supra*, the Memorandum’s exclusion of undocumented immigrants from the apportionment count violates the Constitution and the Census Act, and “the Government does not have an interest in the enforcement of an unconstitutional law.” *New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (quoting *ACLU v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003)). Moreover, the current crisis is one of Defendants’ own making, if not their own design. Despite issuing an Executive Order calling for the collection of citizenship data for redistricting purposes more than a year ago, President Trump waited to announce the Memorandum until the middle of the counting period, just as the census was poised to begin critical NRFU operations. Nearly simultaneously, Defendants chose to end the response period a month earlier than scheduled, further limiting the Bureau’s ability ensure an accurate headcount. The Memorandum is part of a pattern of conduct by Defendants that is directed at undermining the enumeration, particularly with respect to the counting of immigrants and communities of color. Among other remedial value, a preliminary

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24 *See Exec. Order No. 13,880, 84 Fed. Reg. 33,821 (July 11, 2019); see also Remarks by President Trump on Citizenship and the Census (July 11, 2019)*
https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/.
injunction will serve the “strong interest in ensuring that the census proceeds in an orderly, transparent, and fair manner—and, relatedly, that it is conducted in a manner that bolsters public confidence in the integrity of the process and helps strengthen this mainstay of our democracy.” New York, 339 F. Supp. 3d at 150-51 (quotation marks omitted). In particular, a preliminary injunction will help restore some measure of trust in the census that Defendants have repeatedly attempted to erode among immigrants and give Plaintiffs an opportunity to conduct outreach in an atmosphere less polluted by Defendants’ misinformation and attempts to intimidate and marginalize immigrants. Barreto Decl. ¶¶ 66-69 (Ex. 56); Espinosa Decl. ¶ 15 (Ex. 18); Choi Decl. ¶ 24-25 (Ex. 14); Seon Decl. ¶ 22 (Ex. 43); Torres Decl. ¶ 24 (Ex. 47).

CONCLUSION

For the foregoing reasons, the Court should grant partial summary judgment in favor of Plaintiffs, or alternatively a preliminary injunction.

DATED: August 7, 2020

Respectfully submitted,

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Attorney General of the State of New York

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Exhibit 56
Expert declaration of Matthew A. Barreto, Ph.D.

1. Background and Qualifications

1. I am currently a Professor of Political Science and Chicana/o Studies at the University of California, Los Angeles. I am the co-founder and faculty director of the Latino Politics and Policy Initiative (LPPI) in the Luskin School of Public Affairs, a national research center that studies policy issues that impact the Latino and immigrant community.

2. Before I joined UCLA in 2015, I was a professor at the University of Washington for more than nine years, where I was promoted to Associate Professor with tenure, and then Full Professor with tenure. At the University of Washington, I was an affiliated faculty member of the Center for Statistics and the Social Sciences, and an adjunct Professor of Law at the UW School of Law. I am also the co-founder of the research firm Latino Decisions.


4. I earned a Ph.D. in Political Science at the University of California, Irvine in 2005, with an emphasis on racial and ethnic politics in the United States, political behavior, and public opinion.

5. I have published multiple peer-reviewed academic research papers on Latino participation in the U.S. Census, immigrant public opinion and immigrant political engagement (among other topics).

6. In 2018 I provided expert reports and testimony in three federal lawsuits challenging the Department of Commerce’s inclusion of a citizenship status question on the 2020 Census, which included an extensive literature review and evaluation of how immigrants react to changes to the U.S. Census. In all three federal trials, the courts recognized my expertise in studying immigrant political and civic participation, and cited my literature review in ruling in favor of the plaintiffs.

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7. I have conducted research nationwide and in New York, California, Indiana, Wisconsin, Pennsylvania, Alabama, Texas, North Dakota, and North Carolina in connection with litigation assessing, among other things, how the public responds to, and is affected by, changes in the law. Courts have accepted my research studies as viable and methodologically accurate instruments to understand how the public responds to changes in state law. In particular, my previous research has focused on understanding sub-group analysis to evaluate differential impacts by race and ethnicity. Recently in North Carolina, a federal court relied on my research in issuing an injunction against the state’s voter ID law. In addition, the United States District Court for the District of North Dakota stated in Brakebill v. Jaeger (No. 1:16-cv-008) that “the Court gives the findings of the Barreto/Sanchez Survey, and the other studies and data presented by the Plaintiffs, considerable weight.” Prior to this, in 2014 in Veasey v. Perry (No. 13-CV-00193), the United States District Court for the Southern District of Texas, and in findings affirmed by the Fifth Circuit Court of Appeals, found that my survey was statistically sound and relied upon my survey findings to evaluate the impact of Texas’s voter ID law. Likewise, in Frank v. Walker (No. 2:11-cv-01128), a survey I administered and included as part of my expert report was given full weight by the United States District Court for the Eastern District of Wisconsin in a voter ID case in Wisconsin.

8. In Fish v. Kobach (No. 16-2105-JAR-JPO), the plaintiffs retained me as an expert witness to evaluate the methodology of the defendant’s survey, and the United States District Court for Kansas found me to be an expert on best practices of survey research and credible and qualified to discuss survey methodology.

9. I have also regularly presented my expert review and summary of social science literature as part of expert witness reports and declarations, which have been accepted as valid and relied upon by the courts. Review of published social science literature is a well-established method among political scientists and social scientists in general for drawing valid conclusions regarding the general consensus in the field. Literature reviews are an essential component of all academic research and a requirement for publishing peer-reviewed academic research because they
establish the baseline set of knowledge and expectations within the field. As noted above, in litigation challenging the addition of a citizenship question to the 2020 decennial census, three federal courts in New York, California, and Maryland relied upon my literature review as providing credible and valid evidence to help the courts form their opinions.

10. Earlier in 2020, in *New York v. Immigration and Customs Enforcement*, I provided an in-depth literature review examining how immigrant communities respond to increased immigration enforcement, surveillance and monitoring of undocumented immigrants.

11. My full professional qualifications and activities are set forth in my curriculum vitae, a true and correct copy of which I have attached hereto as Appendix A.

II. **Scope of Work**

12. Plaintiffs in this action retained me to evaluate whether the Presidential Memorandum (PM) issued by President Donald Trump on July 21, 2020 to exclude undocumented immigrants from the apportionment base in 2020 would have a negative impact on the Census participation rates of immigrant communities, including undocumented immigrants, legal permanent residents, and naturalized U.S. citizens. To conduct my evaluation, I reviewed two sources of information. First, I compiled an analysis of news coverage of the PM to assess the reach of the announcement. Second, I conducted a comprehensive literature review on survey methodology, response rates, sensitive questions and methodology, and census procedures addressing missing data and imputation.

13. I worked on this project with Mr. Marcel Roman, a Ph.D. student in the department of Political Science at UCLA and Mr. Chris Galeano, a J.D. student in the UCLA School of Law. Mr. Roman and Mr. Galeano both helped me compile sources for the literature review and news coverage of the aforementioned PM.
III. Executive Summary

14. Based on my review of the news coverage of the PM, the extant literature published in the social sciences, and my own extensive experience with immigrant civic engagement, I conclude that the July 21 PM will reduce participation in the 2020 census, and ultimately will reduce the accuracy of the 2020 census. The PM generates the perception of real and immediate threat for undocumented immigrants that will erode their trust in the census, which will lead to increased non-response in immigrant communities. Calling attention to the citizenship or immigration status of immigrants in a negative light causes immigrants to reduce their civic engagement. The new PM sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count, eroding trust that was restored after the threat of a citizenship question on the Census was removed. The strength of that negative signal is visible in coverage of the PM in Spanish-language media, which is a trusted source of news within Latino and immigrant communities. Signals of a threat to the status of undocumented immigrants generate a well-documented “chilling effect” on public participation for immigrants, i.e., the perception of threat will erode trust that leads to a reduction in immigrant engagement with government programs and officials. However, subsequent official action to counteract such threats--either court orders or changes in agency policy--have positive effects on trust and engagement. The perception of immigration status-related threat generated by the PM will make undocumented and mixed-status households less likely to engage with the Census—particularly with enumerators conducting in-person Non-Response Follow-Up (NRFU). The reduction in response rates among undocumented immigrant and mixed-status households will result the Census Bureau using proxy-response and imputation techniques that are error-prone and tend to undercount immigrant households.

15. My review of news accounts following President Trump’s July 21 PM finds there was widespread coverage, particularly within Spanish-language news media. Whether through television, print, or online outlets, the message relayed by the media was that the PM singled out immigrants through a process that invoked citizenship status, or a lack thereof, as part of the 2020
Census, in an effort to exclude them from the apportionment process. Spanish-language news journalists reported that as a result of the PM there was confusion, fear, and anxiety in immigrant communities about fully participating in the 2020 Census. According to a journalist for Telemundo\(^1\) who spoke with many people familiar with the PM, “activists have already reported that this attempt may have scared many people off from responding to the Census, which is particularly detrimental to states with high immigrant populations such as California, Texas, and New York.” This sentiment was widely reported across Spanish-language news in the days and weeks following the July 21 PM.

16. Extensive research studies show Spanish-language media acts as a catalyst for engaging, informing and mobilizing Latino and immigrant communities. Spanish-language journalists and news anchors act as a medium for the feelings and concerns prevalent within Latino immigrant communities, specifically those who are undocumented. Spanish-language media plays a central role in mobilizing and educating the immigrant community on immigration issues in particular. The high levels of trust in Spanish-language media amongst immigrants plays a key role when listening and learning about the issues that matter most to them, in particular those related to immigration policy. Research studies have documented that many immigrants take direct cues related to civic engagement and participation from what they hear, read, and watch on Spanish-language media.

17. Undocumented immigrants are deeply intertwined into the fabric of American communities. Research and statistical reports have repeatedly found that undocumented immigrants see themselves as part of American society and indeed have longstanding ties in the cities and towns in which they permanently live. A clear majority of undocumented immigrants have lived in the United States for over five years and have families, hold jobs, own houses, and are part of their community. A survey of Latino undocumented immigrants\(^2\) found that 89% had


lived in the U.S. over five years, that 74% have children living with them in the U.S. and 85% have a family member in the U.S. who is a U.S. citizen, and indeed that 87% of undocumented immigrants themselves said they hoped to one day become U.S. citizens if legislation were passed to provide that opportunity.

18. Following the June 2019 ruling by the U.S. Supreme Court blocking the inclusion of a citizenship question, Census partners known as Trusted Voices conducted extensive outreach to undocumented immigrants to assure them that the federal government would not be monitoring their citizenship status as it relates to the 2020 Census. The new PM sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count, significantly eroding trust.

19. The published literature is quite clear: a critical component to ensure an accurate response rate on any survey, including the census, is trust between the public and the survey administrator. The prior published studies conclude that response rates will fall without a high degree of trust. The new PM erodes the trust that many community-based organizations with experience serving immigrants had built up over the past year.

20. Trust is particularly important in communities with undocumented populations as many prior reports and publications by the Census Bureau have made clear. The Census Bureau has identified vulnerable population subgroups concerned about the potential misuse of personal information provided to the Census as at-risk for low participation rates and for undercounts. From this perspective, the new PM lowers trust and makes it much harder to stimulate participation in the census from vulnerable populations such as immigrant\(^3\) and minority communities, if such communities do not trust the Census.

21. Far-ranging social science research documents a phenomenon called “the chilling effect” in which immigrant communities withdraw and avoid interactions with government officials or agencies if they believe there could be a risk of adverse consequences for their own

\(^3\) Here we mean persons who are foreign-born and emigrated to the United States.
immigration status or the status of others in the community. Specifically, some studies have found that Census participation rates drop in immigrant communities when federal immigration enforcement is perceived to be connected to the Census. In fact, the Census Bureau has published studies pointing to fears over the federal government learning about citizenship status as a major obstacle in some immigrant communities.

22. Social science research since the 1990s, but especially so in more recent years, is near consensus in finding evidence of the “chilling effect,” i.e., strong patterns of avoidance, withdrawal, and exclusion during times of increased immigration enforcement. This research is often community-focused and highlights how increased attention to immigration status or immigration monitoring by authorities, results in noticeable withdrawal in that specific context. Immigrants, and often their children and others in their close network, will purposely avoid or withdraw from an environment where they fear potential immigration enforcement. The fear associated with detention, separation from their children or family, and possible deportation is so paralyzing that many immigrants – when faced with possible immigration enforcement – avoid even necessary public services such as police protection, health services, going to work, sending their children to school, or attending court to defend their rights. The takeaway is clear – increased negative attention to citizenship status issues decreases trust in those specific agencies or actors and leads to immigrant withdrawal.

23. If trust is low, attempts to re-interview or re-contact households will be far less successful either. Census respondents must believe that there is no jeopardy or threat of disclosure to ensure their participation in a survey, regardless of how many attempts one might make to prompt their participation.

24. Already, a prior study from 2018 about perceptions of the 2020 Census found that levels of trust in immigrant and minority communities in the United States were low as a result of concerns over citizenship. The extensive media attention to the citizenship question resulted in high levels of fears among immigrants. When asked about the protection of their and their family members’ sensitive information, including citizenship status, immigrant respondents were
statistically less likely to trust that the Trump administration will protect their information and not share it with other federal agencies (just 35% were trusting). Among Latino respondents overall, just 31% trust the Trump administration to protect their personal information, which is statistically lower than among non-Latinos. While the June 2019 SCOTUS decision may have alleviated these fears by striking the citizenship question, the July 2020 PM effectively re-confirms those immigrant fears because it sends a signal to immigrant communities that the Trump administration will be monitoring their citizenship status so they may subtract these participants from the 2020 base population count for the apportionment base. In essence, Trump has returned the immigrant community to a condition of wariness similar to when the citizenship question was to appear on the census. They believe their participation is either no longer safe, or not required due to the PM of July 2020 to specifically single out undocumented immigrants.

25. The survey also found that large percentages of immigrants and minorities are concerned specifically that their personal information reported on the census will be shared with Immigration and Customs Enforcement (ICE). Overall, 41% of immigrants surveyed state they are concerned about this, along with 40% of Latinos.

26. When households do not initially self-respond to the census, the Census relies on nonresponse follow up (NRFU) to re-contact households to encourage them to respond. In simulated re-contact, my research has demonstrated that a majority of non-responders to the 2020 census will not switch and become participants when asked again to do so. In particular, research has found that NRFU is less successful when immigrant communities have fears about information concerning their citizenship status being collected or revealed.

27. Larger households will be the most difficult to successfully convert from non-participation to participation if there are fears about citizenship status data being collected or monitored, further undermining an accurate count. Existing research has found that among immigrants who would take the census upon NRFU recontact, their average household size is 2.91 compared to an average household size of 3.94 for immigrants who would not participate upon recontact, leaving them, and their larger households uncounted.
28. One of the ways Census Bureau officials try to account for people who refuse to respond to the census is to mathematically account for non-responders through statistical methods such as “substitution” or “imputation.” Both of these methods use information on responding households to estimate population information on non-responding households. However, when there are fears about citizenship status are introduced, non-responding households are statistically different than responding households on a variety of critical demographics, which violates an important assumption of substitution or imputation. For these methods to serve as viable alternatives, missing units and reported units should be roughly equivalent. However, the existing research reveals that when fears over citizenship status emerge, non-responding households are more likely to be larger in size, be foreign-born, and have different age and educational outcomes than responding households. This will make substitution and imputation inaccurate and unreliable, and makes it highly likely that there will be a net undercount of households refusing to respond to the census due to the citizenship question.

IV. Literature Review and Research Findings

A. The July 21 Presidential Memorandum Received Wide Coverage in Spanish News Media and Created Confusion and Fear About the 2020 Census

29. On July 21, 2020 President Trump issued a Presidential Memorandum declaring that undocumented immigrants will be excluded from the decennial census for apportionment purposes.\(^4\) Specifically, following the completion of the 2020 Census, the PM requires that individuals without lawful immigration status be excluded from the apportionment base for the purpose of the reapportionment of the U.S. House of Representatives. The PM refers to last year’s Executive Order 13880,\(^5\) which instructed executive departments and agencies to share

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information with the Department of Commerce . . . to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country.” This order signals to hard-to-count populations, such as undocumented immigrants and mixed status families, that the federal administration is compiling citizenship related data on them, and that they are to be excluded from the 2020 Census.\footnote{Some point out that matching census and administrative data will lead to matching errors and exclude millions of U.S. citizens from the apportionment process. Randy Capps et al., Millions of U.S. Citizens Could Be Excluded under Trump Plan to Remove Unauthorized Immigrants from Census Data, Migration Policy Institute (July 2020), \url{https://www.migrationpolicy.org/news/millions-us-citizens-could-be-excluded-under-plan-remove-unauthorized-immigrants-census}} While there are technicalities that an undocumented immigrant may fill out the Census form, and then be deducted later, this nuance is lost on a community that has been under constant attack and threat from President Trump and his administration. A memorandum issued by the President stating that undocumented immigrants will be identified in specific communities and then excluded from the official Census population count sends a clear message of exclusion.

30. In particular, the PM reverses recent progress that has been made by community-based organizations following the June 2019 Supreme Court ruling which blocked the citizenship question from being added to the 2020 Census. In an effort to mitigate the challenge posed by the citizenship question, outreach advocates also sought to use the U.S. Supreme Court’s decision as a starting point “to convince everyone to participate in the census count” and emphasize the benefits of participating in the census.\footnote{https://www.huffpost.com/entry/2020-census-citizenship-question_n_5d2f378ce4b02f871ddd074} Because the highest and definitive court in our country had struck down the citizenship question, outreach to immigrant communities could emphasize this as a selling point to fill out the census without any fears about someone’s immigration status being reported. For the Census Bureau’s part, they would enact a public outreach plan that involved “working with local organizations to encourage census participation among immigrants, communities of color and other groups the bureau considers hard to count” to combat the mistrust by these communities.\footnote{https://www.npr.org/2019/07/31/746508182/push-for-a-full-2020-count-ramps-up-after-census-citizenship-question-fight}
31. The new PM undermines these efforts and implies the government is attempting to enumerate the undocumented immigrant population, which could undercut participation. Because of the 2019 Supreme Court decision, there is no direct mechanism for assessing whether a Census response includes data from an undocumented immigrant using Census responses. If the federal government is attempting to exclude undocumented immigrants from the Census count, immigrant communities are likely to draw two conclusions. First, undocumented immigrants, the people they live in the same household with, and others in immigrant communities may be worried the government is attempting to find out their legal status through other means. This is not beyond the realm of possibility, given that the Trump administration has instructed federal agencies to use existing state and federal records to determine citizenship status (Levine, 2020). This could generate a chilling effect and incentivize households with undocumented immigrants to provide no additional information to the Federal Government that they feel would implicate their immigration status. Second, undocumented immigrants and those with ties with undocumented immigrants may think the government will use other means to find them, such as their responses to questions asking about nativity or ethnic/racial group. Therefore, they will not fill out the Census form writ large since probabilistically, providing information on other characteristics might facilitate government efforts to track and identify undocumented immigrants.

32. After the President announced the PM, widespread reports about how the PM would seek to exclude undocumented immigrant populations from the reapportionment process were published by major news outlets throughout the U.S. Major Spanish-language media and

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9 For instance, Nebraska, South Dakota, and South Carolina voluntarily agreed to transfer citizenship data from their state driver’s license and state ID records to the U.S. Census Bureau (Wang, 2020)

print news outlets throughout the nation also reported on the PM. They included Telemundo,\textsuperscript{11} Univision,\textsuperscript{12} Azteca America,\textsuperscript{13} and Estrella TV\textsuperscript{14}—all major media sources for Spanish-speaking viewers with hundreds of local television stations and affiliates throughout the U.S.\textsuperscript{15}

Newspapers and online media outlets for Spanish-speaking readers also reported on the PM's intention to leave out undocumented immigrants from the reapportionment process.\textsuperscript{16} Whether

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through television, print, or online mediums, the message relayed by the media was that the order singed out immigrants through a process that involved citizenship status, or a lack thereof, as part of the 2020 Census, in an effort to exclude them from the apportionment process. Since the PM was signed, it has prompted discussion by Spanish-language news segments on its implications for the immigrant community. These reports have conveyed to Spanish-speaking audiences that millions of undocumented immigrants living in the U.S. would not be counted when deciding how to apportion congressional seats because of the PM, affecting states such as California, Florida, and Texas, each of which includes large undocumented immigrant populations within their communities.

33. Across these news accounts, immigrants, as well as individuals who worked with community-based organizations that serve immigrants, and even journalists, all stated that they believed the July 21 PM was an effort to sow confusion and distrust, and to reduce the count of Latinos and immigrants on the 2020 Census. Examples of some of the direct quotations from these news sources include:

a. “Este memo obviamente causa miedo entre esta población en particular, te preguntó, ¿podría ser el miedo una de las razones por la que la comunidad hispana no participe en el Censo 2020 o se siente que su participación sea baja? Lamentablemente no es la primera vez que el Presidente Trump amenaza y amedrenta nuestra comunidad inmigrante indocumentada... y sí, fomenta el miedo en nuestras comunidades. Una vez más, le dice a nuestra comunidad inmigrante, no se cuenten, no los necesitamos.” “This memo obviously causes fear among this particular population, I ask you, could be one of the reasons...


why the Hispanic community does not participate in the 2020 Census or feels that their participation is low? Unfortunately, this is not the first time that President Trump has threatened and intimidated our undocumented immigrant community... and yes, he has fostered fear in our communities. Once again, he tells our immigrant community, don't count yourselves, we don't need you.”

b. “Hay varias organizaciones que están reaccionando y no están de acuerdo con esta movida de la casa blanca porque ya llevan más de un año tratando de incentivar a la comunidad de indocumentados para que participen del censo, para que no tenga miedo y hagan escuchar su voz, ahora esta acción prácticamente se convierte en un golpe bajo para la comunidad de inmigrantes indocumentados en este país.” “There are several organizations that are reacting and do not agree with this move by the White House because they have been trying for more than a year to encourage the undocumented community to participate in the census, so that they are not afraid and make their voice heard, now this action practically becomes a low blow to the undocumented immigrant community in this country.”

c. “Además, afirman que el anuncio del presidente "claramente" tiene la intención de promover el miedo y disuadir la participación en el censo de inmigrantes y sus familias, ya que se produce solo unas semanas antes de que los enumeradores estén programados para salir y alentar a los hogares a responder al censo.” “In addition, it claims that the president's announcement is "clearly" intended to promote fear and discourage participation in the census by immigrants and their families, since it comes just weeks before enumerators are scheduled to leave and encourage households to respond to the census.”

d. “Algunos oponentes afirman que es un intento para suprimir el creciente poder político de los latinos en Estados Unidos y discriminar a las comunidades inmigrantes de otras minorías no blancas.” “Some opponents claim it is an attempt to suppress the growing political power of Latinos in the United States and to discriminate against other non-white, minority immigrant communities”

e. “Es una manera de tratar de eliminarlos numéricamente del mapa, borrarnos en cuanto a números” “It is a way of trying to wipe us out numerically, wipe us out in terms of numbers”

34. The PM has threatened to upend a year's worth of outreach efforts by groups focused on hard-to-count populations. These groups now face a big challenge: reach out to

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people who haven’t filled out their census form yet who are now worried the federal administration will use whatever information they provide in the 2020 Census to target them. Solving this challenge is now more urgent for these groups given the Census Bureau’s recent decision to shorten the period for collecting responses, including NRFU operations, by 31 days.\(^{23}\)

35. According to Arturo Vargas, the CEO of NALEO, one of the nation’s top civic engagement organizations in the Latino and immigrant community, the new PM is a setback that creates fear in the immigrant community. NALEO has been identified by the Census Bureau itself as one of the most important “trusted voices” to earn trust in the Latino community. Vargas stated on Twitter\(^{24}\): “With a successful #NALEOVirtual Conference done, time now to refocus on #Census2020 - which just got even MORE DIFFICULT with @POTUS effort to exclude immigrants from the apportionment numbers and cutting short @uscensusbureau's time to finish the count. Our community is scared.” Vargas went further to note\(^{25}\) that the new PM was undoing progress made after striking the citizenship question, “#Census2020 is the most challenging to promote participation I have seen in my career. After @SCOTUS stopped a citizenship question, we had a fighting chance. Now @POTUS has made it much harder by his July 21 memo and by cutting off @uscensusbureau’s field work early. @NALEO”

### B. Spanish-Language News Media is a Trusted Source for Immigrants

36. Studies show Spanish-language media acts as a catalyst for engaging and mobilizing Latino and immigrant communities. Spanish-language journalists and news anchors act as a medium for the feelings and concerns felt amongst Latino immigrant communities, in particular among undocumented immigrants. Green-Barber discuss these trends in Spanish-speaking media.\(^{26}\) She found that Spanish-speaking households have high utilization of internet

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\(^{24}\) [https://twitter.com/ArturoNALEO/status/1291764334058127372?s=20](https://twitter.com/ArturoNALEO/status/1291764334058127372?s=20)

\(^{25}\) [https://twitter.com/ArturoNALEO/status/1291792560390729728?s=20](https://twitter.com/ArturoNALEO/status/1291792560390729728?s=20)

\(^{26}\) Lindsay Green-Barber, Latinos and the media: Patterns, changes and ideas for more connection, Center for Investigative Reporting.
and Spanish TV and radio, indicating the large presence and critical role of the Spanish-language media has in Spanish speaking homes. She also found that the Spanish-speaking media plays a central role in mobilizing and educating Latino communities on immigration issues in particular.

37. Research shows that households who more closely follow Spanish-language news rely on that information when it comes to civic and political engagement. Garcia-Rios and Barreto (2016) investigated media habits of Latino immigrants and found that people with high rates of Spanish-language news consumption were more informed and had high rates of immigrant identity, meaning that they were particularly aware and responsive to immigration-related news and current affairs. In 2012, a positive association between Spanish news coverage of President Obama’s DACA program and immigrant identity spurred naturalized citizens to vote at higher rates. In other instances, exposure to negative information can lead to withdrawal.

38. Research on Spanish-language media by Federico Subervi-Velez (2008) notes “the intersection between media and Latinos when assessing political socialization and mobilization of Latinos.” To put simply, Spanish-language media is a critical bridge that informs and influences immigrants in politics and is often a direct reflection of Latino immigrant opinion in America. One example is the reliance of Spanish-language radio to share and spread information about anti-immigrant legislation in the U.S. Congress (Felix et. al, 2008). Research found that Spanish media personalities such as Almendarez Coello (El Cucuy), Eduardo Sotelo (El Piolin) and Christina Saralei presented and educated the community on the anti-immigration rhetoric that was becoming prominent in politics (Felix et al, 2008). Coello and Sotelo’s provided daily updates and created awareness about H.R. 4437, a bill that could negatively impact immigrant communities. In particular, research has found that the high levels of trust in

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Spanish-language media plays a key role when Latino immigrants read or hear about the issues that matter most to them, like immigration policy.

C. Trust and Socio-Political Context are Two Key Factors That Impact Survey Response Rates and Accuracy

39. The decennial census is a population survey. There have been extensive studies across the social sciences documenting the best practices and potential pitfalls in collecting accurate survey data. With respect to evaluating the 2020 Census there are two key takeaways that are quite clear in the published literature. First, trust between the public and the survey administrator is crucial. Prior studies conclude that response rates will fall without a high degree of trust, leading to a biased survey project because it excludes people from the data and is no longer representative. Second, the social and political context during survey implementation can greatly impact trust, confidence, and participation rates. This is especially the case for vulnerable populations when they perceive an unwelcoming environment or context. Of these key takeaways, the hallmark of cooperation in any survey is trust. Subjects are more likely to participate in a survey, to complete survey items accurately, and respond fully to survey items when they trust the survey administrator. When potential respondents are suspicious, uncertain, anxious or untrusting, non-response rates significantly increase. An early study on this topic framed the issue as how much threat potential respondents perceive through the source of the survey (Ball 1967; Bradburn et al. 1978). When subjects identify the survey as being implemented on behalf of authorities who they perceive could use their answers against them, they are likely to not-respond, or to respond untruthfully (Ball 1967). From this perspective, newfound fears about citizenship status due to the July 21 PM will make securing participation of immigrant communities much harder than if the PM had never been issued.

40. A research study by the U.S. Government Accountability Office in 2003 (GAO-03-605) laid out the most appropriate approaches to surveying the Latino population specifically. The report was commissioned because prior government surveys, in particular the Census, were
characterized by high rates of non-response with Latino respondents. The report stated that distrust – especially of those representing the government – was a leading factor in Latino immigrant non-response. To fix this, the report recommended increasing trust so that potential survey respondents are not fearful of their participation, and not suspicious of the census questions being asked, or the census enumerators visiting their community. The July 21 PM related to undocumented immigrants does precisely the opposite, increasing distrust and, therefore, making it substantially less likely that members of the Latino immigrant subgroups will respond to the census.

41. De la Puente (1995) examined issues related to trust, confidentiality, and fear among potential census respondents in El Paso, Texas and found that fear and apprehension on part of the sample area residents led to concealment of information from the Census Bureau and from the ethnographers, due to their belief that the government will not keep their information private or confidential when it comes to highly sensitive questions. This research establishes that the Census Bureau already knows it has challenges with trust in some immigrant communities and attempts to overcome those challenges by not asking sensitive questions that make it very difficult to persuade communities with low trust. While the threat of a citizenship question was dropped, this brand new PM of July 21 instills a new sense of confusion and fear and will result in increased problems with trust in such communities and a corresponding reduction in Census response.

42. In a follow-up study a decade later, de la Puente (2004) concluded that individuals with unstable immigration statuses were much less likely to trust the government and specifically less likely to fill out the census questionnaire. Indeed, properly counting undocumented immigrants has long been a concern for the Census Bureau. De la Puente’s research demonstrated that respondents with irregular immigration statuses are unlikely to directly cooperate with the Census if they perceive their immigration status will be revealed. The July 21 PM does precisely this; it sends a strong signal to undocumented immigrants that the federal government is collecting data about them, and will match various government records to find and exclude certain immigrants. One respondent in the de la Puente study, who did have legal status as a student, was afraid to participate in the Census because she feared that at some point in the future she may go out of

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status and that the information she provided to the Census Bureau might be used to track her down. According to de la Puente, it is critical that immigrant respondents clearly understand that their immigration status is not associated with the Census population count.

43. An important practice that ensures higher participation rates in surveys is respondent anonymity, particularly when there might be concerns over immigration status. The Census violates anonymity by requiring the respondent to list the names of all household members. If respondents do not trust the survey administrator, and there is no anonymity, vulnerable respondents are far less likely to participate. Tourangeau and Yan (2007) explain how the “threat of disclosure” can result in non-response. Generally, people have concerns about the possible consequences of participating in a survey, or giving a truthful answer should information become known to a third party with enforcement powers. The authors explain a survey may be “sensitive” if it raises fears about the likelihood or consequences of disclosure of the answers to agencies or individuals directly, or not directly involved in the survey. As an example, Tourangeau and Yan (2007) discuss asking a question about marijuana use to a group of teenagers. If the teens suspect that the answers could be shared with their parents, they opt out of the survey or lie. But if the survey is completely anonymous and implemented by their peers, they are much more likely to participate and be truthful. The perceived threat of disclosure to authorities is what matters. With the July 21 PM, the federal government has clearly created a perception of threat for immigrants and the 2020 Census.

44. A review of findings across different surveys suggest that the likelihood of survey response largely depends on timing and contextual factors, including the respondent’s personal situation and the features of the data collection, such as the degree of privacy it offers. The exact same survey might be highly sensitive and risk non-participation in one setting, but be acceptable and proper in another. To this point, a comprehensive review of survey environment research indicates that highly sensitive surveys will be disruptive, produce non-response, or result in biased data when the respondent is concerned that their answers could be known by authorities. However, if the respondent feels secure and has total privacy and anonymity, they are likely to participate.

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and provide truthful answers (Tourangeau and Smith 1996). In particular, Krysan (1998) found evidence that respondents greatly modified their answers to questions and issues related to views about race, ethnicity, and immigration based on how they felt the interviewer would perceive or judge their responses.

45. Concerns about confidentiality are likely to exacerbate the unwillingness of certain communities to respond to the Census in the current socio-political context created by the July 21 PM. A study of immigrant communities’ knowledge and awareness of the Census found that one major concern was confidentiality of personal information (Raines 2001). Beyond the Latino immigrant community, this study reported evidence that immigrants from Laos, Somalia, Iraq, Bosnia, and Haiti expressed concerns over anonymity and confidentiality. The general takeaway is that as additional private, personal, or sensitive questions are added, the degree of concern over anonymity and confidentiality raises considerably. Even if the Census Bureau provides assurances, many may not believe or trust those assurances. In part, this might be due to the current social and political context (laid out above in paragraphs 29-34) or could also be due to prior experiences in their home country with authoritarian regimes and government data collection. Thus, for a population survey to be accurate, it is critical that respondents truly believe their answers to questions will always remain confidential and not used against them. The July 21 PM opens the door to that exact fear because the federal government plans to use administrative data and records to exclude undocumented immigrants from the base population count.

D. The Threat of Non-Response is Real and Immediate

46. The overall national sociopolitical environment has raised awareness and alertness among immigrant communities, but by itself, the national context does not depress immigrant participation. Instead the published literature is clear that immigrants react to specific threats as they develop, and they engage fully when those threats are removed. Indeed, in areas with low levels of immigration enforcement and threat of deportation, or in so-called sanctuary cities, research does not find evidence of a chilling effect or withdrawal (e.g. Garcia 2019). However,
the national context does cause immigrants to take more notice of their surroundings and be aware of the potential for a negative interaction with immigration officials. When immigration enforcement is heightened, the current (2017-2020) national sociopolitical climate can result in a more significant withdrawal. Put simply, President Trump has put the immigrant community on edge. In June of 2019, they had the protection of the U.S. Supreme Court which gave assurances that their citizenship status could not be connected to the 2020 Census. The July 21 PM changed the risk of threat in the minds of many immigrants who hear Trump’s words as connecting a federal monitoring program of undocumented immigrants to the 2020 Census. They may not do the full research to realize they can still fill out the Census safely, because they hear the news which is connecting the July 21 PM to Trump’s longstanding desire to increase deportation of undocumented immigrants. Further, the July 21 PM sends the signal to undocumented immigrants to avoid the Census because they will not be counted. If the President issues a memorandum saying you will not be counted on the Census base population count, and you have a lingering fear over your citizenship status, there is virtually no reason at all to transmit your entire household’s personal information to the federal government. Existing research makes clear that when new threats emerge due to changes in policy, immigrants take note and withdraw.

47. Perhaps the best summary of how the combination of federal policies and political environments interact is found in a new book by Angela Garcia, *Legal Passing: Navigating Undocumented Life and Local Immigration Law* (2019). In this book, Garcia reviews a plethora of data and research on how immigrant communities respond and react to both threatening and accommodating environments, and how a national climate of hostility does not automatically create a chilling effect for immigrants everywhere. Rather, Garcia showed with extensive evidence that specific context and the proximate threat of immigration enforcement versus accommodation is what matters the most. Instances with the highest levels of threat produce the most withdrawal. In her study of more accommodating or welcoming environments, Garcia finds immigrants are able to navigate life effectively, writing “At the same time, this book also argues against the popular depictions of undocumented immigrants being pushed underground, their perception of
threat so strong that they avoid engaging in public life… As compared to restrictive destinations, the integrative outcomes of accommodating locales that I describe in this book are evident in undocumented Mexicans’ ease of physical navigation, deeper willingness to interact with local police, and place-based sense of belonging.” Of particular importance is the timing of when threats pop up or become visible. Garcia describes “initial reactions immediately after new clampdowns – sweeps, raids, and checkpoints” being the most intense periods of avoidance. However eventually immigrants learn how to navigate their communities, and to avoid locations of particular threat, but otherwise effectively go about their day.

48. Thus, the literature demonstrates that the current era is a particularly anxiety-inducing period in American history for undocumented immigrants, and those concerned about immigration enforcement. However, this just serves to frame the environment, it does not by itself lead to wholesale withdrawal. Rather, the literature points to the importance of specific instances of threat that result from new policies that create fear, anxiety and avoidance.

49. Prior survey research in January 2020\(^30\) assessed how Latinos in New York reacted to information about whether or not ICE was present in and around state courthouses. The question there was whether increased threat of immigration enforcement resulted in immigrant withdrawal. ICE was sporadically conducting immigration-related searches in or near state courthouses across New York. In our survey experiment, we randomly assigned one set of respondents to a condition in which we reminded them of ICE presence at state courthouses, while other respondents were randomly assigned to a condition without the information about ICE presence.

50. Across the full sample of Latinos in New York, the survey experiment results demonstrate that being informed about ICE presence at state courthouses has a strong, and statistically significant causal effect on increasing avoidance behavior and withdrawal. This effect is consistent across eight different types of engagement. When confronted with information about

\(^{30}\) Survey conducted as part of the expert declaration by Matthew A. Barreto in NY v. ICE lawsuit.
ICE conducting arrests and detention at courts in New York, Latino participants reduced their intention to attend state court as a witness, as a defendant, to accompany a family member, to protect their rights, or to testify about a housing complaint. In addition, they were less likely to go to the police as witness, or to call the local police if they witness a crime, or to submit a police report as a victim. This suggests that when Latinos and immigrants learn about a new threat, they respond immediately with reduced intention to participate or engage.

51. Because the overall sample size of the survey was large (n=1,001) the New York courthouse research included additional analyses on immigrant segments within the main sample. The results of the subset analysis are consistent with the extant literature and expectations, with much stronger causal effects of avoidance and withdrawal among the foreign-born Latinos, and much stronger effects among non-citizens, and the strongest causal evidence of the chilling effect among Latinos are acquainted with an undocumented immigrant. These analyses provide very strong evidence that is theoretically motivated and consistent with decades of social science research on the immediate chilling effect of immigration enforcement.

52. A newer study conducted during the period of Trump’s presidency finds similar results. The Violence Against Women Act (VAWA) allows women who are victims of domestic violence to petition to change their immigration status and was used effectively when women felt safe enough to call immigration officials. However, in February 2017 the Trump administration reactivated the Secure Communities program which coordinated local police databases with ICE. As such, in areas of increased ICE presence, the study found that fewer and fewer women initiate police reports of domestic violence. The authors explain this is due to fears over being reported to, or detained by ICE. As the authors conclude, “intensified immigration enforcement might increase misreporting due to fear of being over scrutinized and, potentially, placed in a position that jeopardizes the possibility of staying in the country.” (Amuedo-Dorantes and Arenas-Arroyo 2019). This is yet another example of a before/after study which finds direct and immediate evidence of immigrant withdrawal after a change in policy, in this case, by the Trump administration.
E. Extensive Research Confirms Fears About Immigration Enforcement and The Chilling Effect

53. Additional ethnographic research has revealed that undocumented immigrants and mixed-status households are likely to avoid government contact when they suspect it is not safe to participate (de la Puente 1995). This is especially the case when sensitive topics will be potentially discussed or revealed. Velasco (1992) maintains that undocumented immigrants in his sample area in San Diego, CA avoided contact with government. He argues that this avoidance was one of the important contributing factors to census omission and estimates that over half of the sample area residents were undocumented immigrants. Similar situations were also reported in the Miami, FL sample area (Stepick 1992) and in the 26 rural Marion County, OR sample areas (Montoya 1992). However, the ethnographic research all concludes that participation barriers can be overcome by not including worrisome questions about citizenship status and by working with community based organizations and cultural facilitators to increase trust and confidence in data privacy.

54. Levels of trust in immigrant and minority communities are very low with respect to issues related to citizenship. In a prior national survey about the 2020 Census, when asked about protecting sensitive information, including citizenship of themselves and family members, only 35% of immigrants expressed trust that the Trump administration will protect their information and not share it with other federal agencies. Among Latino respondents overall, just 31% trust the Trump administration to protect their personal information. According to my prior survey research, a very large percent of immigrants and minorities believe the Trump administration will share their personal information with other federal agencies.

55. Research related to the 2020 Census suggests that the Census Bureau was well aware of potential issues related to non-response over immigration fears. A comprehensive study by the Census Bureau’s Center for Survey Measurement presented at the National Advisory Committee on Racial, Ethnic, and Other Populations Fall Meeting 2017 (Meyers 2017) reported an increase in respondents expressing concerns to researchers and field staff about confidentiality and data
access related to immigration, legal residency, and citizenship status, and their perception that certain immigrant groups are unwelcome. There was an observation of increased rates of unusual respondent behaviors during pre-testing and production surveys, including item-nonresponse, break-offs, and refusals, especially when the questions involved citizenship status. The most commonly occurring finding was that respondents appeared visibly nervous about disclosing their private information and who would have access to such data. The current political climate was of concern to respondents: in one Spanish interview, a respondent stated, “the possibility that the Census could give my information to internal security and immigration could come and arrest me for not having documents terrifies me.”

56. As this finding makes clear, immigrant communities can be especially vulnerable to the social and political context surrounding the implementation of a survey. A study of immigrants in California and Texas found that respondents’ fear over citizenship status correlated with their non-participation in the health sector (Berk and Schur 2001). This study found strong evidence that a threatening context can lead immigrants to withdraw and limit their access to public services, including access to medical care which they greatly needed. Likewise, anxiety and fear over immigration status has been found to reduce utilization of services related to health care, law enforcement, and education (Pedraza and Osorio 2017). In particular, research has identified the context of heightened “immigration policing” as one that erodes trust in other public institutions and creates an environment in which immigrant communities are very selective as to where, when, and how they engage with government agencies (Cruz Nichols, LeBrón and Pedraza 2018). The finding is not just limited to first-generation immigrants themselves; the research also finds a strong spillover effect to U.S.-born Latinos who have immigrant parents, or feel connected to the immigrant community, and also demonstrates non-participation during times of threatening context.

57. Studies have shown that the political context after 2016 and the election of Donald Trump has significantly diminished Latinos’ trust of the federal government. For instance, Michelson and Monforti (2018) find that Latinos, including those who are undocumented, were
less trusting of government in 2016 than in 2012. In 2012, trust amongst Latinos was strong across all subgroups of Latino immigrants—citizens, non-citizens with legal status, and undocumented immigrants. Four years later, Latinos registered lower levels of trust in government, with fewer than 1 in 20 Latinos in any subgroup responding that they trust the government “just about always.” In addition, Sanchez and Gomez-Aguinaga (2017) report that an overwhelming majority of Latinos described Trump and his policies as scary (74%), dangerous (77%), hostile (78%), and unwelcoming (80%) and they conclude that the current context is creating tension, anxiety, and nervousness among Latinos and immigrants. While the June 2019 Supreme Court decision striking the citizenship question allowed community outreach groups to push reset and create a campaign that citizenship would not be associated with the Census at all, the new PM reinjects concerns about citizenship status into the 2020 population count.

58. Beyond the Latino and immigrant communities, there is also reason to expect that increased fears about citizenship could increase non-response rates among Arab and Middle Eastern Americans. Research by Oskooii (2016) and Lajevardi and Oskooii (2018) demonstrates that American Muslims and those of Arab and Middle Eastern ancestry currently perceive a high rate of discrimination and an unwelcoming environment. Oskooii (2016) explains how perceived social exclusion can result in withdrawal and non-participation by these communities and documents this fact empirically in his published research. In research by the Center for Survey Measurement, focus groups conducted in Arabic among immigrants from the Middle East revealed the potential for Census non-response due to questions about citizenship status in light of the current political climate. (Meyers 2017). Some focus group participants referred to the “Muslim Ban” when expressing why they would be nervous about reporting their immigration and citizenship status to the federal government.

59. This context is particularly important as it relates to the issues about citizenship status, because this is the point of tension for many in the immigrant community today. That is, there is grave concern over providing information to the federal government given the perceived high rates of immigrant policing. And now that newfound distrust and fear is directly related to citizenship
status as a result of the July 21 PM, a considerable non-response is the likely outcome.

60. A clear implication identified in the relevant literature on surveys is that when respondents perceive a threatening survey, and if trust is low, non-participation will result in an inaccurate survey. Further, attempts to re-interview or re-contact households will not be successful, and some re-contact may only serve to further erode trust. Survey respondents must believe that there is no potential jeopardy before participating. Once a respondent believes that participation in the survey could bring them harm, and that the survey enumerator is acting on behalf of an official agency, attempts at repeated re-contact typically do not result in a completed survey (Ball 1967). In interviews with the enumerators themselves, there is a sense that the issues related to citizenship status will make their jobs harder, if not impossible (Meyers 2017).

61. Prior experiences with census data collection efforts that overlapped with anti-immigrant contexts provide evidence that non-response follow-up (NRFU) will be much more difficult in 2020 given the political climate and the PM. Terry et al. (2017) describe the connection between a threatening context and Census non-response in Arizona and Texas among immigrant communities: “the wider social context also had an important role in enumeration. Just before the NRFU enumeration program started in 2010, Arizona passed a very strong anti-immigration law that coincided with legal ordinances in two Dallas-area cities. These ordinances were aimed at identifying illegal immigrants through police stops or the reporting of immigration status of applicants wishing to rent apartments. The new law provoked heightened tensions around the country, particularly in the Dallas/Fort Worth-area Hispanic community. As a result, these reports conclude that non-response was high and that NRFU was less successful.

62. Undocumented immigrants may already fear providing their information to the government. They are a hard-to-reach population that is difficult for enumerators to gain access to and follow-up on in the event of non-response. To overcome these difficulties, non-governmental organizations and the Census Bureau have engaged in targeted messaging toward immigrant communities that participation in the Census would help increase access to public resources, federal funding, and political representation (Levine, 2020; Liptak et al., 2020; Smith,
2020). However, the PM, by excluding the count of undocumented immigrants from the apportionment base, completely undercuts this incentive to participate. If the government is going to remove them from the base population count, why bother filling out the 2020 Census at all? Undocumented immigrants are likely to perceive that there is no benefit to participation, as the July 21 PM states they will not count, and there is now an increased risk of their information being linked to immigration records and facing immigration enforcement.

63. It is important to note undocumented immigrants and their social ties are often risk-averse, assume the worst-case scenario, and are highly suspicious about whether their information would be shared with Federal immigration authorities (Yoshikawa, 2011; Dreby, 2015; Torres-Ardila, Bravo, and Ortiz, 2020). For example, even U.S.-citizen Latinos reduced their participation in Medicaid as a result of a punitive immigration enforcement environment (Watson, 2014; Vargas, 2015). It is unlikely Medicaid service providers will use their records to find undocumented friends or family, but the perception of legibility to immigration authorities was sufficient to produce system-avoiding behaviors. In another research paper, U.S.-born children of undocumented immigrants avoided a variety of record-keeping institutions (e.g. banking, formal employment, voter registration) as a result of their social ties with an undocumented parent (Desai, Su, and Adelman, 2019).

64. Undercounting undocumented immigrants will have spillover effects on effectively counting the broader legal non-citizen and citizen population. Mixed-status households are affected by the PM. The PM suggests the government may be using various forms of information to identify undocumented immigrants. If undocumented immigrants are the head of the household or if the head of household is responsible for undocumented immigrant friends and/or family members, they may not respond or allow themselves to be contacted by follow-up enumerators in order to protect the anonymity of their undocumented social ties. This means citizen children, documented spouses of undocumented immigrants, documented partners of undocumented immigrants, and/or documented family of undocumented immigrants will be less likely to be counted in the census.
65. One implication of the fear and unrest in the immigrant community is the increased mobility which could render any attempt at imputation or substitution incomplete and inaccurate. For imputation to work, the missing unit household cannot be vacant, and likewise cannot be a second home or vacation home of someone already counted. The missing unit household should have someone living there as their primary residence. However, as Frost notes that many undocumented immigrants who receive government letters or notices may pick-up and move their entire family, rather than wait around and figure out a way to interact with public officials. Similarly, this is documented by O’Hare (2017) who notes that Latino children are especially susceptible to being undercounted due to mobility. There is evidence that if immigrants are fearful of attempts by the federal government to obtain the personal information, identities, and citizenship statuses of all members of their household, they may vacate their homes and move to avoid being contacted again (Meyers 2017). To the extent this happens, attempts at imputation or substitution will be inaccurate, both on the national level, but especially on state and local levels.

F. When Subsequent Official Action is Taken to Remove Threats Related to Immigration Status, Immigrants Respond with Participation

66. On January 9, 2018, a federal court in the Northern District of California issued a nationwide preliminary injunction against the Trump administration effort to phase-out DACA. The January 2018 decision allowed existing DACA recipients to apply for renewals. Later, on February 13, 2018 a second federal court in the Eastern District of New York also issued a nationwide preliminary injunction to allow DACA renewals to continue. When the court enjoined the effort by the Trump administration to repeal DACA and allowed undocumented immigrants to begin applying for DACA, there was an immediate rush of applications by undocumented immigrants who held DACA status, but were expired. According to data from the United States Customs and Immigrant Services (“USCIS”), 64,210 immigrants applied for renewal immediately after the January 2018 injunction, and 31,860 were approved by March 31,
2018 and 32,280 were pending, with only 70 having been denied.\textsuperscript{31} Over the course of 2018, USCIS reported 287,709 total requests for DACA renewal were made by undocumented immigrants.\textsuperscript{32} Despite additional legal challenges, throughout 2019 the injunctions from Northern California and Eastern New York remained in place nationwide and 406,586 persons applied for DACA renewals across 2019.\textsuperscript{33} Despite the Trump administration’s continued legal challenges to DACA, public statements denigrating immigrants, once the courts issued the injunctions to protect DACA, undocumented immigrants became trusting of this program.

67. On July 2, 2015, the Priority Enforcement Program (PEP) was implemented by U.S. Immigration and Customs Enforcement (ICE). It was announced by then-DHS Secretary Jeh Johnson in a November 2014 memo, and was meant to replace the then-existing Secure Communities program, which coordinated local police databases with ICE. PEP implemented a series of mandates that immigration enforcement should prioritize individuals who have engaged in serious criminal activity or who pose national security threats. In short, it mandated that ICE cast a smaller net in identifying, detaining, and deporting undocumented immigrants. In addition, PEP made it more difficult for ICE to execute immigration detainers. ICE had to state probable cause (via reference to the priorities) in order to execute a detainer in addition to the local law enforcement agency having to serve a copy of the detainer request on the individual in order for it to take effect. The intent of the new policy was for police to collaborate less with ICE and to only focus their detention efforts on serious criminals. The Dallas County Sheriff, which controls the county jails and oversees the processing of immigrants detained agreed to participate in the PEP program to reduce the local prominence of ICE in Dallas.\textsuperscript{34} A research paper

\textsuperscript{31} Approximate Count of DACA Receipts: Since January 10, 2018, As of Mar. 31, 2018
\textsuperscript{32} Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012-Mar. 31, 2020
\textsuperscript{33} Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012-Mar. 31, 2020
\textsuperscript{34} Dallas county jails complied with the PEP. Dallas County Sheriff Lupe Valdez formally agreed to participate in the program after meeting with ICE representatives in July and August 2015. In August 2015, Dallas County
analyzing Dallas Police Department (DPD) police reports finds clear evidence that the implementation of PEP increased crime reporting to DPD by Hispanic and immigrant subjects in Dallas.\textsuperscript{35} The data shows Hispanic and immigrant engagement with police increased significantly in the immediate quarter after PEP was implemented. And in the six quarters following the change in policy, Hispanics and immigrants voluntarily reported around 6,000 more incidents to the police than they would have been if the enforcement priorities had not changed. Thus, reversals or limitations imposed on executive actions may have measurable consequences on promoting trust among immigrant communities and influencing behavioral interactions with various aspects of government.

68. In prior survey research in 2018 to test the impact of a citizenship question being included or excluded from the 2020 Census, there was a clear finding of increased Census participation after removing any fear of immigration status being exposed.\textsuperscript{36} Initially, after being told about the citizenship question, a sizable share of respondents said they would not participate in the 2020 Census. Later in the survey, respondents were randomly assigned to a condition in which they were told the government changed their mind and a citizenship question would NOT be included after all. A second set of participants were randomly assigned to a condition in which it was reaffirmed that the government would in fact include a citizenship question.

90. Table 7: Percent of Non-Responders Who Change to Responders at Q7 / Q8

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>White</th>
<th>Latino</th>
<th>Black</th>
<th>AAPI</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q8 Yes - with citizenship</td>
<td>45.2</td>
<td>49.5</td>
<td>38.9</td>
<td>62.2</td>
<td>0.2</td>
<td>17.2</td>
</tr>
<tr>
<td>Q7 Yes - without citizenship</td>
<td>84.3</td>
<td>89.3</td>
<td>80.1</td>
<td>78.6</td>
<td>53.3</td>
<td>94.9</td>
</tr>
<tr>
<td>Difference</td>
<td>-39.1</td>
<td>-39.7</td>
<td>-41.2</td>
<td>-16.5</td>
<td>-53.1</td>
<td>-77.7</td>
</tr>
</tbody>
</table>

officials began reviewing ICE’s request prior to honoring them with the vetting guidelines being similar to PEP priorities, ensuring only individuals who posed a threat to public safety were transferred to ICE’s custody. This is evidenced in data by Jacome (2018), who finds total detainers dropped by roughly 1,000 by the end of 2015 due to decreases in detainers issued for individuals convicted of misdemeanors and those with no conviction.


Among Latinos who said they would not participate in the census with a citizenship question, 80 percent changed their mind and said they would participate once they learned that the citizenship question would be removed. The mechanism here is whether or not those in the immigrant community believe their participation creates increased risk of exposing themselves to immigration enforcement. Members of immigrant communities are very concerned about their citizenship status being monitored or revealed. When they believe the threat is real, they will withdraw from the Census, and when that threat has been removed, they reengage. This provides very strong evidence that when fears about citizenship status being revealed are removed, a large share of Latinos will indeed increase their participation in Census 2020.\footnote{See id.}

69. Across the wide-ranging literature, a key finding is that immigrants are normally eager to engage in public life and with political institutions, but when there is a threat of negative consequences for their immigration status, avoidance behavior is likely. (e.g. Garcia 2019).

G. Non-Response Follow-Up (NRFU) and Imputation of Non-Responding Households

70. The Census Bureau is aware that some households will not respond to the initial request for participation, and as such they have long had a program called Non-Response Follow-Up (NRFU) which provides follow-up contact with any households that do not initially respond. The Census Bureau estimates they conducted follow-up with around 50 million households in 2010 (Rao 2017). NRFU is critical for the Census Bureau to increase participation rates, but it is a costly and difficult undertaking by their own admission. Any increased non-response at initial contact makes NRFU much more difficult, especially if non-responding households come to not trust the survey questions that enumerators are attempting to ask. What’s more, NRFU is now profoundly more difficult due to COVID-19 and the time available has been shortened. As discussed in this report, the PM increases the likelihood that Latinos, immigrants, and noncitizens are less likely to self-respond to the 2020 census. These non-responding individuals are also unlikely to respond.
after household visits by census enumerators because of fear of government interaction. (de la Puente 1995; 2004).

71. In fact, with the new focus on excluding undocumented immigrants directed by the PM, the Census outreach efforts after July 21, 2020 could actually create more fear and anxiety in immigrant communities and further drive down response rate and increase the net undercount. For example, the Census Bureau plans to send enumerators into non-responding communities on behalf of the federal government, and if nobody is home, they will leave a “Notice of Visit” from the federal government which includes a unique household “census identification number.” Further, they inform the household that additional visits will be made back to their house by enumerators on behalf of the federal government. This sends a clear signal of federal government monitoring of the household and will result in increased anxiety and concern over cooperating (e.g. Menjivar 2011; Szkupinski Quiroga et al. 2014). Research by Hagan et al. (2011) documents with clear evidence the extensive chilling effect of increased presence of government officials who appear to be monitoring immigrants and checking on their status. They find immigrants “withdrawing from the community” as well as “avoiding public places” and that they “spend most of their non-working hours in their homes because it is the safest way to avoid detection.” (Hagan et al. 2011.) According to Abrego (2011), undocumented immigrants will go to great lengths to reduce their visibility in society when they perceive a potential threat of deportation. Her research identifies withdrawal from interactions with government agencies as awareness of immigration checks increases. From the perspective of an anxious immigrant, each additional household visit from a government Census worker, following a PM directing the exclusion of undocumented people, is the exact environment that would produce withdrawal. According to Abrego: “In effect, their well-being and stability are perennially threatened because, as they are constantly reminded, there may be an ICE raid... at any time” (2011).

72. Research also finds that increased presence and visibility of government officials who appear to be collecting immigration information creates withdrawal and also misreporting on government forms (Rodriguez and Hagan 2004). Increased presence of immigration officials in
the community lead to a decline of student attendance in the nearby school to avoid any contact with the government officials. However, in communities without ICE presence, school attendance is not impacted. The research study observed this trend across three different cities in Texas and attributed increased withdrawal to an increased visibility and presence of government officials asking about immigration status. Further, the same study reported that Hispanics began to change their racial identification to White on government forms at health clinics to avoid any risk of association with immigration officials (Rodriguez and Hagan 2004).

73. Another study specifically examined the willingness of immigrants to participate in surveys and data collection efforts, in particular examining how fear of deportation impacted response rates and general engagement with government services (Arbona et al. 2010). One of the most important findings of this study was that if immigrants fear their participation could somehow lead to their deportation, they will not participate unless they are fully comfortable and trusting of the survey taker. As the research study progressed, Arbona et al. reported, through quantitative data, that fear of deportation was a strong motivating factor for avoidance and that over 80% of immigrants in their sample stated that they avoided activities such as “ask[ing] for help from government agencies, report[ing] an infraction to the police, attend[ing] court if requested to do so,” and other items. The more census enumerators visit immigrant communities to attempt household counts, following the July 21 PM to exclude undocumented immigrants, the more likely they will be to not participate. That is, the outreach itself will produce further non-response as a result of the socio-political climate following the PM.

74. NRFU enumerators may not be able to make contact with adult households. Enumerators may not be sufficiently linguistically or culturally competent in order to persuade undecided households to respond. For example, they may not be able to effectively convince Latinos who may be concerned about immigration issues or enforcement to respond. Many Latinos, in the context of heightened immigration enforcement, are told to not open the door to strangers due to commercial scams and guidance from immigration legal advisors regarding ICE visits (Kissam et al., 2019). Moreover, even if enumerators are able to convince members of
immigrant communities to respond despite the existence of a chilling effect, it may be logistically difficult for enumerators to make contact with adult householders. In many immigrant communities, work hours are long and weekend work is common, increasing the difficulty for NRFU enumerators to conduct a direct interview of the household (Kissam et al., 2019).

75. NRFU also cannot account for households omitted from the Master Address File as a result of “complex households” in low-visibility unconventional and/or hidden housing units (Kissam, 2019). These complex households may be more likely to be made up of immigrants and their direct social ties. Kissam (2019) notes in the San Joaquin Valley, only 95% of the Latino immigrant study population live in housing units included in the Census Bureau’s Master Address File, resulting in a 5% household omission rate. The only way these households can be counted in the Census is if they proactively respond via online non-ID processing operations or by phone. However, these alternative mechanisms may not work if these complex households are concerned about the prospect of providing information to a government seeking to identify their citizenship status or exclude them from the count for specific purposes, such as apportionment, as required by the PM.

76. Even if NRFU results in data production, it may be faulty data. High levels of non-response force the Census Bureau to rely on alternative statistical procedures such as triangulation via administrative records, proxy interviews with neighbors, and, imputation. Some of these alternative efforts might fail in immigrant communities. Proxy interviews may fail to resolve undercounting due to mistrust of Federal authorities and lack of willingness to provide information on neighbors. Indeed, only 17% of respondents in a survey of the San Joaquin Valley immigrant community indicated they were willing to provide an enumerator with information about neighbors in the San Joaquin Valley (Kissam, 2019). It is important to note proxy interview efforts are error-prone, since they are, at best, estimates by neighbors of the number and characteristics of neighboring households. The same survey of immigrant communities in the San Joaquin Valley indicates less than half of potential Census respondents believe they know enough about their
neighbors to provide accurate responses (Kissam, 2019).

77. Moreover, finding administrative records that match households is likely to be more difficult for immigrant households, who may be less prone to providing personal or household information to various aspects of government and may not be eligible for a variety of government programs that keep records (Kissam, 2019; Asad, 2020). While the Trump administration may assume they can rely on administrative records, the reality is that this creates major methodological problems for NRFU and then imputation. The data is fraught with errors and inconsistencies and will lead to lower quality data and undercounts. Research by Bhaskar, Fernandez, and Porter (2018), who are Census Bureau researchers, indicates matching an administrative record to a household requires a Personal Identification Key (PIK). They also find foreign-born households are less likely to have a PIK than U.S.-born households. Lack of having a PIK is associated with more people in a household, living in a Census tract with a high density of foreign-born individuals, Latino/Hispanic race/ethnicity, non-citizen status, limited English or no English proficiency, and being a recent immigrant. IRS administrative records may not serve as effective proxies for enumeration given not all undocumented immigrants file income tax returns on a regular basis (Gee, Gardner, and Wiehe, 2016). Social Security Administration (SSA) records may be incomplete if immigrant workers have only worked in the informal or underground economy. Parents also may never apply for an SSN for foreign-born children without legal status. Foreign-born non-working spouses may have never applied for an SSN (Kissam, 2019). Often, the use of borrowed SSNs is prevalent among immigrant workers, which may result in potential undercounts or discrepancies in the count. Moreover, employer reports of employee’s earnings do not provide reliable or exhaustive information on household size.

78. Even if a match to an administrative record is found for a specific address, it may not accurately enumerate household size and composition because the record may be out of date or exclude peripheral household members who are not part of the primary core family living in the housing unit (Kissam, 2019). There may be discrepancies via administrative matching in neighborhoods where low-income renter households move often and administrative records may
not update frequently in immigrant communities such that newly born children will be disproportionately omitted (Kissam, 2019). If information via administrative records or proxy interviews do not bear fruit, the Census Bureau may attempt to use hot-deck imputation to determine the characteristics of households that did not respond. The problem is that non-responding households in immigrant communities may be systematically larger than those that do respond. Thus, each imputation will contribute to a differential undercut given that “donor” households have less inhabitants (Kissam, 2019).

79. In addition to trying to match households to their administrative records, the Census Bureau has indicated that it may employ statistical imputation techniques to address nonresponse. During the collection of any survey, two types of nonresponse can emerge: unit nonresponse and item nonresponse. Unit nonresponse concerns an entire missing case resulting from either non-contact, refusal, or inability to participate. Item nonresponse concerns missing values on certain questions in the survey. Bias, or incorrect and faulty data, can emerge from nonresponse when the causes of the nonresponse are linked to the survey statistics being measured, which is referred to as nonignorable nonresponse (Groves et al 2004). By way of illustration, public health officials designed a survey to measure the prevalence of HIV in the population during the early days of the HIV epidemic. Despite incentives, cooperation rates among those who were HIV-positive were extremely low because of the stigma of the disease. Thus, the key statistic sought – namely, the percentage of HIV-positive people – was causally related to the likelihood of self-response; specifically, in that case, those who were HIV-positive did not want to participate in the study at all. Non-ignorable nonresponse is particularly egregious because even if the causal influence is known “there is no way that the statistic among respondents can be made free of nonresponse bias (without making heroic assumptions about the status of the nonrespondents)” (Groves et al. 2004). What this means is that if a factor influencing the decision to not respond is correlated with an important outcome variable, imputation is impractical because you cannot observe the existence of the precise variable you are trying to count. In the case of the 2020 Census, the key outcome variable is producing an accurate count of total household size; yet, prior research establishes that
larger households are more likely to not respond when the responder's citizenship status may be implicated. Thus, the decision whether to respond is correlated with household size, a key outcome variable of interest.

80. Some statistical tools are available to deal with nonresponse. At one end of the spectrum, if every variable of interest is known for the nonrespondent, except one, then we can use these variables to form an imputation model that will predict a value for the missing value—for example, we may know the existence of the respondent and that person's age, but may not know their income level and can use predictive models to impute income for that respondent. At the other end of the spectrum we have entire missing cases (unit nonresponse), where the existence of the person is unknown. Imputation for unit nonresponse, sometimes called "whole person imputation," is used almost exclusively in longitudinal surveys where ample data from prior waves exists for a missing respondent. It is extremely rare to impute for unit nonresponse if little is known about the nonrespondent case (Groves and Couper 1998). Unit nonresponse is typically dealt with by some form of post-stratification or response rate weighting adjustment\(^\text{38}\) (Kalton 1983). While imputation can be useful for missing values in an otherwise completed survey form (item nonresponse), it is particularly problematic for imputing the existence of whole persons, and is especially likely to end up with an undercount in vulnerable communities. This is part of the reason that social scientists and government statisticians want the decennial census to be as non-burdensome and non-sensitive as possible, to ensure an overall accurate count through high rates of participation (Wines 2018).

81. In general, whole-person imputation itself relies on a number of assumptions to work correctly. If data is missing completely at random (MCAR) (Rubin 1976), then non-response generally introduces less bias. Models are of less help with non-ignorable nonresponse, as noted above, where nonresponse depends on the values of a response variable. In this case, models can

\(^{38}\) After the survey data are collected, statisticians can use the known universe of respondent demographics to apply weights and possibly correct for non-response, however, this only corrects the dataset for use in a data analysis project or academic research paper, not necessarily population counts, which are supposed to serve as the baseline universe estimate in the first place.
help but never eliminate all nonresponse bias (Lohr 1999). Indeed, recent reviews of cutting edge imputation procedures like “hot deck imputation” argue that “hot deck” methods for situations where nonresponse is non-ignorable have not been well explored (Andridge and Little 2010). Whole person imputation, then, has its dangers. The Census Bureau currently acknowledges that “whole person substitutions and whole person imputations are not very accurate.” (See Abowd 30(b)(6) Deposition 2018)

82. With respect to the U.S. census and counts of Latino and immigrant households, previous research has shown that whole person imputation efforts are seriously error-prone. Because family arrangements, housing styles and total household sizes vary considerably, attempts to impute the population of non-respondent households have been shown to undercount the population (Kissam 2017). First, many non-traditional housing units are simply not included in the imputation, leaving them as vacant when in reality they had tenants or dwellers. Second, the household size of missing units tends to be larger, on average, than of reported units. Reports also document differences by socioeconomic status. The end result is that even with imputation, there can still be a significant undercount of the Latino immigrant population.

83. Beyond the raw count being inaccurate, there is also evidence of misattribution of those imputed, because they rely on higher acculturated units for which there is data to make adjustments (i.e. substituting data on U.S.-born, English-speaking and college educated households when in fact missing cases are more likely to be foreign-born, Spanish-speaker, less educated households), suggesting the imputed data do not accurately describe the true population (Kissam 2017). The U.S. Government Accountability Office has itself admitted this is a problem with respect to getting a complete count of Latinos. In the 2003 report on trying to improve the Latino count, they wrote “even with the Bureau’s guidelines and training, deciding whether a house is unfit for habitation or merely unoccupied and boarded-up can be very difficult. An incorrect decision on the part of the census worker could have caused the dwelling and its occupants to get missed by the census.” U.S GAO Report (2003) (GAO-03-605).

84. By examining data from a prior 2018 survey specifically about the Census, we can
conclude that unit non-response on the 2020 census will not be at random. Households that do not respond and represent missing units, are certain to have very different characteristics and demographics than the households that do respond. In this event, it makes it nearly impossible to impute or infer the population totals or any other demographic information about missing units (e.g. missing households) because we do not have enough reliable information on “matched” or similar units. Further, it is quite likely that unit non-response in 2020 will be clustered geographically, meaning that there will be fewer available adjacent units for imputation, and that analysts will have to rely on dissimilar households for imputation, thus violating the most important assumption needed for accurate imputation. In particular, non-responders were found more likely in dense urban areas and locales with high numbers of renters. These factors are known to be related to census undercounts and make NRFU difficult and result in erroneous imputation (U.S. GAO Report, 2003).

85. It is virtually certain that the reduced self-response caused by the July 21 PM related to citizenship status will lead to a net undercount among those populations with lower rates of self-response. Previous census reports have documented that high rates of non-response to the initial questionnaire result in undercounts, and that NRFU is not always successful in converting those cases into respondents. In addition, matching household to administrative records can be an unreliable method of enumerating the household, particularly for immigrant communities. Prior census reports have also documented that errors are made in imputation and that undercounts persist even after attempted imputation. Ultimately, the worse the initial non-response is, the worse the initial undercount is, making it increasingly more difficult to convert those cases into responding cases, and increasing more difficult to impute missing units (US Census Bureau 2017b; National Research Council 2002; 2004).

86. This problem has been documented to be worse in Latino and immigrant communities where the Census admits the undercount is problematic, and that their efforts at NRFU and imputation have errors (Eriksen and Deфонso 1993; O’Hare et al. 2016). One primary reason is that issues related to trust of government officials significantly hampers the NRFU process, and in
2020 the citizenship question will greatly exacerbate issues of trust in immigrant communities (See section below “Perceptions of Trust and Confidentiality” at paragraph 96). In particular, young children in Latino households have been found to be regularly undercounted by previous census efforts and that imputation methods do not appropriately find or count this population. The best assurance for an accurate count is high response rates on the initial census request for participation, which requires a high degree of trust (O’Hare et al. 2016; Casey Foundation 2018). Previous self-reports by the Census Bureau are clear: immigrant communities are already at-risk of an undercount because of lower levels of trust of government officials, and have particular anxiety over citizenship information being shared. What’s more, these previous census reports have documented that low self-participation on round one of invitations ultimately leads to an undercount that no amount of NRFU, administrative-record matching, or imputation can correct. In 2020, the PM will only create more problems, more anxiety in immigrant communities, and less self-participation on round one. With nearly 17 million people, including 6 million citizen children, living in households with at least one person who is an undocumented immigrant (Casey Foundation 2018), there is enormous potential for a massive non-response with a newly created anxiety over citizenship status as a result of the July PM.

87. After reviewing defendants report(s), I plan to offer rebuttal opinions as requested by plaintiffs.

Executed on August 7, 2020 at Agoura Hills, CA.

I declare under penalty of perjury that the foregoing is true and correct.

Matthew A. Barreto

August 7, 2020
References


Torres-Ardila, Fabian, Daniela Bravo, and Franklin Ortiz (2020). “Increasing Latino Participation Rates in the 2020 Census in Chelsea, MA”.


Abowd, John, Depositions on August 15, 2018 (hereinafter Abowd Deposition) and August 29, 2018 (Abowd 30(b)(6)).


Center for Survey Measurement. 2017. “MEMORANDUM FOR Associate Directorate for Research and Methodology (ADRM).”


Appendix A
MATT A. BARRETO – BARRETOM@UCLA.EDU
UNIVERSITY OF CALIFORNIA, LOS ANGELES, 3345 BUNCHE HALL, LOS ANGELES CA 90095 / 909.489.2955

EMPLOYMENT: Professor, Political Science, University of California Los Angeles (2015 – present)
Professor, Chicana/o Studies, University of California Los Angeles (2015 – present)
Co-Founder & Faculty Director, Latino Policy & Politics Initiative
Dept. Political Science, University of Washington
Professor (2014 – 2015)
Associate Professor (2009 – 2014)
Assistant Professor (2005 – 2009)
Co-Founder & Director, Washington Institute for the Study of Ethnicity and Race
Founding Director, Center for Democracy and Voting Rights, UW School of Law

Affiliated Research Centers
Latino Policy & Politics Initiative (LPPI), University of California, Los Angeles
Chicano Studies Research Center (CSRC), University of California, Los Angeles
Center for the Study of Los Angeles (CSLA), Loyola Marymount University

PERSONAL: Born: June 6, 1976
San Juan, Puerto Rico
High School: 1994, Washburn Rural HS, Topeka, KS

EDUCATION: Ph.D., Political Science, June 2005
University of California – Irvine
Sub Fields: American Politics / Race, Ethnicity and Politics / Methodology
Thesis: Ethnic Cues: The Role of Shared Ethnicity in Latino Political Participation
Thesis Committee: Bernard Grofman (chair), Louis DeSipio, Katherine Tate, Carole Uhlaner
Thesis Awards: Ford Foundation Dissertation Fellowship for Minorities, 04-05
University of California President’s Dissertation Fellowship, 04-05
University of California Institute for Mexico & the U.S. Dissertation Grant, 04-05

Master of Science, Social Science, March 2003
University of California – Irvine

Bachelor of Science, Political Science, May 1998
Eastern New Mexico University, Portales, NM
Minor: English. Cumulative GPA: 3.9, Summa Cum Laude
PUBLICATION RECORD

Google Scholar citation indices:  
Cites: 3,768  
h-index: 28  
i10-index: 54  
Years post-PhD: 15  
Cites/year: 236

BOOK MANUSCRIPTS:


PEER-REVIEWED ARTICLES


Barreto-CV 4


*Edited Volume Book Chapters*


### RESEARCH AWARDS AND FELLOWSHIPS

<table>
<thead>
<tr>
<th>Month</th>
<th>Institution/Initiative</th>
<th>Funding/Duration</th>
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<tr>
<td>Aug 2018</td>
<td>Provost Initiative for Voting Rights Research&lt;br&gt;UCLA Latino Policy &amp; Politics Initiative [With Chad Dunn]</td>
<td>$90,000 – 24 months</td>
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<td>April 2018</td>
<td>Democracy Fund &amp; Wellspring Philanthropic&lt;br&gt;UCLA Latino Policy &amp; Politics Initiative [With Sonja Diaz]</td>
<td>$200,000 – 18 months</td>
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<td>March 2018</td>
<td>AltaMed California&lt;br&gt;UCLA Latino Policy &amp; Politics Initiative [With Sonja Diaz]</td>
<td>$250,000 – 12 months</td>
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<td>Dec 2017</td>
<td>California Community Foundation&lt;br&gt;UCLA Latino Policy &amp; Politics Initiative [With Sonja Diaz]</td>
<td>$100,000 – 12 months</td>
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<td>July 2013</td>
<td>Ford Foundation&lt;br&gt;UW Center for Democracy and Voting Rights</td>
<td>$200,000 – 12 months</td>
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<td>April 2012</td>
<td>American Values Institute [With Ben Gonzalez]&lt;br&gt;Racial Narratives and Public Response to Racialized Moments</td>
<td>$40,000 – 3 months</td>
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<td>Jan 2012</td>
<td>American Civil Liberties Union Foundation [With Gabriel Sanchez]&lt;br&gt;Voter Identification Laws in Wisconsin</td>
<td>$60,000 – 6 months</td>
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<td>June 2011</td>
<td>State of California Citizens Redistricting Commission&lt;br&gt;An Analysis of Racial Bloc Voting in California Elections</td>
<td>$60,000 – 3 months</td>
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<td>Apr 2011</td>
<td>Social Science Research Council (SSRC) [With Karam Dana]&lt;br&gt;Muslim and American? A national conference on the political and social incorporation of American Muslims</td>
<td>$50,000 – 18 months</td>
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<td>Jan 2011</td>
<td>impreMedia [With Gary Segura]&lt;br&gt;Latin opinion polling poll of voter attitudes in 2011</td>
<td>$30,000 – 6 months</td>
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<td>Oct 2010</td>
<td>National Council of La Raza (NCLR) [With Gary Segura]&lt;br&gt;Measuring Latino Influence in the 2010 Elections</td>
<td>$128,000 – 6 months</td>
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<td>Oct 2010</td>
<td>We Are America Alliance (WAAA) [With Gary Segura]&lt;br&gt;Latino and Asian American Immigrant Community Voter Study</td>
<td>$79,000 – 3 months</td>
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<td>May 2010</td>
<td>National Council of La Raza (NCLR) [With Gary Segura]&lt;br&gt;A Study of Latino Views Towards Arizona SB1070</td>
<td>$25,000 – 3 months</td>
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<tr>
<td>Apr 2010</td>
<td>Social Science Research Council (SSRC) [With Karam Dana]&lt;br&gt;Muslim and American? The influence of religiosity in Muslim political incorporation</td>
<td>$50,000 – 18 months</td>
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<tr>
<td>Oct 2009</td>
<td>American Association of Retired Persons (AARP) [With Gary Segura]&lt;br&gt;Health care reform and Latino public opinion</td>
<td>$25,000 – 3 months</td>
</tr>
<tr>
<td>July 2008</td>
<td>National Association of Latino Elected Officials (NALEO) [With Gary Segura]&lt;br&gt;Latino voter outreach survey – an evaluation of Obama and McCain</td>
<td>$72,000 – 3 months</td>
</tr>
</tbody>
</table>
RESEARCH GRANTS AND FELLOWSHIPS CONTINUED...

April 2008  National Association of Latino Elected Officials (NALEO) & National Council of La Raza (NCLR), 2008 Latino voter messaging survey  $95,000 – 6 months

Dec. 2007  Research Royalty Fund, University of Washington 2008 Latino national post-election survey  $39,000 – 12 months

Oct. 2007  Brennan Center for Justice, New York University [with Stephen Nuno and Gabriel Sanchez] Indiana Voter Identification Study  $40,000 – 6 months

June 2007  National Science Foundation, Political Science Division [with Gary Segura] American National Election Study – Spanish translation and Latino oversample  $750,000 – 24 months

Oct. 2006  University of Washington, Vice Provost for Undergraduate Education Absentee voter study during the November 2006 election in King County, WA  $12,000 – 6 months

Mar. 2006  Latino Policy Coalition Public Opinion Research Grant [with Gary Segura] Awarded to the Washington Institute for the Study of Ethnicity and Race  $40,000 – 18 months

2005 – 2006  University of Washington, Institute for Ethnic Studies, Research Grant  $8,000 – 12 months

Mar. 2005  Thomas and Dorothy Leavey Foundation Grant [with Fernando Guerra] Conduct Exit Poll during Los Angeles Mayoral Election, Mar. 8 & May 17, 2005 Awarded to the Center for the Study of Los Angeles  $30,000 – 6 months

2004 – 2005  Ford Foundation Dissertation Fellowship for Minorities  $21,000 – 12 months

2004 – 2005  University of California President’s Dissertation Fellowship  $14,700 – 9 months

2004 – 2005  University of California Mexico-US (UC MEXUS) Dissertation Grant  $12,000 – 9 months

Apr – 2004  UC Regents pre-dissertation fellowship, University of California, Irvine,  $4,700 – 3 months

2003 – 2004  Thomas and Dorothy Leavey Foundation Grant [with Fernando Guerra] Awarded to the Center for the Study of Los Angeles  $20,000 – 12 months

2002 – 2003  Ford Foundation Grant on Institutional Inequality [with Harry Pachon] Conducted longitudinal study of Prop 209 on Latino and Black college admittance Awarded to Tomás Rivera Policy Institute  $150,000 – 12 months

2002 – 2003  Haynes Foundation Grant on Economic Development [with Louis Tornatzky] Knowledge Economy in the Inland Empire region of Southern California Awarded to Tomás Rivera Policy Institute  $150,000 – 18 months

2001 – 2002  William F Podlich Graduate Fellowship, Center for the Study of Democracy, University of California, Irvine  $24,000 – 9 months
**RESEARCH UNDER REVIEW/WORKING PAPERS:**


Barreto, Matt and Christopher Parker. “The Great White Hope: Existential Threat and Demographic Anxiety in the Age of Trump.” *Revise and Resubmit*

Barreto, Matt, Natalie Masuoka, Gabe Sanchez and Stephen El-Khatib. “Religiosity, Discrimination and Group Identity Among Muslim Americans” *Revise and Resubmit*

Barreto, Matt, Gabe Sanchez and Barbara Gomez. “Latinos, Blacks, and Black Latinos: Competition, Cooperation, or Indifference?” *Revise and Resubmit*

Walker, Hannah, Matt Barreto, Stephen Nuño, and Gabriel Sanchez. “A comprehensive review of access to valid photo ID and the right to vote in America” [Under review]


Barreto, Matt, David Redlawsk and Caroline Tolbert. “Framing Barack Obama: Muslim, Christian or Black?” [Working paper]
M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

CONSULTING EXPERT:

- North Carolina, 2019, Expert for Plaintiffs in North Carolina voter ID lawsuit, NAACP v. Cooper
- East Ramapo CSD, 2018, Expert for Plaintiffs in Section 2 VRA lawsuit, assessed polarized voting
- Dallas County, TX, 2017, Expert for Defense in Section 2 VRA lawsuit, Harding v. Dallas County
- Galveston County, TX Redistricting, 2013, Expert report for Dunn & Brazil, LLC, Demographic analysis, vote dilution analysis, and racially polarized voting analysis for Section 2 lawsuit Galveston County JP/Constable districting
- Pasadena, TX Redistricting, 2013, Expert report for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, and racially polarized voting analysis for Section 2 lawsuit within Pasadena School District
- Harris County, TX Redistricting, 2011, Testifying Expert for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, and racially polarized voting analysis for Section 2 lawsuit within Harris County
- Orange County, FL, 2012, Consulting Expert for Latino Justice/PRLDEF, Racially polarized voting analysis in Orange County, Florida
- Anaheim, CA, 2012, Consulting Expert for Goldstein, Demchak & Baller Legal, Racially polarized voting analysis for CVRA redistricting case Anaheim, CA
- Los Angeles County, CA, 2011, Consulting Expert for Goldstein, Demchak & Baller Legal, Racially polarized voting analysis for three redistricting cases in L.A.: Cerritos Community College Board; ABC Unified Schools; City of West Covina
- Harris County, TX Redistricting, 2011, Consulting Expert for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, for Section 5 objection within Harris County
- Monterey County, CA Redistricting, 2011, Consulting Expert for City of Salinas, Demographic analysis, creation of alternative maps, and racially polarized Voting analysis within Monterey County
- Asian Pacific American Legal Center, 2011, Racially Polarized Voting analysis of Asian American candidates in Los Angeles for APALC redistricting brief
- Lawyers’ Committee for Civil Rights and Arnold & Porter, LLP, 2010-12, Racially Polarized Voting analysis of Latino and Asian candidates in San Mateo County, concerning San Mateo County Board of Supervisors
- ACLU of Washington, 2010-11, preliminary analysis of Latino population patterns in Yakima, Washington, to assess ability to draw majority Latino council districts
State of Washington, 2010-11, provided expert analysis and research for *State of Washington v. MacLean* in case regarding election misconduct and voting patterns

Los Angeles County Chicano Employees Association, 2008-10, Racially Polarized Voting analysis of Latino candidates in L.A. County for VRA case, concerning L.A. County Board of Supervisors redistricting (6 reports issued 08-10)

Brennan Center for Justice and Fried, Frank, Harris, Shriver & Jacobson LLP, 2009-10 Amicus Brief submitted to Indiana Supreme Court, *League of Women Voters v. Rokita*, regarding access to voter identification among minority and lower resource citizens

State of New Mexico, consulting expert for state in *AAPD v. New Mexico*, 2008,

District of Columbia Public Schools (DCPS), statistical consultant for survey methodology of opinion survey of parents in DCPS district (for pending suit), 2008,

Brennan Center for Justice, 2007-08, Amicus Brief submitted to U.S. Supreme Court, and cited in Supreme Court decision, *Crawford v. Marion County*, regarding access to voter identification among minority and lower-resource citizens

Los Angeles County Chicano Employees Association, 2002-07, Racially Polarized Voting analysis of Latino candidates in L.A. County for VRA case, concerning L.A. County Board of Supervisors redistricting (12 + reports issued during 5 years)

Monterrey County School Board, 2007, demographic and population analysis for VRA case

Sweetwater Union School District, 2007-08, Racially Polarized Voting analysis, and demographic and population analysis for VRA case

Mexican American Legal Defense Fund, 2007-08, Racially Polarized Voting analysis for Latino candidates, for City of Whittier city council races, for VRA case


Nielsen Media Research, 2005-08, with Willie C. Velasquez Institute, assessed the methodology of Latino household recruitment in Nielsen sample
M.A. Barreto / UCLA / Curriculum Vitae / Mar 2020

Teaching Experience:

- Minority Political Behavior (Grad Seminar)
- Politics of Immigration in the U.S. (Grad Seminar)
- Introduction to Empirical/Regression Analysis (Grad Seminar)
- Advanced Empirical/Regression Analysis (Grad Seminar)
- Qualitative Research Methods (Grad Seminar)
- Political Participation & Elections (Grad Seminar)
- The Voting Rights Act (Law School seminar)
- Research methodology II (Law School Ph.D. program seminar)
- U.S. Latino Politics
- Racial and Ethnic Politics in the U.S.
- Politics of Immigration in the U.S.
- Introduction to American Government
- Public Opinion Research
- Campaigns and Elections in the U.S.
- Presidential Primary Elections

Teaching Assistant
University of California, Irvine 2002 – 2005

- Intro to American Politics (K. Tate)
- Intro to Minority Politics (L. DeSipio)

Recognized as Outstanding Teaching Assistant, Winter 2002

- Statistics and Research Methods (B. Grofman)
- Recognized as Outstanding Teaching Assistant, Winter 2003

Board & Research Appointments

Founding Partner
Latino Decisions 2007 – Present

Senior Research Fellow
Center for the Study of Los Angeles, Loyola Marymount University 2002 – Present

Board of Advisors
American National Election Study, University of Michigan 2010 – Present

Advisory Board
States of Change: Demographics & Democracy Project 2014 – Present

CAP, AEI, Brookings Collaborative Project

Research Advisor
American Values Institute / Perception Institute 2009 – 2014

Expert Consultant
State of California, Citizens Redistricting Committee 2011 – 2012

Senior Scholar & Advisory Council

Board of Directors
CASA Latina, Seattle, WA 2006 – 2009

Faculty Research Scholar
Tomás Rivera Policy Institute, University of Southern California 1999 – 2009

Barreto-CV 12
PHD STUDENTS

UCLA & UW

Committee Chair or Co-Chair
- Francisco I. Pedraza – University of California, Riverside (UW Ph.D. 2009)
- Loren Collingwood – University of California, Riverside (UW Ph.D. 2012)
- Betsy Cooper – Public Religion Research Institute, Washington DC (UW Ph.D. 2014)
- Sergio I. Garcia-Rios – Cornell University (UW Ph.D. 2015)
- Hannah Walker – Rutgers University (UW Ph.D. 2016)
- Kassra Oskooii – University of Delaware (UW Ph.D. 2016)
- Angela Ocampo – Arizona State University (UCLA Ph.D. 2018)
- Ayobami Laniyonu – University of Toronto (UCLA Ph.D. 2018)
- Adria Tinin – in progress (UCLA ABD)
- Bang Quan Zheng – in progress (UCLA ABD)
- Bryan Wilcox-Archeleta – in progress (UCLA ABD)
- Tyler Reny – in progress (UCLA ABD)
- Angie Gutierrez – in progress (UCLA)
- Shakari Byerly-Nelson – in progress (UCLA)
- Vivien Leung – in progress (UCLA)

Committee Member
- Jessica Stewart – Emory University (UCLA Ph.D. 2018)
- Jonathan Collins – Brown University (UCLA Ph.D., 2017)
- Lisa Sanchez – University of Arizona (UNM Ph.D., 2016)
- Nazita Lajevardi – Michigan State University (UC San Diego Ph.D., 2016)
- Kiku Huckle – Pace University (UW Ph.D. 2016)
- Patrick Rock (Social Psychology) – (UCLA Ph.D. 2016)
- Raynee Gutting – Loyola Marymount University (Stony Brook Ph.D. 2015)
- Christopher Towler – Sacramento State University (UW Ph.D. 2014)
- Benjamin F. Gonzalez – San Diego State University (UW Ph.D. 2014)
- Marcela Garcia-Castañon – San Francisco State University (UW Ph.D. 2013)
- Justin Reedy (Communications) – University of Oklahoma (UW Ph.D. 2012)
- Dino Bozonenos – Cal State San Marcos (UC Riverside Ph.D. 2012)
- Brandon Bosch – University of Nebraska (UW Ph.D. 2012)
- Karam Dana (Middle East Studies) – UW Bothell (UW Ph.D. 2010)
- Joy Wilke – in progress (UCLA ABD)
- Erik Hanson – in progress (UCLA)
- Christine Slaughter – in progress (UCLA)
- Lauren Goldstein (Social Psychology) – in progress (UCLA)
- Barbara Gomez-Aguinaga – University of Nebraska (UNM Ph.D., in progress)
Exhibit 57
IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

NEW YORK IMMIGRATION COALITION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

Expert Declaration of Mr. John Thompson

1. Introduction

1. On July 21, 2020 President Trump issued a Memorandum for the Secretary of Commerce on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census (in the remainder of this document I will use the term “Memorandum” to refer to this document). I am extremely concerned that this action will adversely affect the quality and accuracy of the 2020 Census.

2. The 2020 Census results will be of great importance to our nation. The Constitution requires that the census be used for reapportioning the Congress of the United States and the Electoral College. The 2020 Census will also be used for numerous other functions to support good
policymaking and economic growth including: redrawing congressional and state legislative voting districts; allocating over $1.5 trillion of federal funds annually; informing sound policy development; providing critical information for state, local and tribal government planning; and supplying critical information to large and small businesses to generate growth and job creation. Inaccuracies or errors in the 2020 Census will have grave consequences on these uses for the subsequent 10-year period.

3. I have carefully reviewed the Memorandum instructing the Secretary of Commerce to provide information to exclude undocumented persons from the Apportionment counts. I have also reviewed the 2020 Census Operational Plans as well as the documentation that the Census Bureau has issued describing the actions it is taking in response to the COVID-19 pandemic. I have two serious concerns regarding the Memorandum: (1) it will significantly increase the risk of larger total and differential undercounts, relative to previous censuses, for the hard-to-count populations, including immigrant communities; and (2) it lacks transparency as required by law and the Census Bureau Statistical Quality Standards that would allow for the assessment of the methodology that might be used in response to the direction to exclude undocumented persons from the 2020 Census Apportionment counts.

II. Qualifications

4. Below I briefly describe specific aspects of my qualifications and work experience that establishes my credentials as an accomplished statistician and an expert on the Census Bureau and Decennial Census. I have also attached a copy of my CV to this declaration.

5. I have served as both the Director of the U.S. Census Bureau and as the career senior executive in charge of management of all aspects of the 2000 Decennial Census. I am also a distinguished professional in the area of statistics and survey design. I have a deep understanding of the processes that are necessary to achieve a complete and highly accurate Decennial Census.

6. I served as the Director of the U.S. Census Bureau from August 2013 to June 2017. Prior to becoming Director, I worked at the Census Bureau for 27 years (from 1975 to 2002). I started my career as a mathematical statistician in 1975. I spent the majority of my employment at the Census Bureau focused on the Decennial Census and ultimately served as the Associate Director for the 2000 Decennial Census, with management responsibility for all phases of the 2000 Decennial Census.

7. The Census Bureau is the largest Statistical Agency and produces a wide range of demographic and economic statistics including: the Decennial Census; the American Community Survey; the Current Population Survey; the National Crime Victimization Survey, the National Health Interview Survey; the Economic Census; the release of 13 principle key economic indicators on a monthly or quarterly basis; and conducts about 100 additional surveys. The Director of the Census Bureau is appointed by the President and
confirmed by the Senate.

8. My responsibilities as Director of the Census Bureau included overseeing the research and testing that produced the design for the 2020 Census. During my tenure, the original operational plan for conducting the 2020 Census was released, as was an updated version 2.0 of this plan. In addition, major field tests were conducted in 2013, 2014, 2015 and 2016. The results of these tests informed the final 2020 Census Design that was tested in the 2018 end-to-end test. During my service, the Census Bureau reviewed the residence criteria used to determine where to count the residents of the United States. A preliminary proposal for the 2020 residence criteria was issued for public comment on June 30, 2016.¹ In particular, the Census Bureau was following the same principles that had guided each previous Decennial Census – the Constitution requires that everyone living in the United States should be included in the enumeration, regardless of immigration status, for all uses of the census, including Apportionment. The final 2020 Census residence criteria were issued on February 5, 2018, and again followed these same principles to count everyone living in the United States at their usual place of residence regardless of immigration status for Apportionment and all other uses.²

9. Prior to being appointed Director of the Census Bureau I was at National Opinion Research Center (NORC) at the University of Chicago, serving as Executive Vice President from 2002 to 2008 and President from 2008 to 2013. NORC is an objective, non-partisan independent research institution that delivers reliable data and rigorous analysis to guide critical programmatic, business, and policy decisions. Clients include government, corporate, and nonprofit organizations around the world who partner with NORC to transform increasingly complex information into useful knowledge. NORC conducts research in five main areas: Economics, Markets, and the Workforce; Education, Training, and Learning; Global Development; Health and Well-Being; and Society, Media, and Public Affairs. NORC services include designing and conducting surveys (telephone, Internet, and in-person) as well as analytical studies.

10. From July 2017 to August 2018, I served as the Executive Director of the Council of Professional Associations on Federal Statistics (COPAFS). COPAFS is an organization with a membership consisting of professional associations and research organizations that depend on and support high quality federal statistics. The Executive Director of COPAFS must have a deep understanding of the Federal Statistical System and the wide range of data products that are produced. Serving as the Executive Director of COPAFS reinforced my appreciation of the importance of high-quality Decennial Census data to the entire Federal Statistical System.

11. In addition to the work experience described above, I am an elected Fellow of the American Statistical Association and was selected to serve on the National Academies of Science, Engineering, and Medicine Committee on National Statistics.

III. Concerns

A. Background on the Decennial Census

12. The uses of the data generated by the Decennial Census are extremely important for all components of our democracy and economy, including: the constitutionally required reapportionment of the Congress; redrawing congressional and state legislative voting districts; allocating over $1.5 trillion in federal funds annually; supporting evidence based policy making by state, local and tribal governments; and allowing informed decisions by large and small business to generate economic growth and job creation. Inaccuracies or undercounts in Decennial Census data will result in under-representation of the affected population groups not just in the immediate term, but for ten subsequent years until the next Decennial Census results are available.

B. The 2020 Census was already facing unprecedented challenges prior to the release of the Memorandum.

13. The COVID-19 pandemic forced the delay of key operations out of concerns for the safety of both census workers and the general public. The in-person components of the local partnership program to increase response rates of the traditionally hard-to-count populations were delayed, as was the operation to collect responses from those households that do not self-respond. This operation is referred to as nonresponse follow-up or NRFU. In my opinion, NRFU is the most critical operation to achieving a fair and accurate enumeration. Currently the national self-response rate is 63 percent, which means that over 37 percent or over 50 million housing units and their occupants must still be enumerated.\(^3\) A successful NRFU is therefore essential to achieving a complete enumeration for the 2020 Census.

14. The NRFU operation had been scheduled to start on May 15, 2020 and run through July 31, 2020. However, as a result of the COVID-19 pandemic, the Census rescheduled it to start in most of the United States on August 11, 2020 and initially planned to complete it by October 30, 2020.

15. In order to accommodate this delay, the Census Bureau had requested, through the Department of Commerce, a four-month extension of the legal deadlines\(^4\) to deliver Apportionment and redistricting data. For Apportionment this would extend the current deadline of December 31, 2020 to April 30, 2021. For redistricting data, the requested

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\(^4\) Title 13, US Code, Section 141, (b) and (c).
extension was from March 31, 2021 to July 31, 2021.

16. However, the Census Bureau has announced that the deadlines will not be extended, and that the NRFU will now be completed by September 30, 2020. The Census Bureau will have to take steps to complete the NRFU more rapidly than they planned.

17. In this situation the risk that the hard-to-count populations will be underrepresented increases greatly. Cooperation on the part of the households in NRFU is going to be essential. However, as I discuss below, the issuance of the Memorandum will most likely decrease cooperation and willingness to participate further reducing the effectiveness of NRFU in achieving a fair and accurate enumeration.

C. The confidence of respondents that the 2020 Census will be confidential will be significantly eroded leading to increased undercounts

18. The Census Bureau has made good progress since the 1990 Decennial Census, and had great success during both the 2000 and 2010 Decennial Censuses in reducing undercounts. A key component of this success has been the deployment of a combined national and local advertising and local partnership program to deliver a message to hard-to-count populations that the census is important to their community, and that the data collected through the census is completely confidential. No individual’s information is shared with any other organization or law enforcement entities.

19. This messaging program was responsible for dramatic gains in the accuracy and coverage of the 2000 and 2010 Decennial Census relative to the 1990 Census, which did not include such a program. For example, the undercount of Black or African Americans dropped from 4.6 percent in 1990 to 2.1 percent in 2010. For the Hispanic population the undercount dropped from 5.0 percent to 1.5 percent.

20. Census Bureau research conducted in planning for the 2020 Census has identified serious concerns that potential respondents have with respect to the confidentiality of their information prior to the release of the Memorandum. For example:

a. Census Bureau researchers conducted qualitative research that was presented at the 2018 American Association of Public Opinion Research annual conference that

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indicated that fear of government was higher than had been experienced in prior years.\textsuperscript{8}

b. The 2020 Census Barriers Attitudes and Motivators Study was conducted to understand the concerns of potential respondents to help shape the 2020 Census advertising and communication program themes and messages. The study found that the two most significant barriers to participation in the 2020 Census were: (1) concerns that the Census Bureau would share information with other government agencies; and (2) that the information that respondents provided would be used against them\textsuperscript{9}. Non-White and Hispanic groups were much more concerned than the White non-Hispanic group. In addition, respondents that were not proficient in English were much more concerned than those who were (39 percent compared to 23 percent).

c. The Census Bureau also conducted research on the potential effects of adding a citizenship question to the 2020 Census questionnaire.\textsuperscript{10} This research indicated that the question would reduce self-response of the non-citizen population. Furthermore, the research found that it was likely that households that refuse to respond to the census questionnaire because of the citizenship question are also likely to not respond to NRFU enumerators. It is my opinion, based on my experience in implementing the 2000 Census and my work in leading the design and planning for the 2020 Census, that the Memorandum is likely to have similar effects on NRFU response.

21. In order to address these concerns, a cornerstone of the 2020 Census advertising and partnership program, is a message that respondent information is confidential. The Census Bureau will not share it with any outside entities, including law and immigration enforcement. It is my opinion that the Memorandum will reduce the effectiveness of the 2020 Census advertising and partnership program in gaining the confidence of respondents in traditionally hard-to-count communities.

22. For example, a critical factor in underlying response and participation in the 2020 Census is the macro environment under which the NRFU is being conducted. While the 2020 Census advertising and partnership program is designed to positively influence this environment, other factors such as the issuance of the Memorandum can have the opposite effect. As Census Bureau Chief Scientist, Dr. John Abowd, acknowledged during recent trial testimony\textsuperscript{11} in the matter considering the potential effects of adding a citizenship question to the 2020 Census questionnaire, the macro environment was likely to be affected by actions to

\textsuperscript{8} AAPOR Panel on Changes in Respondent Privacy, Confidentiality, and Data Sharing Concerns, Meyers, Gorman, Harris-Kojetin, Terry, and Fobia, Denver, Colorado, May 18, 2018

\textsuperscript{9} CBAMS report

\textsuperscript{10} J. David Brown, Misty L. Heggeness, Suzanne M. Dorinski, Lawrence Warren, and Moises Yi Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census, August 6, 2018.

add a citizenship question. Furthermore, Dr. Abowd acknowledged that the political environment around immigration could amplify the effects of a citizenship question on decreased response.

23. It is my opinion that the effects of the Memorandum on the current macro environment are likely to be as great if not greater than the addition of a citizenship question. Therefore, immigrants and the families of immigrants will be reluctant to participate in the NRFU and many will not be enumerated. It is also likely, in my opinion, that this reluctance to participate will extend to other hard-to-count populations as well. The issuance of the Memorandum has significantly increased the risk of larger total and differential undercounts, relative to previous censuses.

D. Lack of transparency

24. At this point, little is known about the ultimate quality and accuracy of the 2020 Census. The location and magnitude of errors caused by potential undercounts and overcounts has not been determined. In addition, the level of inclusion of undocumented persons in the 2020 Census is also unknown.

25. It will be very challenging for the Census Bureau to determine the number of undocumented persons that are included in the 2020 Census at the time when Apportionment data is required to be reported. It is critical for the Census Bureau and the Department of Commerce to describe the methodology that they intend to utilize to estimate the numbers of undocumented persons enumerated in the 2020 Census and what are appropriate measures of accuracy that would support the usage of such methodologies. The Memorandum does not provide any specific directions and the Census Bureau has not described how it will comply with the Memorandum.

26. There are legal and statistical standards that the Census Bureau has followed and should continue to follow with respect to transparency:

   a. The Census Bureau is a Federal Statistical Agency and as Director Dillingham noted in sworn testimony July 29, 2020, the Census Bureau intends to follow the principles and practices identified by the Committee on National Statistics for Federal Statistical Agencies.\textsuperscript{12} Principle 2, \textit{Credibility among Data Users}, states: “Also essential to building credibility are for an agency to be open and transparent about its data sources and their limitations, demonstrate understanding of users’ needs and priorities, fully document the processes used to produce and disseminate statistical products, and take proactive steps to preserve data for future use.”

b. The Office of Management and Budget issued a Memorandum on April 24, 2019 Improving Implementation of the Information Quality Act to the Heads of all Executive Departments and Agencies strengthening previous guidance in this area.\textsuperscript{13} This document states: “The IQA requires agencies conduct pre-dissemination review of their information products. During this review, each agency should consider the appropriate level of quality for each of the products that it disseminates based on the likely use of that information.”

27. In 2013 the Census Bureau issued Statistical Quality Standards that are currently guiding the conduct of all their programs including the 2020 Census.\textsuperscript{14}

a. In particular: Statistical Quality Standard F1, Releasing Information Products Requirement F1-6 states: “Information products must comply with the Census Bureau’s statistical quality standards and must be free of serious data quality issues in order to be released outside the Census Bureau without restrictions.” Statistical Quality Standard F2, Providing Documentation to Support Transparency in Information Products Requirement F2-2 states: “Documentation must be readily accessible in sufficient detail to allow qualified users to understand and analyze the information and to reproduce (within the constraints of confidentiality requirements) and evaluate the results.”

28. The most important information produced and released by the Census Bureau is the constitutionally mandated Apportionment data. Because this information is so vital to our democracy, it is critically important that the Department of Commerce and the Census Bureau are transparent in their adherence to their legal and statistical standards. At a minimum, the Census Bureau has an obligation to assure the public and stakeholders that any methods it develops for determining the number of undocumented individuals is statistically sound.

VI. Conclusion

In conclusion, it is my opinion that the issuance of the Memorandum will significantly increase the risk of much larger undercounts for the 2020 Census than measured in previous censuses, including undercounts of immigrant communities. In addition, there is no transparency or documentation of how the quality and fitness for use of the Apportionment counts will be determined, nor is there any documentation of how the number of undocumented persons potentially included in the 2020 Census will be determined.

\textsuperscript{13} Russel T. Vought, Acting Director OMB, Memorandum for the Heads of Executive Departments and Agencies, Subject: Improving Implementation of the Information Quality Act (Apr. 24, 2019).
\textsuperscript{14} U.S. Census Bureau Statistical Quality Standards (Jul. 2013).
Executed on August 6, 2020 at Bend, Oregon.

I declare under penalty of perjury that the foregoing is true and correct.

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John Thompson
Appendix A
JOHN H. THOMPSON

BRIEF CAREER HISTORY

Extensive Senior Executive leadership in the non-profit and federal sectors, with experience in social science research and statistics, congressional advocacy, building coalitions, operational management, business development, stakeholder relations, innovation, and strategic vision.

Independent Consultant, August 2018 to present

Consulting service focusing on survey methodology, executive leadership, the Federal Statistical System, and decennial census. Activities have included:

- Expert witness for the plaintiffs in two court cases opposing the addition of a citizenship question to the 2020 Census
  - New York Immigration Coalition, et al v. United States Department of Commerce and Wilbur Ross, U.S. District Court for the Southern District of New York, and
  - Robyn Kravitz et al., v. United States department of Commerce, et al
- Training news media journalists on the 2020 Census with Georgetown University, the Poynter Center, and the Harvard Shorenstein Center.
- Providing consultation services to NORC at the University of Chicago

Executive Director, Council of Professional Associations on Federal Statistics –
July 2017 to August 2018

The Council of Professional Associations on Federal Statistics (COPAHS) was founded in 1981 to coordinate activities of a number of Associations, Organizations, and Businesses that rely on federal statistics to support good governance and economic growth. COPAHS now represents a growing body of stakeholders that support the production and use of high quality statistics. The Executive Director represents these stakeholders in realizing their mission to Advance Excellence in Federal Statistics. Activities include:

- Advocated on behalf of federal agencies. For example, COPAHS is a co-chair of the Friends of the Bureau of Labor Statistics, and the Friends of the National Center for Health Statistics;
- Worked with stakeholder coalitions to support proper funding for the 2020 Census and the American Community Survey;
- Ensured members of Congress, COPAHS members, and other stakeholders were informed of critical issues facing agencies that produce federal statistics;
- Alerted members and stakeholders of breaking issues that needed immediate support and attention;
- Organized and supported ongoing educational efforts for members of Congress and their staff on the value and importance of federal statistics both nationally and in their own states and districts;
- Created and joined in powerful coalitions of organizations and businesses to advocate on behalf of federal agencies that produce statistics, building broad support across a wide spectrum of data users;
• Built partnerships with foundations that help fund critical research in the statistical agencies and academia to ensure the on-going modernization of how statistical data are created and made available to the public and researchers, and to fund educational efforts;

• Worked closely with the Chief Statistician of the United States and the statistical agencies to help inform and promote modernization efforts underway and assist agencies in keeping abreast of new stakeholder data needs; and

• Hosted events to demonstrate the importance of federal statistics such as the 2018 Federal Committee on Statistical Methodology Research and Policy Conference.

**Director, United States Census Bureau – August 2013 to June 2017**

Appointed by the President as Director of the largest federal statistical agency, with a staff of over 5,000 headquarters employees and approximately 10,000 to 15,000 staff spread across the United States in six regional offices and a major production facility in Indiana, with an annual budget exceeding $1 billion. Key accomplishments include:

• Worked successfully with the executive and legislative branches of the federal government, including the White House, the Office of Management and Budget, Cabinet officials, and members of Congress and congressional staff, to accomplish a major transformation of the Census Bureau into a forward-looking 21st century statistical agency. Testified at 6 congressional hearings on the Census Bureau;

• Provided a conceptual vision and lead a redesign of the 2020 decennial census that is estimated to save $5 billion through effective use of operations research-driven reengineering of field operations, innovative use of technology, and partnership with key stakeholders;

• Lead outreach to key stakeholders including representatives of state local and tribal governments; advocacy organizations; professional associations, business groups, various media; and academic researchers;

• Put in place a robust research program to support mission critical activities, such as linking administrative records, disclosure avoidance methods, economic studies, statistical research, survey methodology, big data, and data dissemination;

• Lead efforts to maintain congressional support and funding for the American Community Survey, a critical data asset of the federal government, including mobilizing a diverse group of key stakeholders to effectively advocate in support of the survey, personally visiting almost all of the House of Representatives and Senate members of the Census Bureau appropriations and oversight committees, and establishing a program of research directly related to the concerns that had been raised;

• Improved economic statistics through research on using alternatives to direct survey data collection to produce statistics that are timelier and have increased granularity, and carrying out three initiatives to advance the release of principal economic indicators on trade, retail sales and services, which allowed the Bureau of Economic Analysis to significantly reduce revisions to Gross Domestic Product (GDP) estimates;

• Recruited outstanding research staff including new senior leadership for Research and Methodology, the Director of a newly established big data center, and seven former Presidential Innovation Fellows; and

• Improved data dissemination to the public, including development of a platform to deliver data in ways that will meet the rapidly evolving demands of a growing body of users. In addition,
in order to meet immediate targeted demands two new tools were released: City SDK (Software Development Kit) to allow easy developer access; and Census Business Builder a tool that combines small area demographic and economic data in a way that is easily accessible for entrepreneurs and small business owners.

President and Executive Vice President, NORC at the University of Chicago – July 2002 to August 2013

NORC is a national non-profit organization that conducts high quality social science research in the public interest. As President, I had responsibility for all NORC corporate activities and for the quality of all NORC research efforts. I provided vision for NORC to establish the organization as a leader in the social science research industry. My accomplishments included:

- Strengthened the organization’s high-quality, diverse staff;
- Broadened the scope of the collaborations between NORC and the University of Chicago;
- Realized nearly 50 percent growth in revenue and greatly expanding NORC’s portfolio of business and research programs; and
- Provided leadership in the social science research community - selected to be a Fellow of the American Statistical Association (ASA), elected to serve a term as Chair of the Social Statistics Section of the ASA, and chaired the 2009 ASA Committee on Fellows. Also elected as a member of the Committee on National Statistics, serving on two National Academy of Sciences panels addressing 2010 and 2020 Census concerns.

As Executive Vice President of Survey Operations (2002 – 2008), I provided oversight and direction to the Economics, Labor Force, and Demography Research Department, the Statistics and Methodology Department, and Survey Operations for field and telephone data collection. My major accomplishments included:

- Provided leadership and guidance for a major corporate initiative, the National Immunization Survey, which is conducted on behalf of the Centers for Disease Control and Prevention, and is the largest telephone survey in the United States conducted via random digit dialing for scientific purposes.
- Significantly increased the productivity and cost effectiveness of NORC’s overall data collection activities;
- Successfully utilized skills in directing large project start-ups, and in managing large complex operations, directing the project through the completion of the first contract phase, which included the first year of data collection and the delivery of the first data set; and
- All survey operations were completed on schedule, and within budget including the delivery of an extremely complex data set, and a public use file.
Principal Associate Director and Associate Director for Decennial Census Programs, United States Census Bureau – 1997 to July 2002

Served as the senior career executive responsible for all aspects of the 2000 Decennial Census. This was the largest peacetime mobilization undertaken by the U.S. government, with a budget of $6.5 billion, establishment of over 500 field offices, a temporary workforce that peaked at over 500,000, and establishment of telephone capacity to receive over 5 million calls over a period of one month. I was also chairman and director of the Executive Steering Committee for Accuracy & Coverage Evaluation Policy for the 2000 Census. This Committee was charged with making a recommendation as to whether or not to adjust the 2000 Census redistricting data for coverage errors, an issue fraught with political disagreement and controversy. This work was widely recognized as superb – with the Committee’s recommendation supported by numerous reviews, including the National Academy of Sciences Panel on evaluating Census 2000.

EDUCATION

M.S. Virginia Polytechnic Institute and State University, 1975 Mathematics Graduate course work in statistics - George Washington University 1977-1981

B.S. Virginia Polytechnic Institute and State University, 1973 Mathematics

PROFESSIONAL SERVICE AND ASSOCIATIONS

American Statistical Association, 1975 to Present
Chair, Social Statistics Section – 2011
Chair, ASA Committee on Fellows - 2009
National Academy of Sciences,
Member of the Committee on National Statistics – 2011 - 2013
Member of the Panel on the Design of the 2010 Census Program of Evaluations and Experiments
Member of the Panel to Review the 2010 Census

HONORS AND AWARDS

Virginia Tech College of Science Hall of Distinction inaugural class, 2013
Presidential Rank Award of Meritorious Executive, 2001
Department of Commerce, Gold Medal, U.S. Bureau of the Census, 2000
Elected Fellow of the American Statistical Association, 2000
Department of Commerce, Bronze Medal, U.S. Bureau of the Census, 1988
PAPERS AND PUBLICATIONS


1988  Navarro, Alfredo, John H. Thompson, and Linda Flores-Baez, "Results of Data Switching Simulation." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, April, 1988.


Exhibit 58
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ST-TE OF NEW YORK, et al.,

Plaintiffs,

v.

DON-LD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

20-CV-5770 (JMF)

NEW YORK IMMIGRATION COLITON, et al.,

Plaintiffs,

v.

DON- LD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

20-CV-5781 (JMF)

EXPERT DECLARATION OF DR. CHRISTOPHER WARSHAW
I. Introduction

1. My name is Christopher Warshaw. I have been an Assistant Professor of Political Science at George Washington University since August 2017. I was recently awarded tenure, and will become a tenured Associate Professor on September 1, 2020. Prior to working at George Washington University, I was an Associate Professor at the Massachusetts Institute of Technology from July 2016 - July 2017, and an Assistant Professor at MIT from July 2012 - July 2016.

2. I have been asked by counsel representing the plaintiffs in New York Immigration Coalition v. Trump and State of New York v. Trump to analyze relevant data and provide my expert opinions.

3. More specifically, I have been asked:

   • To forecast the populations of every state in the United States in 2020.
   • To estimate the proportion of the population in every state in the United States likely to be excluded if undocumented immigrants are not included in the Census enumeration used for apportionment.
   • To analyze the likely effects of the exclusion of undocumented immigrants on the apportionment of representatives across states for the U.S House of Representatives.

4. My opinions are based on the knowledge I have amassed over my education, training and experience, including a detailed review of the relevant academic literature. They also follow from a statistical analysis that I describe in detail below.
A. Qualifications and Publications

5. My Ph.D. is in Political Science, from Stanford University, where my graduate training included courses in political science and statistics. I also have a J.D. from Stanford Law School. My academic research and teaching focuses on public opinion based on surveys and Census data, as well as the study of representation, elections, and polarization in American Politics. I have also taught courses on statistical analysis.

6. My *curriculum vitae* is attached to this Declaration at Appendix C. All publications that I have authored and published appear in my *curriculum vitae*. I have published 30 academic articles and book chapters. My work is published or forthcoming in peer-reviewed journals such as: the *American Political Science Review*, the *American Journal of Political Science*, the *Journal of Politics*, *Political Analysis*, *Political Science Research and Methods*, the *British Journal of Political Science*, *Political Behavior*, the *Annual Review of Political Science*, the *Election Law Journal*, *Nature Energy*, *Public Choice*, and edited volumes from Cambridge University Press and Oxford University Press. My non-academic writing has been published in the *New York Times* and the *Washington Post*.

7. Most relevantly, I provided an expert report and declaration in *New York Immigration Coalition et al v. United States Department of Commerce*, No. 18-CV-2921-JMF (S.D. NY). In that report, I assessed the consequences of an undercount caused by a potential citizenship question on the U.S. Census. Specifically, I examined the effects of a net differential undercount of people who live in immigrant households on congressional apportionment. I found that the inclusion of a citizenship question on the Census would likely have led to substantial effects on the population counts of each state, and the apportionment of
representatives across states for the U.S House of Representatives. In that case, the court found my analysis and findings “credible and persuasive.”


9. The opinions in this declaration are my own, and do not represent the views of George Washington University.

**B. Research Design**

10. President Trump recently issued a presidential memorandum charging the Secretary of Commerce to “exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”\(^1\) In order to assess the consequences of excluding undocumented immigrants from the count of people in the United States used for apportionment, I conduct the following steps:

   A. I estimate the baseline population of each state in 2020 based on the Census Bureau’s annual estimates of the population of each state from the past three decades.\(^2\) The populations used for apportionment also include overseas federal employees and their dependents. Then, based on data from the U.S. Military and the Census Bureau, I

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estimate the number of overseas federal employees and dependents that would be added to the population of each state for apportionment.

B. I use data from the Pew Research Center to estimate the number of undocumented immigrants in each state in 2020. These are the most widely used data in the academic literature on the undocumented immigrant population. However, I reach very similar conclusions using a variety of alternative sources of data on the number of undocumented immigrants in each state.

C. Based on all of these data, I estimate the proportion of each state’s population that would be excluded from the enumeration used for apportionment due to the presidential memorandum. I then use the official apportionment table published by the U.S. Census Bureau to estimate the number of congressional seats that states would gain or lose. Finally, I report the uncertainty in all of my analyses.

D. I evaluate the robustness of my findings to a variety of alternative data sources and modeling strategies. I also compare my findings to four other independent reports from different research groups. My findings are robust to alternative modeling assumptions and are similar to these other groups’ findings.

C. Summary of Findings

11. Based on my analysis, I have reached the following conclusions:

- The exclusion of undocumented immigrants from the apportionment base (i.e., the population enumeration used for apportionment) is likely to have substantial effects on the population counts of each state, and the apportionment of representatives across states for the U.S House of Representatives.
• It will almost certainly lead Texas to lose a seat in Congress. It is likely to lead California and New Jersey to lose a congressional seat. It also could lead other states, such as Arizona, Florida, New York, or Illinois, to lose seats. These conclusions are similar across multiple data sources on the prevalence of undocumented immigrants. They are also similar to the conclusions reached by a variety of independent analysts and organizations.

• The exclusion of undocumented immigrants from the apportionment base would affect political representation in Congress. For instance, it is likely to affect the distribution of federal funds to each state, and the general power that each state holds in Congress.

II. Projecting the State Populations in 2020

12. The first stage of my analysis is to develop baseline projections of the population of each state in the country in 2020. These projections are critical to determining the likely effects of excluding undocumented immigrants from the apportionment base. In order to develop these estimates, I use the Census Bureau’s official estimates of the population of each state from 1990-2019. The Census Bureau does not provide public estimates of each geographic unit’s populations in future years.

13. In this section, I first discuss several possible approaches for estimating future populations. I show that my preferred approach performs as well or better at a similar modeling problem than alternative approaches. I then discuss how I incorporate uncertainty into my population projections. Finally, I present estimates of the 2020 populations in each state in the country.

A. Data

14. The Census Bureau’s Population Estimates Program (PEP) produces estimates of the population for the United States, states, counties, cities, towns, and other geographic areas.
These aggregate estimates are based on the demographic components of population change (births, deaths, and migration) at each level of geography.\textsuperscript{3} My population projections are based on these official population estimates for each state for the period from 1990-2019.\textsuperscript{4}

**B. Statistical Model for Population Projections**

15. There are a number of potential options for forecasting the likely population of each state in 2020. One possible forecasting option would be to allow the forecasts to increase or decrease over time, where the amount of change over time (called the drift) is set to be the average change in the historical data (see Hyndman and Athanasopoulos 2018, 48-49). Some related methods in this family of forecasting approaches are:

- **Model 1: Linear trend between 2010-2019:** One approach would be to project forward based on the linear trend in the population estimates since the last Census (e.g., Election Data Services 2017). This approach assumes that each geographic unit’s population follows the same linear rate of change in the future that it has followed over the past decade. This approach has the benefit of using many years of data, but it could yield biased estimates if the population trends have changed over this period. I estimate linear trends using a simple linear regression model in the software program R.

- **Model 2: Linear trend between 2016-2019:** Another possibility is to project forward based on the linear trend in the population estimates over the past 4 years. This approach

\textsuperscript{3} I do not directly use the more detailed cohort-component method used by the Census for my population projections because this information is unavailable for some geographic levels, particularly for the 2000-2010 period. It is also unclear whether the additional complexities associated with this approach would yield substantial gains in predictive accuracy.

assumes that each geographic unit’s population follows the same linear trend in the future that it has followed over this shorter time period. This approach has the benefit of being sensitive to more recent trends, but it could be noisier than estimates based on the longer time series. That is, it could be overly sensitive to short-term trends. I estimate linear trends using a simple linear regression model in R.

- **Model 3: Change between two most recent years (i.e., 2018 to 2019):** A third possibility is to focus on the change between each geographic unit’s population in the two most recent years and assume that future years will follow this recent trend. This approach has the benefit of being based on the most recent changes in populations, but it could also be overly sensitive to short-term idiosyncratic trends. I estimate these short-term trends using the software program R.

16. As Hyndman and Athanasopoulos (2018, 50) discusses: “Sometimes one of these simple methods will be the best forecasting method available; but in many cases, these methods will serve as benchmarks rather than the method of choice. That is, any forecasting methods [] will be compared to these simple methods to ensure that the new method is better than these simple alternatives. If not, the new method is not worth considering.” I consider one more complex approach against these benchmarks:

- **Model 4: A state space model with exponential smoothing:** This approach uses an exponential smoothing model that weights levels and trends to an extent determined by the data (Hyndman et al. 2008; Hyndman and Athanasopoulos 2018). This model uses all of the available data, but it gives more weight to the most recent years. I estimate the exponential smoothing model using the ets function in the forecast package in R.
C. Validation of Population Projections

17. The accuracy of forecasting models can only be determined by considering how well a given model performs on new data that were not used when fitting the original model (Hyndman and Athanasopoulos 2018, 62). In order to choose the best model for this analysis, I evaluated each model using a benchmark that is similar to the challenge of forecasting the 2020 populations. Specifically, I forecasted the 2019 population estimates in each state based on 1990-2018 population data. For each analysis I used the following evaluation metrics (see Hyndman and Athanasopoulos 2018, 64-65).

- **The mean error across states (ME):** This helps assess whether a given metric has a systematic bias in one direction or another.

- **The root mean-squared error across states (RMSE):** This helps assess the accuracy of the forecasts. It penalizes larger errors more than smaller errors.

- **The mean absolute error across states (MAE):** This helps assess the accuracy of the forecasts. It penalizes all errors equally.

- **The mean percentage error across states (MPE):** This helps assess whether a given metric has a systematic bias in one direction or another. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

- **The mean absolute percentage error across states (MAPE):** This metric also helps assess the accuracy of the forecasts. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).
Table 1: Validation of State Population Projections at Predicting 2019 State Populations

<table>
<thead>
<tr>
<th>Model</th>
<th>ME</th>
<th>RMSE</th>
<th>MAE</th>
<th>MPE</th>
<th>MAPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1): Linear model (decade)</td>
<td>-20,821</td>
<td>71,748</td>
<td>32,448</td>
<td>-0.29%</td>
<td>0.57%</td>
</tr>
<tr>
<td>(2): Linear model (4 years)</td>
<td>-12,219</td>
<td>33,933</td>
<td>14,513</td>
<td>-0.11%</td>
<td>0.21%</td>
</tr>
<tr>
<td>(3): Delta in last two years</td>
<td>-2,940</td>
<td>12,129</td>
<td>6,073</td>
<td>-0.02%</td>
<td>0.09%</td>
</tr>
<tr>
<td>(4): State space model</td>
<td>-4,034</td>
<td>12,623</td>
<td>6,766</td>
<td>-0.04%</td>
<td>0.13%</td>
</tr>
</tbody>
</table>

18. Table 1 shows the results. Overall, the state space model (4) and delta model (3) perform the best in this validation exercise. These models have much less error than the other models across all the metrics. Other studies have shown that state space models generally outperform other modeling approaches due to its flexibility (Hyndman et al. 2008; Hyndman and Athanasopoulos 2018). It also provides measures of uncertainty. As a result, I use this approach in my main analysis. I also show below, however, that I reach very similar findings using the delta model (3) (see Additional Scenario #6).

D. Baseline estimates of 2020 populations

19. The next stage is to use the official Census population estimates to project each geographic unit’s population in 2020. Table 2 shows the results. Note that all of the analysis of apportionment that follow fully incorporate the uncertainties in these projections.

---

5 The projections shown here do not include the overseas military population, federal employees, and dependents. However, the apportionment projections in Table 6 do include these groups.
Table 2: State population projections

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>4,779,736</td>
<td>4,903,185</td>
<td>4,918,700</td>
</tr>
<tr>
<td>Alaska</td>
<td>710,231</td>
<td>731,545</td>
<td>728,000</td>
</tr>
<tr>
<td>Arizona</td>
<td>6,392,017</td>
<td>7,278,717</td>
<td>7,399,400</td>
</tr>
<tr>
<td>Arkansas</td>
<td>2,915,918</td>
<td>3,017,804</td>
<td>3,025,900</td>
</tr>
<tr>
<td>California</td>
<td>37,253,956</td>
<td>39,512,223</td>
<td>39,724,500</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,029,196</td>
<td>5,758,736</td>
<td>5,833,000</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,574,097</td>
<td>3,565,287</td>
<td>3,565,300</td>
</tr>
<tr>
<td>Delaware</td>
<td>897,934</td>
<td>973,764</td>
<td>982,000</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>601,723</td>
<td>705,749</td>
<td>710,000</td>
</tr>
<tr>
<td>Florida</td>
<td>18,801,310</td>
<td>21,477,737</td>
<td>21,706,500</td>
</tr>
<tr>
<td>Georgia</td>
<td>9,687,653</td>
<td>10,617,423</td>
<td>10,723,200</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,360,301</td>
<td>1,415,872</td>
<td>1,411,500</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,507,592</td>
<td>1,787,065</td>
<td>1,823,600</td>
</tr>
<tr>
<td>Illinois</td>
<td>12,880,632</td>
<td>12,671,821</td>
<td>12,622,100</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,483,802</td>
<td>6,732,219</td>
<td>6,769,900</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,046,355</td>
<td>3,155,070</td>
<td>3,168,400</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,853,118</td>
<td>2,913,314</td>
<td>2,915,500</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,339,367</td>
<td>4,467,673</td>
<td>4,474,200</td>
</tr>
<tr>
<td>Louisiana</td>
<td>4,533,372</td>
<td>4,648,794</td>
<td>4,650,500</td>
</tr>
<tr>
<td>Maine</td>
<td>1,326,361</td>
<td>1,344,212</td>
<td>1,340,400</td>
</tr>
<tr>
<td>Maryland</td>
<td>5,773,552</td>
<td>6,045,680</td>
<td>6,071,200</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,547,629</td>
<td>6,892,503</td>
<td>6,904,900</td>
</tr>
<tr>
<td>Michigan</td>
<td>9,883,640</td>
<td>9,986,857</td>
<td>9,986,900</td>
</tr>
<tr>
<td>Minnesota</td>
<td>5,303,925</td>
<td>5,639,632</td>
<td>5,676,100</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,907,297</td>
<td>2,976,149</td>
<td>2,972,300</td>
</tr>
<tr>
<td>Missouri</td>
<td>5,988,927</td>
<td>6,137,428</td>
<td>6,152,400</td>
</tr>
<tr>
<td>Montana</td>
<td>980,415</td>
<td>1,068,778</td>
<td>1,077,400</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,826,341</td>
<td>1,934,408</td>
<td>1,946,500</td>
</tr>
<tr>
<td>Nevada</td>
<td>2,700,551</td>
<td>3,080,156</td>
<td>3,132,200</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,316,470</td>
<td>1,359,711</td>
<td>1,363,300</td>
</tr>
<tr>
<td>New Jersey</td>
<td>8,791,894</td>
<td>8,882,190</td>
<td>8,894,300</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2,059,179</td>
<td>2,096,829</td>
<td>2,100,400</td>
</tr>
<tr>
<td>New York</td>
<td>19,378,102</td>
<td>19,453,561</td>
<td>19,377,200</td>
</tr>
<tr>
<td>North Carolina</td>
<td>9,535,483</td>
<td>10,488,084</td>
<td>10,594,000</td>
</tr>
<tr>
<td>North Dakota</td>
<td>672,591</td>
<td>762,062</td>
<td>766,100</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,536,304</td>
<td>11,680,100</td>
<td>11,786,400</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,751,351</td>
<td>3,956,971</td>
<td>3,971,200</td>
</tr>
<tr>
<td>Oregon</td>
<td>3,831,074</td>
<td>4,217,737</td>
<td>4,260,000</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>12,702,370</td>
<td>12,801,989</td>
<td>12,803,100</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,052,567</td>
<td>1,059,361</td>
<td>1,059,400</td>
</tr>
<tr>
<td>South Carolina</td>
<td>4,629,364</td>
<td>5,148,714</td>
<td>5,213,000</td>
</tr>
<tr>
<td>South Dakota</td>
<td>814,180</td>
<td>881,659</td>
<td>891,700</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,346,105</td>
<td>6,829,174</td>
<td>6,886,700</td>
</tr>
<tr>
<td>Texas</td>
<td>25,145,561</td>
<td>28,995,881</td>
<td>29,432,600</td>
</tr>
<tr>
<td>Utah</td>
<td>2,763,885</td>
<td>3,205,958</td>
<td>3,259,800</td>
</tr>
<tr>
<td>Vermont</td>
<td>625,741</td>
<td>623,989</td>
<td>624,100</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,001,024</td>
<td>8,535,519</td>
<td>8,570,600</td>
</tr>
<tr>
<td>Washington</td>
<td>6,724,540</td>
<td>7,614,893</td>
<td>7,707,400</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,852,994</td>
<td>1,792,147</td>
<td>1,780,000</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,866,986</td>
<td>5,822,434</td>
<td>5,836,800</td>
</tr>
<tr>
<td>Wyoming</td>
<td>563,626</td>
<td>578,759</td>
<td>578,700</td>
</tr>
</tbody>
</table>

III. Estimating the Overseas Federal Population Allocated to each State

20. The population estimates above include all people living in the United States. However, the populations used for apportionment also include overseas federal employees and their
dependents.\textsuperscript{6} Thus, it is necessary to estimate how overseas federal employees and dependents would be allocated for purposes of apportionment.

21. In the 2010 Census, the overseas military population were generally allocated to their “home of record” (the address provided when the service member entered the military) for purposes of apportionment.\textsuperscript{7} For the 2020 Census, however, all overseas federal personnel will be counted at their usual residential address in the United States.\textsuperscript{8} In other words, military personnel will typically be counted as residing in or near the domestic base where they are stationed. Unfortunately, there is no currently available public estimate of how these overseas personnel will be allocated to individual states. The Census Bureau has stated that it plans to count federal personnel living outside the United States, and their dependents living with them outside the United States, using administrative data provided by the Department of Defense and the Department of Homeland Security.\textsuperscript{9}

22. I used the following process to estimate the number of overseas federal population that will be allocated to each state for apportionment:

- First, I estimated the number of military personnel overseas in each branch using data from the Department of Defense from March, 2020.\textsuperscript{10}

- Second, I allocated these personnel to each state in proportion to the number of service members in each branch based in each state.\textsuperscript{11} This approach implicitly assumes that each

\textsuperscript{6} “Overseas” is defined as anywhere outside the 50 U.S. States and the District of Columbia.


\textsuperscript{8} See https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/.


\textsuperscript{10} I used the spreadsheet DMDC_Website_Location_Report_2003.xlsx that is available from https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp.

\textsuperscript{11} This approach implicitly assumes that each
member of the military has an equal probability of being assigned abroad. While this is clearly a simplification, I believe it is the most reasonable analytical approach with currently available data.

- Third, I assumed that military personnel have the same number of dependents (1.44) as they did in the 2010 Census.\(^{12}\)

- Finally, I assumed that the overseas federal civilian population is the same as in 2010 (39,674). Since the majority of overseas federal civilian employees are with the State Department,\(^{13}\) I assume these are all headquarters staff that work in Washington DC. I use ACS Commuting Flows from the Census to allocate them between the District of Columbia, Virginia, and Maryland.\(^{14}\) I also assumed that these civilian employees each have 1.44 dependents.

- Of course, this estimation method has considerable uncertainty. So I assumed that there is a standard error associated with my estimates of the overseas federal population for each state that is equal to 10% of the size of the estimates.

23. Based on this methodology, I estimate that there are about 230,000 overseas federal personnel. Including dependents, I estimate there are about 561,000 federal employees and dependents overseas population will be included for purposes of apportionment for the 2020 Census. Table 3 shows the state-by-state results. A copy of Table 3 is provided in Appendix

\(^{11}\) I used the spreadsheet DMDC_Website_Location_Report_2003.xlsx that is available from https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp.


A to this Declaration. My estimates indicate that California, North Carolina, Texas, and Virginia have the largest overseas federal populations.\textsuperscript{15} It is important to note that the federal overseas population is down by nearly 50% since the 2010 Census.\textsuperscript{16} This likely reflects the reduction in the nation’s military deployments in conflict areas over the past decade.\textsuperscript{17}

**IV. Estimating the Number of Undocumented Immigrants in Each State**

24. The President’s Memorandum charges the Secretary of Commerce to “exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act.”\textsuperscript{18} In order to assess the impact of this memorandum, we next need to estimate the number of undocumented immigrants in each state.

25. There is no official estimate from the Census Bureau or any other federal government agency of the number of undocumented immigrants in each state that would be affected by the President’s memorandum. The most commonly used estimates of the number of undocumented people have been developed by the Pew Research Center.\textsuperscript{19} There are hundreds of citations in Google Scholar for Pew’s estimates of the number of undocumented immigrants in the United States. As a result, I use these estimates in my main analysis. However later, I also examine the estimates of the number of undocumented immigrants from a number of other organizations that use a variety of slightly different methodologies.

\textsuperscript{15} These estimates seem to be in-line with discussions in news coverage of apportionment. See https://www.rollcall.com/2020/02/26/census-troop-counting-rules-could-tip-congressional-balance/.

\textsuperscript{16} I use information on these populations from the 2010 apportionment available at https://www.census.gov/data/tables/2010/dec/2010-apportionment-data.html.

\textsuperscript{17} See Pew’s report on the number of overseas military personnel at https://www.pewresearch.org/fact-tank/2017/08/22/us-active-duty-military-presence-overseas-is-at-its-smallest-in-decades/.

\textsuperscript{18} See https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/.

Each of these analyses yields substantively similar conclusion as my main analysis using Pew’s data.

26. Pew estimates the U.S. unauthorized immigrant population from 1995-2017 in each state based on a residual estimation methodology that compares a demographic estimate of the number of immigrants residing legally in the country with the total number of immigrants as measured by either the American Community Survey (ACS) or the March Supplement to the Current Population Survey (CPS). The difference is assumed to be the number of unauthorized immigrants in the survey, a number that later is adjusted for omissions from the survey (see below). The basic estimate is:

\[
\text{Unauthorized Immigrants (U)} = \text{Survey, Total Foreign Born (F)} - \text{Estimated Lawful Immigrant Population (L)}
\]

27. The lawful resident immigrant population was estimated by applying demographic methods to counts of lawful admissions covering the period since 1980 obtained from the Department of Homeland Security’s Office of Immigration Statistics and its predecessor at the Immigration and Naturalization Service, with projections to current years, when necessary. Initial estimates were calculated separately for age-gender groups in six states (California, Florida, Illinois, New Jersey, New York and Texas) and the balance of the country. This residual method has been used in a wide variety of government reports and peer reviewed articles (e.g., Baker 2018; Warren and Warren 2013; Passel 2016).

28. The overall estimates for unauthorized immigrants built on these residuals by adjusting for survey omissions in these six states and the balance of the country, subdivided for Mexican immigrants and other groups of immigrants (balance of Latin America, South and East Asia,  

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20 The next few paragraphs of this section are adapted from Pew’s discussion of their methodology at https://www.pewresearch.org/hispanic/2018/11/27/authorized-immigration-estimate-methodology/.
rest of world) depending on sample size and state. Once the residual estimates were
produced, Pew assigned individual foreign-born respondents in the survey a specific status
(one option being unauthorized immigrant) based on the individual’s demographic, social,
economic, geographic and family characteristics in numbers that agree with the initial
residual estimates for the estimated lawful immigrant and unauthorized immigrant
populations in the survey. A last step in the weighting-estimation process involves
developing state-level estimates that take into account trends over time in the estimates.

29. Overall, Pew estimates there were about 10,481,000 undocumented immigrants in the United
States in 2017. They estimate that the states with the most undocumented immigrants are
California, Texas, Florida, New York, and New Jersey. The states with the fewest
undocumented immigrants are Maine, Montana, Vermont, and West Virginia.

30. Of course, Pew’s estimation process has substantial uncertainties inherent in it. First, there is
no way to know that individual respondents to the ACS and CPS are undocumented
immigrants. Pew estimates undocumented status based on a variety of pieces of
information. Second, the ACS and CPS are themselves surveys, subject to sampling error.
There could also be misreporting of country of birth on the ACS and/or unit non response by
undocumented immigrants (Brown et al. 2018). In order to characterize these uncertainties,
Pew provides a 90% confidence interval for their estimates of the number of undocumented
people in each state.

22 These estimates seem plausible since the Department of Homeland Security estimated there were 12
million undocumented immigrants in the country in January 2015 (Baker 2018). They are also similar to
estimates of the number of undocumented immigrants developed by other think tanks (see below).
23 See https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigration-estimate-
metholdogy/.
31. Lastly, Pew’s data of the number of undocumented immigrants in each state between 1995-2017 need to be projected 3 years forward to 2020. To determine how to forecast the number of undocumented immigrants in each state, I compared the same four modeling strategies that I discussed earlier for the state population projections. For each method, I used data through 2014 to evaluate its performance at predicting the number of undocumented immigrants three years forward in 2017.

32. All of the models generate significant levels of error compared to the population forecasting validation shown above in Table 4. However, the state space model (4) and a linear time trend (2) using the previous four years of data perform somewhat better than the other models. In my main analysis, I use the state space model to project the number of undocumented immigrants in 2020. Moreover, I ensured that the state space model estimates fully incorporate the uncertainty in Pew’s estimates in the number of undocumented immigrants (see Treier and Jackman 2008; Caughey and Warshaw 2018). I checked the robustness of my analysis by showing that I reach similar substantive conclusions using the linear time trend model (see Additional Scenario #7).

Table 4: Validation of Forecasting Pew’s Estimates of the Number of Undocumented Immigrants in 2017

<table>
<thead>
<tr>
<th>Model</th>
<th>ME</th>
<th>RMSE</th>
<th>MAE</th>
<th>MPE</th>
<th>MAPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1): Linear model (decade)</td>
<td>-21,908.25</td>
<td>90,634.40</td>
<td>31,639.51</td>
<td>-3.34</td>
<td>14.56</td>
</tr>
<tr>
<td>(2): Linear model (4 years)</td>
<td>-10,944.23</td>
<td>50,403.96</td>
<td>25,971.15</td>
<td>-3.95</td>
<td>17.59</td>
</tr>
<tr>
<td>(3): Delta in last two years</td>
<td>-12,884.62</td>
<td>58,005.64</td>
<td>28,961.54</td>
<td>-0.40</td>
<td>19.24</td>
</tr>
<tr>
<td>(4): State space model</td>
<td>-13,688.05</td>
<td>55,204.49</td>
<td>22,794.32</td>
<td>-3.46</td>
<td>15.48</td>
</tr>
</tbody>
</table>

24 Pew’s data are available at https://www.pewresearch.org/hispanic/interactives/unauthorized-trends/.
25 Specifically, I used the following approach. First, I constructed 100 simulations of the number of undocumented immigrants in each state from 2005-2017 using Pew’s estimates and the associated confidence intervals. For each simulation, I used the state space model to forecast each state’s number of undocumented immigrants in 2020. I then constructed a bootstrap sample of the forecast of undocumented immigrants in each state based on the mean and confidence intervals in the state space model’s population forecast. Finally, I estimated the number of undocumented immigrants in each state in 2020, and its associated standard error to represent uncertainty, based on these simulations.
33. Table 5 shows the estimates of the number of undocumented immigrants in each state (standard errors that represent uncertainty are in parentheses). A copy of Table 5 is provided in Appendix A to this Declaration. It shows that California, Florida, Illinois, New Jersey, New York, and Texas each have at least 400,000 undocumented immigrants.²⁶

34. These final estimates take into account the uncertainty in Pew’s initial estimates of the number of undocumented immigrants from 2005-2017. They also take into account the uncertainty in projecting the trends in each state from 2017-2020. In general, the additional uncertainty associated with forecasting to 2020 approximately triples the size of Pew’s confidence intervals for their estimates of undocumented immigrants in each state in 2017.

A. Incorporating Uncertainty

35. All modeled estimates have uncertainty. My analyses uses bootstrap simulations to incorporate three sources of uncertainty in all my models:

• The uncertainty in the population forecasts in every state for 2020.

• The uncertainty in the estimates of the overseas federal employees and dependents, and how they are allocated to states.

• The uncertainty in the estimate of the number of undocumented immigrants in each state in 2020.

V. State-level Effects of Excluding Undocumented Immigrants from Apportionment Base

36. Now that we have calculated population projections and estimates of the number of undocumented immigrants in each state, we are in a position to estimate state-level impacts.

²⁶ These state-by-state figures are similar to those in a 2015 Department of Homeland Security report, which provided estimates of the number of undocumented immigrants in several states (Baker 2018).
A. Effect on State Population Enumerations

37. To begin, I analyzed the effects on the enumerated population of each state in 2020. The results are shown in Table 6. Column (1) of Table 6 shows the baseline apportionment population projections for each state (including the overseas military population, federal employees, and dependents). Column (2) shows my estimate of the number of undocumented immigrants in each state in 2020. Column (3) shows my estimate of the percentage of the apportionment population in each state that consists of undocumented immigrants.
<table>
<thead>
<tr>
<th>State</th>
<th>Baseline 2020 Apportionment Population</th>
<th>Undocumented Immigrants (Pew)</th>
<th>Undocumented Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>4,926,400</td>
<td>71,900</td>
<td>1.5%</td>
</tr>
<tr>
<td>Alaska</td>
<td>735,700</td>
<td>8,400</td>
<td>1.1%</td>
</tr>
<tr>
<td>Arizona</td>
<td>7,410,500</td>
<td>274,400</td>
<td>3.7%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>3,028,800</td>
<td>65,300</td>
<td>2.2%</td>
</tr>
<tr>
<td>California</td>
<td>39,799,200</td>
<td>2,066,000</td>
<td>5.2%</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,846,100</td>
<td>190,100</td>
<td>3.3%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,568,100</td>
<td>145,300</td>
<td>4.2%</td>
</tr>
<tr>
<td>Delaware</td>
<td>984,300</td>
<td>29,700</td>
<td>3%</td>
</tr>
<tr>
<td>Florida</td>
<td>21,736,600</td>
<td>796,000</td>
<td>3.7%</td>
</tr>
<tr>
<td>Georgia</td>
<td>10,749,300</td>
<td>375,700</td>
<td>3.5%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,428,900</td>
<td>43,800</td>
<td>3.1%</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,825,700</td>
<td>38,300</td>
<td>2.1%</td>
</tr>
<tr>
<td>Illinois</td>
<td>12,633,400</td>
<td>409,300</td>
<td>3.2%</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,773,300</td>
<td>103,200</td>
<td>1.5%</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,169,100</td>
<td>51,000</td>
<td>1.6%</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,924,300</td>
<td>81,300</td>
<td>2.8%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,485,300</td>
<td>44,700</td>
<td>1%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>4,657,900</td>
<td>100,100</td>
<td>2.1%</td>
</tr>
<tr>
<td>Maine</td>
<td>1,350,400</td>
<td>4,000</td>
<td>0.3%</td>
</tr>
<tr>
<td>Maryland</td>
<td>6,105,000</td>
<td>261,600</td>
<td>4.3%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,907,400</td>
<td>231,900</td>
<td>3.4%</td>
</tr>
<tr>
<td>Michigan</td>
<td>9,889,700</td>
<td>103,800</td>
<td>1%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>5,677,700</td>
<td>86,800</td>
<td>1.5%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,979,500</td>
<td>23,000</td>
<td>0.8%</td>
</tr>
<tr>
<td>Missouri</td>
<td>6,160,800</td>
<td>63,100</td>
<td>1%</td>
</tr>
<tr>
<td>Montana</td>
<td>1,079,300</td>
<td>4,400</td>
<td>0.4%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,950,200</td>
<td>55,800</td>
<td>2.9%</td>
</tr>
<tr>
<td>Nevada</td>
<td>3,137,300</td>
<td>211,200</td>
<td>6.7%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,363,700</td>
<td>10,400</td>
<td>0.8%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>8,899,400</td>
<td>493,200</td>
<td>5.5%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2,107,400</td>
<td>59,200</td>
<td>2.8%</td>
</tr>
<tr>
<td>New York</td>
<td>19,386,100</td>
<td>679,800</td>
<td>3.5%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>10,639,700</td>
<td>330,800</td>
<td>3.1%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>770,300</td>
<td>5,900</td>
<td>0.8%</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,715,100</td>
<td>94,400</td>
<td>0.8%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,981,800</td>
<td>90,100</td>
<td>2.3%</td>
</tr>
<tr>
<td>Oregon</td>
<td>4,261,500</td>
<td>109,100</td>
<td>2.6%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>12,809,600</td>
<td>217,800</td>
<td>1.7%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,061,400</td>
<td>32,900</td>
<td>3.1%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>5,229,800</td>
<td>101,500</td>
<td>1.9%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>893,800</td>
<td>5,700</td>
<td>0.6%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,888,900</td>
<td>139,200</td>
<td>2%</td>
</tr>
<tr>
<td>Texas</td>
<td>29,479,700</td>
<td>1,649,100</td>
<td>5.6%</td>
</tr>
<tr>
<td>Utah</td>
<td>3,263,900</td>
<td>106,100</td>
<td>3.3%</td>
</tr>
<tr>
<td>Vermont</td>
<td>624,400</td>
<td>3,500</td>
<td>0.6%</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,639,600</td>
<td>297,600</td>
<td>3.4%</td>
</tr>
<tr>
<td>Washington</td>
<td>7,736,300</td>
<td>274,400</td>
<td>3.5%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,780,600</td>
<td>4,300</td>
<td>0.2%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,836,300</td>
<td>72,900</td>
<td>1.2%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>580,300</td>
<td>4,800</td>
<td>0.8%</td>
</tr>
</tbody>
</table>

38. Overall, Table 6 indicates that each state would be affected by an exclusion of undocumented immigrants. Figure 1 shows a map of the percentage of people in each state that would be dropped from the Census apportionment base if undocumented immigrants are excluded.
Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Maryland, Massachusetts, Nevada, New Jersey, New York, North Carolina, Rhode Island, Texas, Utah, Virginia, and Washington would all lose at least 3% of their population from their apportionment base. Thus, they could be at risk of losing a congressional seat during apportionment.

![Map showing change in population due to excluding undocumented immigrants.](image)

**Figure 1: Effects on State Populations**

### B. Effect on Apportionment

39. Next, I used the population projections and estimates of undocumented immigrants in each state to examine the likely effect of excluding undocumented immigrants from the Census count on the apportionment of seats in the House of Representatives. Article 1, Section 2, of the United States Constitution states: “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.”

40. Since the first census in 1790, five methods of apportionment have been used. The government currently uses a method called the Method of Equal Proportions, which was
adopted by Congress in 1941 following the census of 1940. This method first assigns each state one seat. Then, additional seats in the House of Representatives are assigned to a “priority” value. The priority value for each seat is determined by multiplying the population of a state by a “multiplier.” The multiplier is \( \frac{1}{\sqrt{n(n-1)}} \). So the formula for calculating the multiplier for the second seat is \( \frac{1}{\sqrt{2(2-1)}} \) or 0.70710678, the formula for calculating the multiplier for the third seat is \( \frac{1}{\sqrt{3(3-1)}} \) or 0.40824829, and so on. The Census provides an official table of these multipliers, which I used for my calculations.\(^{27}\)

41. The next step is to multiply the multipliers by the population total for each of the 50 states (the District of Columbia is not included in these calculations). The resulting numbers are the priority values. Multipliers and priority values must be calculated for the largest number of seats that could be assigned to a state. In my analysis, I calculated the priority values for each state for seats 2 through 60. The next step is to rank and number the resulting priority values starting with seat 51 until all 435 seats have been assigned. The final step is to tally the number of seats for each state to arrive at the total number of seats in the House of Representatives apportioned to each state.

42. I conducted these steps for 1,000 simulations of the population projections and undocumented populations in each state. Table 7 shows the results.\(^{28}\) Column (1) shows the rounded, baseline projections for the number of seats that each state is likely to receive in 2020 if there is a full population enumeration. Column (2) shows the rounded projections for the number of seats that each state is likely to receive in 2020 if undocumented immigrants are excluded from the apportionment base. Column (3) shows the rounded, average change in

\(^{27}\) See https://www.census.gov/population/apportionment/about/computing.html.

\(^{28}\) Table 12 in the Appendix A shows unrounded numbers for this table.
the number of congressional seats each state would gain or lose due to the exclusion of undocumented immigrants. Finally, column (4) shows the probability that each state would lose at least one seat.

Table 7: Estimates of Effect of Excluding Undocumented Immigrants on Congressional Apportionment

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Seats (1)</th>
<th>Seats after Exclusion (2)</th>
<th>Seat Delta (3)</th>
<th>Prob. Seat Loss (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>6</td>
<td>7</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Alaska</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Arizona</td>
<td>10</td>
<td>10</td>
<td>-0</td>
<td>0.3%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>California</td>
<td>52</td>
<td>51</td>
<td>-1</td>
<td>72.1%</td>
</tr>
<tr>
<td>Colorado</td>
<td>8</td>
<td>8</td>
<td>-0</td>
<td>0.3%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>5</td>
<td>5</td>
<td>-0</td>
<td>3.4%</td>
</tr>
<tr>
<td>Delaware</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Florida</td>
<td>29</td>
<td>28</td>
<td>-1</td>
<td>38.4%</td>
</tr>
<tr>
<td>Georgia</td>
<td>14</td>
<td>14</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Idaho</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Illinois</td>
<td>17</td>
<td>17</td>
<td>-0</td>
<td>10.1%</td>
</tr>
<tr>
<td>Indiana</td>
<td>9</td>
<td>9</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Iowa</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Kansas</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Maine</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Maryland</td>
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<td>8</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Massachusetts</td>
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<td>0%</td>
</tr>
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</tr>
<tr>
<td>Minnesota</td>
<td>7</td>
<td>8</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Missouri</td>
<td>8</td>
<td>8</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Montana</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>3</td>
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<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Nevada</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>12</td>
<td>11</td>
<td>-1</td>
<td>69.8%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>New York</td>
<td>26</td>
<td>25</td>
<td>-1</td>
<td>18.9%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>14</td>
<td>14</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Ohio</td>
<td>15</td>
<td>16</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Oklahoma</td>
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<td>5</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Oregon</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>17</td>
<td>17</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Rhode Island</td>
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<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>1</td>
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<td>0%</td>
</tr>
<tr>
<td>Tennessee</td>
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<td>9</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Texas</td>
<td>39</td>
<td>38</td>
<td>-1</td>
<td>98.3%</td>
</tr>
<tr>
<td>Utah</td>
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<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Vermont</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Virginia</td>
<td>11</td>
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<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Washington</td>
<td>10</td>
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<td>0%</td>
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<td>West Virginia</td>
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<td>0%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>8</td>
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<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
</tbody>
</table>

43. My analysis indicates that there is a 98% chance that Texas would lose a Congressional seat if undocumented immigrants are excluded from the apportionment base. It loses a seat in...
nearly every single one of my simulations. In addition, my analysis indicates that there is a 72% chance that California would lose a Congressional seat. On average, it loses .83 seats across my simulations (i.e., in most simulations it loses 1 seat, in some it loses 2 seats, and in some it loses zero seats). My analysis also indicates that there is a 70% chance that New Jersey would lose a Congressional seat if undocumented immigrants are excluded from the apportionment base. There are smaller chances that several other states could lose seats, including Connecticut, Florida, Illinois, and New York.\textsuperscript{29}

44. The states that lose seats in Congress would likely see decreases in their share of federal outlays due to their reduction in voting power in Congress. A number of economics and political science studies have found that distributive spending is allocated in part based on the number of seats that a geographic area has in Congress (e.g., Ansolabehere, Gerber, and Snyder 2002; Cascio and Washington 2014; Elis, Malhotra, and Meredith 2009). For instance, Elis, Malhotra, and Meredith (2009) find that a 10% increase in a state’s share of the U.S. House of Representatives equates to a 0.7% increase in a state’s share of the federal budget. This implies that an extra congressional seat can gain a state as much as $100 per capita in additional federal funding (360).

VI. Robustness Checks

45. It is always helpful to evaluate the robustness of any analysis to alternative modeling assumptions. In this section, I undertake four different robustness checks. First, I evaluate the impact of using alternative sources of information on the number of undocumented immigrants in each state on my analysis. Second, I evaluate the impact of alternative population forecasting methodologies. Third, I evaluate whether my conclusions would differ

\textsuperscript{29} Note the rounded numbers in Table 7 imply that Florida and New York would lose seats. The unrounded numbers in the Appendix (Table 12), however, show that there is a less 50% chance that they would lose a seat.
if former Census Director John H. Thompson is correct that the exclusion of undocumented immigrants from the apportionment base would cause an undercount of immigrant populations. I used the foreign-born population in the United States to evaluate the impact of an undercount of immigrants. Fourth, I compare my results to the conclusions of various organizations’ reports on the impact of excluding undocumented immigrants on apportionment.

46. Overall, the analysis in this section shows that my conclusions are robust to a wide variety of alternative data sources and modeling strategies. They are also consistent with the findings of other organizations and analysts. All of these alternative data sources, methodologies, and third-party reports indicate that Texas would lose a congressional seat if undocumented immigrants are excluded from the apportionment base. They nearly all indicate that California would lose a seat. They also indicate that some mix of Florida, New Jersey, and New York could lose seats.

A. Robustness to Alternative Estimates of the Number of Undocumented Immigrants

47. Due to the substantial uncertainties in Pew’s estimates of the number of undocumented people in each state, I conducted a canvass of alternative sources of estimates for the undocumented population. I identified several alternative sources of data:

- Additional Scenario 1: The Migration Policy Institution (MPI) has developed estimates of the number of undocumented people in each state based on the U.S. Census Bureau’s 2012-16 American Community Survey data. They estimate there are about 11,300,000 undocumented immigrants in the United States. Their national estimate is very similar to

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Pew’s estimate.\textsuperscript{31} However, their estimates differ more in some states. For instance, MPI estimates that there are about 50% more undocumented immigrants in California than Pew estimates. They do not provide measures of uncertainty for their estimates so I assume that each state has a standard error that is 10% of the state’s point estimate.

- **Additional Scenario 2:** The Center for Migration Studies (CMS) has developed estimates of the number of undocumented people in each state in 2018.\textsuperscript{32} Their methodology is described in two articles that were published in the *Journal of Migration and Security* (Warren 2014, 2019). They estimate there are about 10,543,500 undocumented immigrants in the United States, which is nearly identical to Pew’s national estimate.\textsuperscript{33} They do not provide measures of uncertainty for their estimates so I assume that each state has a standard error that is 10% of the state’s point estimate.

- **Additional Scenario 3:** Third, I examine a scenario where the national estimates of the number of undocumented immigrants are somewhat too high. To do this, I simply decrease all of my main estimates using Pew’s data of the number of undocumented immigrants in each state by 20% to examine the effects on apportionment if the Pew, MPI, and CMS estimates of the total number of undocumented immigrants in the United States are all too high.

- **Additional Scenario 4:** Fourth, I examine a scenario where the national estimates of the number of undocumented immigrants are much too high. To do this, I decrease all of my main estimates using Pew’s data on the number of undocumented immigrants in each state by 40%.

\textsuperscript{31} MPI’s national estimate is about 8% higher than Pew’s estimate.
\textsuperscript{32} Their estimates are available at http://data.cmsny.org/state.html.
\textsuperscript{33} CMS’s national estimate is about 0.5% higher than Pew’s estimate.
• **Additional Scenario 5:** Finally, I examine a scenario where the national estimates of the number of undocumented immigrants are much too low. To do this, I increase all of my main estimates using Pew’s data on the number of undocumented immigrants in each state by 50%.

Table 8: Comparison of My Findings with Analyses Based on Alternative Estimates of the Number of Undocumented Immigrants. The table shows the probability that various states would lose seats in each scenario.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Scenario #1 MPI</th>
<th>Scenario #2 CMS</th>
<th>Scenario #3 Pew (80%)</th>
<th>Scenario #4 Pew (60%)</th>
<th>Scenario #5 Pew (150%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>72%</td>
<td>100%</td>
<td>93%</td>
<td>49%</td>
<td>36%</td>
<td>92%</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>0%</td>
<td>26%</td>
<td>39%</td>
<td>48%</td>
<td>60%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td>80%</td>
<td>23%</td>
<td>57%</td>
<td>36%</td>
<td>91%</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td>52%</td>
<td>19%</td>
<td>17%</td>
<td>28%</td>
<td>24%</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>96%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>99.5%</td>
</tr>
</tbody>
</table>

48. Table 8 compares my main findings (the “Main Analysis” column) to analyses based on alternative estimates of the number of undocumented immigrants. It shows each of the states that at least one scenario (including my main analysis) finds has a 33% chance or more of losing a seat if undocumented immigrants are excluded from the apportionment base. For each of these states, it shows the probability that my analysis indicates the state would lose a seat and the probability it would lose a seat under the various alternative scenarios.

49. Overall, all of these analyses yield substantively similar results as my main analysis. In each scenario, Texas has more than 95% chance of losing a congressional seat if undocumented immigrants are excluded from the apportionment base. Moreover, in all of the additional scenarios but one, California has about a 50% chance or more of losing a congressional seat. There is also a significant chance that Florida, New Jersey, and New York could lose a seat in most of the scenarios.
B. Robustness to Alternative Modeling Approaches

50. As I discussed above, there are a number of alternative approaches we could use to project the 2020 populations and estimates of undocumented immigrants in each state. In this section, I discuss alternative forecasting methodologies for each of these:

- **Additional Scenario 6**: For the population forecasts of each state in 2020, I use a forecasting methodology based on the deltas in the two most recent years. In Table 1, I found that this approach was roughly equivalent to the state space model. The state space model is preferable because it is more flexible and provides a measure of uncertainty.

- **Additional Scenario 7**: For the forecasts of the number of undocumented immigrants in each state in 2020 based on Pew’s data, I use a methodology based on a linear time trends over the four most recent years. In Table 4, I found that this approach performed nearly as well as the state space model. The state space model is preferable because it is more flexible and requires fewer assumptions about future time trends.

51. Both of these alternative-modeling strategies produce similar results as my main results (Table 9). In each scenario, Texas is nearly certain to lose a seat. California and New Jersey are likely to lose seats in each scenario. Florida and New York also have significant chances of losing a seat in each scenario.

Table 9: Comparison of My Findings with Alternative Modeling Strategies. The table shows the probability that various states would lose seats in each scenario.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Scenario #6</th>
<th>Scenario #7</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>72%</td>
<td>84%</td>
<td>75%</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>45%</td>
<td>96%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td>73%</td>
<td>51%</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td>58%</td>
<td>30%</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>99.5%</td>
<td>100%</td>
</tr>
</tbody>
</table>
C. Robustness to a Possible Census Undercount

52. The testimony of the former U.S. Census Bureau Director, John H. Thompson, to Congress on July 29, 2020 raises the possibility that the president’s memorandum could lead to nonresponse to the Census by hard-to-count populations, including noncitizens and immigrants.34 This, in turn, could lead the Census to undercount foreign-born people. It is possible that planned reductions in door-to-door canvassing due to COVID-19 could lead to a further undercount of foreign-born people.35

53. In this section, I examine whether an undercount of foreign-born people would affect my findings about the effects of excluding undocumented immigrants from the apportionment base. I use my estimates from New York Immigration Coalition et al v. United States Department of Commerce, No. 18-CV-2921-JMF (S.D. NY) of the number of foreign-born people in each state. I then assess the consequences of a scenario with a 10% undercount of foreign-born people using the same methodology that I use in my main analyses. I am adopting my declaration provided in that matter by reference and include a copy in Appendix B.

Table 10: Comparison of My Findings with Analyses that Assume 10% Undercount of Foreign-born People. The table shows the probability that various states would lose seats in each scenario.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Scenario #8 Undercount</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>72%</td>
<td>67%</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td>0%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td>93%</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td>0%</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td>76%</td>
</tr>
</tbody>
</table>

54. Table 10 compares my main findings to the results of this undercount scenario. It shows each state that my analysis indicates has a significant chance of losing a seat if undocumented immigrants are excluded from the apportionment base. Once again, in this scenario Texas is likely to lose a congressional seat if undocumented immigrants are excluded from the apportionment base. California and New Jersey are also likely to lose congressional seats.

**D. Comparison with Other Organizations’ Analyses**

55. There have been a number of studies and reports by various organizations estimating how excluding undocumented immigrants would affect apportionment. These include:

- The Pew Research Center\(^{36}\)
- The Center for Immigration Studies (CIS)\(^{37}\)
- The Center for Politics at the University of Virginia (CfP)\(^{38}\)
- A peer reviewed academic study published in 2019 (Baumle and Poston Jr 2019).

Table 11: Comparison of My Findings with Other Studies. The table shows whether each study finds various states would lose a seat.

<table>
<thead>
<tr>
<th>State</th>
<th>Main Analysis</th>
<th>Pew</th>
<th>CIS</th>
<th>CfP</th>
<th>Academic Study</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
</tr>
<tr>
<td>Arizona</td>
<td>0.3%</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>California</td>
<td>72%</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Florida</td>
<td>38%</td>
<td></td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>New Jersey</td>
<td>70%</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>New York</td>
<td>19%</td>
<td></td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Texas</td>
<td>98%</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

56. Table 11 compares my main findings to the results of these studies. It shows each state that at least one study finds would lose a seat if undocumented immigrants are excluded from the apportionment base. For each of these states, it shows the probability that my analysis

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indicates the state would lose a seat and an X for each of the other studies that shows it would lose a seat.

57. Overall, each of these four other studies reaches substantively similar conclusions as the ones in this Declaration. They all conclude that California and Texas would lose congressional seats if undocumented immigrants are excluded from the apportionment base. They also find a mix of other states that might lose seats, including Arizona, Florida, New Jersey, and New York.

VII. Conclusion

58. Based on the analyses in this Declaration, I conclude that failing to count undocumented immigrants for apportionment is likely to have effects on the population counts of each state, and the apportionment of representatives across states for the U.S. House. Texas is nearly certain to lose a congressional seat. California and New Jersey are very likely to each lose a congressional seat. Other states, such as Florida and New York could lose seats as well. This would affect political representation in Congress. For instance, it is likely to affect the distribution of federal funds to each state, and the general power that each state holds in Congress.
I reserve the right to amend or supplement my opinions if additional information or materials become available. I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct to the best of my knowledge.

Executed on August 7, 2020 in Bethesda, Maryland.

Christopher Warshaw
References


1. **Estimates of Overseas Federal Personnel**


<table>
<thead>
<tr>
<th>State</th>
<th>Overseas Personnel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>7,700</td>
</tr>
<tr>
<td>Alaska</td>
<td>7,500</td>
</tr>
<tr>
<td>Arizona</td>
<td>11,000</td>
</tr>
<tr>
<td>Arkansas</td>
<td>2,900</td>
</tr>
<tr>
<td>California</td>
<td>74,900</td>
</tr>
<tr>
<td>Colorado</td>
<td>14,200</td>
</tr>
<tr>
<td>Connecticut</td>
<td>2,600</td>
</tr>
<tr>
<td>Delaware</td>
<td>2,100</td>
</tr>
<tr>
<td>Florida</td>
<td>29,500</td>
</tr>
<tr>
<td>Georgia</td>
<td>26,800</td>
</tr>
<tr>
<td>Hawaii</td>
<td>17,500</td>
</tr>
<tr>
<td>Idaho</td>
<td>2,200</td>
</tr>
<tr>
<td>Illinois</td>
<td>10,300</td>
</tr>
<tr>
<td>Indiana</td>
<td>3,300</td>
</tr>
<tr>
<td>Iowa</td>
<td>900</td>
</tr>
<tr>
<td>Kansas</td>
<td>8,900</td>
</tr>
<tr>
<td>Kentucky</td>
<td>11,200</td>
</tr>
<tr>
<td>Louisiana</td>
<td>7,300</td>
</tr>
<tr>
<td>Maine</td>
<td>1,100</td>
</tr>
<tr>
<td>Maryland</td>
<td>33,600</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>2,700</td>
</tr>
<tr>
<td>Michigan</td>
<td>2,900</td>
</tr>
<tr>
<td>Minnesota</td>
<td>1,600</td>
</tr>
<tr>
<td>Mississippi</td>
<td>6,700</td>
</tr>
<tr>
<td>Missouri</td>
<td>8,400</td>
</tr>
<tr>
<td>Montana</td>
<td>2,000</td>
</tr>
<tr>
<td>Nebraska</td>
<td>3,600</td>
</tr>
<tr>
<td>Nevada</td>
<td>6,200</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>700</td>
</tr>
<tr>
<td>New Jersey</td>
<td>5,300</td>
</tr>
<tr>
<td>New Mexico</td>
<td>7,000</td>
</tr>
<tr>
<td>New York</td>
<td>9,300</td>
</tr>
<tr>
<td>North Carolina</td>
<td>44,500</td>
</tr>
<tr>
<td>North Dakota</td>
<td>4,000</td>
</tr>
<tr>
<td>Ohio</td>
<td>8,600</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>10,700</td>
</tr>
<tr>
<td>Oregon</td>
<td>1,200</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>6,900</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,700</td>
</tr>
<tr>
<td>South Carolina</td>
<td>16,400</td>
</tr>
<tr>
<td>South Dakota</td>
<td>2,000</td>
</tr>
<tr>
<td>Tennessee</td>
<td>2,600</td>
</tr>
<tr>
<td>Texas</td>
<td>51,500</td>
</tr>
<tr>
<td>Utah</td>
<td>4,200</td>
</tr>
<tr>
<td>Vermont</td>
<td>300</td>
</tr>
<tr>
<td>Virginia</td>
<td>68,800</td>
</tr>
<tr>
<td>Washington</td>
<td>23,000</td>
</tr>
<tr>
<td>West Virginia</td>
<td>700</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>1,600</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1,800</td>
</tr>
</tbody>
</table>
2. Estimates of Undocumented Immigrants

Table 5: Estimates of Undocumented Immigrants in each State in 2020. Standard errors, which represent the uncertainty in each estimate, are shown in parentheses.

<table>
<thead>
<tr>
<th>State</th>
<th>Undocumented Immigrants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>71,900 (28,800)</td>
</tr>
<tr>
<td>Alaska</td>
<td>6,800 (3,500)</td>
</tr>
<tr>
<td>Arizona</td>
<td>274,400 (56,400)</td>
</tr>
<tr>
<td>Arkansas</td>
<td>65,300 (20,400)</td>
</tr>
<tr>
<td>California</td>
<td>2,066,000 (275,700)</td>
</tr>
<tr>
<td>Colorado</td>
<td>190,100 (50,200)</td>
</tr>
<tr>
<td>Connecticut</td>
<td>148,300 (67,700)</td>
</tr>
<tr>
<td>Delaware</td>
<td>29,700 (12,100)</td>
</tr>
<tr>
<td>Florida</td>
<td>796,000 (105,300)</td>
</tr>
<tr>
<td>Georgia</td>
<td>375,700 (140,000)</td>
</tr>
<tr>
<td>Hawaii</td>
<td>43,800 (19,000)</td>
</tr>
<tr>
<td>Idaho</td>
<td>38,300 (9,400)</td>
</tr>
<tr>
<td>Illinois</td>
<td>409,300 (70,100)</td>
</tr>
<tr>
<td>Indiana</td>
<td>103,200 (48,200)</td>
</tr>
<tr>
<td>Iowa</td>
<td>51,000 (20,400)</td>
</tr>
<tr>
<td>Kansas</td>
<td>81,300 (27,900)</td>
</tr>
<tr>
<td>Kentucky</td>
<td>44,700 (20,400)</td>
</tr>
<tr>
<td>Louisiana</td>
<td>100,100 (61,500)</td>
</tr>
<tr>
<td>Maine</td>
<td>4,000 (1,900)</td>
</tr>
<tr>
<td>Maryland</td>
<td>261,600 (76,300)</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>331,900 (69,300)</td>
</tr>
<tr>
<td>Michigan</td>
<td>103,800 (37,500)</td>
</tr>
<tr>
<td>Minnesota</td>
<td>86,800 (34,200)</td>
</tr>
<tr>
<td>Mississippi</td>
<td>25,000 (11,600)</td>
</tr>
<tr>
<td>Missouri</td>
<td>63,100 (31,300)</td>
</tr>
<tr>
<td>Montana</td>
<td>4,400 (1,700)</td>
</tr>
<tr>
<td>Nebraska</td>
<td>55,800 (17,900)</td>
</tr>
<tr>
<td>Nevada</td>
<td>211,200 (31,600)</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>10,400 (4,400)</td>
</tr>
<tr>
<td>New Jersey</td>
<td>490,200 (90,000)</td>
</tr>
<tr>
<td>New Mexico</td>
<td>59,200 (16,600)</td>
</tr>
<tr>
<td>New York</td>
<td>679,800 (102,000)</td>
</tr>
<tr>
<td>North Carolina</td>
<td>330,800 (73,400)</td>
</tr>
<tr>
<td>North Dakota</td>
<td>5,900 (3,200)</td>
</tr>
<tr>
<td>Ohio</td>
<td>94,400 (43,400)</td>
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<tr>
<td>Oklahoma</td>
<td>90,100 (30,200)</td>
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<tr>
<td>Oregon</td>
<td>109,100 (32,200)</td>
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<td>Pennsylvania</td>
<td>217,800 (85,500)</td>
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<td>Rhode Island</td>
<td>32,900 (12,000)</td>
</tr>
<tr>
<td>South Carolina</td>
<td>101,500 (47,500)</td>
</tr>
<tr>
<td>South Dakota</td>
<td>5,700 (2,300)</td>
</tr>
<tr>
<td>Tennessee</td>
<td>139,200 (56,000)</td>
</tr>
<tr>
<td>Texas</td>
<td>1,649,100 (182,200)</td>
</tr>
<tr>
<td>Utah</td>
<td>106,100 (19,100)</td>
</tr>
<tr>
<td>Vermont</td>
<td>3,500 (1,600)</td>
</tr>
<tr>
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<td>297,600 (104,600)</td>
</tr>
<tr>
<td>Washington</td>
<td>374,800 (82,600)</td>
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<td>West Virginia</td>
<td>4,300 (2,000)</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>72,900 (31,000)</td>
</tr>
<tr>
<td>Wyoming</td>
<td>4,800 (1,900)</td>
</tr>
</tbody>
</table>
3. **Unrounded Main Results for Congressional Apportionment**

Table 12: Unrounded Estimates of Excluding Undocumented Immigrants on Congressional Apportionment

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Seats</th>
<th>Seats after Exclusion</th>
<th>Seat Delta</th>
<th>Prob. Seat Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
</tr>
<tr>
<td>Alabama</td>
<td>6.46</td>
<td>7.66</td>
<td>0.54</td>
<td>0%</td>
</tr>
<tr>
<td>Alaska</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Arizona</td>
<td>10.00</td>
<td>10.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>4.00</td>
<td>4.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>California</td>
<td>52.15</td>
<td>51.32</td>
<td>-0.83</td>
<td>72.1%</td>
</tr>
<tr>
<td>Colorado</td>
<td>8.00</td>
<td>8.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>5.00</td>
<td>4.97</td>
<td>-0.03</td>
<td>3.4%</td>
</tr>
<tr>
<td>Delaware</td>
<td>1.00</td>
<td>1.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Florida</td>
<td>28.86</td>
<td>28.47</td>
<td>-0.38</td>
<td>38.4%</td>
</tr>
<tr>
<td>Georgia</td>
<td>14.00</td>
<td>14.02</td>
<td>0.02</td>
<td>0%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>2.00</td>
<td>2.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Idaho</td>
<td>2.00</td>
<td>2.12</td>
<td>0.12</td>
<td>0%</td>
</tr>
<tr>
<td>Illinois</td>
<td>17.00</td>
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<td>-0.10</td>
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Appendix B
DECLARATION OF DR. CHRISTOPHER WARSHAW

I. Qualifications

1. I have been asked by counsel representing the plaintiffs in New York Immigration Coalition v. U.S. Dept of Commerce and State of New York v. U.S. Dept of Commerce to analyze relevant data and provide my expert opinions. More specifically, I have been asked: to forecast the populations of every state, county, and city in the United States in 2020; given the assumption that various demographic groups are likely to be undercounted due to the inclusion of a citizenship question on the Census, to estimate the proportion of the population that belongs to those groups; to estimate the proportion of the population in every state, county, and city in the United States that belongs to those demographic groups assumed to be likely to be undercounted in 2020 due to the inclusion of a citizenship question on the Census; to analyze the likely effects of an undercount caused by the citizenship question affecting those same demographic groups on the apportionment of representatives across states for the U.S. House of Representatives; and to examine the likely consequences of an undercount caused by the citizenship question affecting those demographic groups on the
distribution of people in urban and rural counties. My expert report is PX-32 and the errata to that report is PX-323.

2. I have been an Assistant Professor of Political Science at George Washington University since August 2017. Prior to that, I was an Associate Professor at the Massachusetts Institute of Technology from July 2016 - July 2017, and an Assistant Professor at MIT from July 2012 - July 2016.

3. My Ph.D. is in Political Science, from Stanford University, where my graduate training included courses in political science and statistics. I also have a J.D. from Stanford Law School.

4. My academic research focuses on public opinion based on surveys and census data, as well as the study of representation, elections, and polarization in American Politics. I have also taught courses on statistical analysis. My curriculum vitae is PX-323. All publications that I have authored and published appear in my curriculum vitae. My work is published or forthcoming in peer-reviewed journals such as: American Political Science Review, the American Journal of Political Sciences, the Journal of Politics, Political Analysis, Political Science Research and Methods, the British Journal of Political Science, Political Behavior, the Election Law Journal, Nature Energy, Public Choice and edited volumes from Cambridge University Press and Oxford University.

6. The opinions in this declaration are my own, and do not represent the views of George Washington University.

7. I offer these opinions with a strong degree of professional certainty based on the knowledge I have amassed over my education, training and experience, and through a detailed review of the relevant academic literature.

II. Projecting Future Populations

8. The first stage of my analysis is to develop baseline projections of the population of each state, county, and city in the country in 2020. These projections are critical to determining the likely effects of an undercount in the Census due to the inclusion of a citizenship question. In order to develop these estimates, I use the Census’s official estimates of the population of each state, county, and city from 2000-2017. The Census does not provide public estimates of each geographic unit’s populations in future years.

   A. Data

9. The Census Bureau’s Population Estimates Program (PEP) produces estimates of the population for the United States, states, counties, cities, towns, and other geographic areas. These aggregate estimates are based on the demographic components of population change (births, deaths, and migration) at each level of geography.¹

10. My population projections are based on these official population estimates for each state, county, and city for the period from 2000-2017.

11. For the state populations from 2010-2017, I used the file ‘nst-est2017-01.xlsx’ which I obtained from https://www.census.gov/data/tables/2017/demo/popest/state-total.html. For the

¹I do not directly use the more detailed cohort-component method used by the Census for my population projections because this information is unavailable for some geographic levels, particularly for the 2000-2010 period. It is also unclear whether the additional complexities associated with this approach would yield substantial gains in predictive accuracy.
populations from 2000-2009, I used the file ‘st-est00int-01.xls’ from https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-state.html.

12. For the county populations from 2010-2017, I used the file ‘co-est2017-alldata.csv’ from https://www.census.gov/data/tables/2017/demo/popest/counties-total.html. For the populations from 2000-2009, I used the file ‘co-est00int-tot.csv’ from https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-counties.html.


**B. Statistical Model for Population Projections**

15. There are a number of potential options for forecasting the likely population of a geographic unit (e.g., states) in 2020. One possible forecasting option would be to allow the forecasts to increase or decrease over time, where the amount of change over time (called the drift) is set to be the average change in the historical data. See Hyndman and Athanasopoulos 2018, at 48-49. Some related methods in this family of forecasting approaches are:
a. **Linear trend between 2010-2017:** One possibility is to project forward based on the linear trend in the population estimates since the last Census (e.g., Election Data Services 2017). This approach assumes that each geographic unit’s population follows the same linear rate of change in the future that it has followed over the past decade. This approach has the benefit of using many years of data, but it could yield biased estimates if the population trends have changed over this period. I estimate linear trends using a simple linear regression model in the software program R.

b. **Linear trend between 2014-2017:** Another possibility is to project forward based on the linear trend in the population estimates over the past 4 years. This approach assumes that each geographic unit’s population follows the same linear trend in the future that it has followed over this shorter time period. This approach has the benefit of being sensitive to more recent trends, but it could be noisier than estimates based on the longer time series. That is, it could be overly sensitive to short-term trends. I estimate linear trends using a simple linear regression model in R.

c. **Change between two most recent years (i.e., 2016 to 2017):** A third possibility is to focus on the change between each geographic unit’s populations in the two most recent years, and assume that future years will follow this recent trend. This approach has the benefit of being based on the most recent changes in populations, but it could also be overly sensitive to short-term idiosyncratic trends. I estimate these short-term trends using the software program R.
16. As Hyndman and Athanasopoulos discuss, “Sometimes one of these simple methods will be
the best forecasting method available; but in many cases, these methods will serve as
benchmarks rather than the method of choice. That is, any forecasting methods . . . will be
compared to these simple methods to ensure that the new method is better than these simple
alternatives. If not, the new method is not worth considering.” Id. at 50.

17. I consider one more complex approach against these benchmarks, a state space model with
exponential smoothing: This approach uses an exponential smoothing model that weights
levels and trends to an extent determined by the data. See Hyndman and Athanasopoulos.
This model uses all of the available data, but it gives more weight to the most recent years. I
estimate the exponential smoothing model using the ets function in the forecast package in
R.\(^2\)

**C. Validation of Population Projections**

18. The accuracy of forecasting models can only be determined by considering how well a given
model performs on new data that were not used when fitting the original model. Id. at 62. In
order to choose the best model for this analysis, I evaluated each model using two
benchmarks that are similar to the challenge of forecasting the 2020 populations. First, I
forecasted the Census 2010 population in each state based on 2000-2007 population
estimates data. Second, I forecasted the 2017 population estimates in each state based on
2007-2014 population data. For each analysis, I used the following evaluation metrics. Id. at
64-65.

\(^2\) For my state-level population projections, I used the default parameters for the ets function in
R, which allowed the function to choose the exponential smoothing state space model that best
fit the data in each state. The best model was usually an ‘MAN’ or ‘AAN’ model. For the
population projections for cities and counties, I estimated an ‘MAN’ state space model using the
ets function. The details of the state space model specification, however, do not affect any of my
substantive conclusions. All of the state space models yield very similar results.
a. **The mean error across states**: This helps assess whether a given metric has a systematic bias in one direction or another.

b. **The mean absolute error across states**: This helps assess the accuracy of the forecasts.

c. **The mean absolute proportional error across states**: This metric also helps assess the accuracy of the forecasts. It has the advantage of being unit-free (i.e., the interpretation is similar in small and large states).

19. Table 1 shows the results. For the forecast of the 2010 population, the state space model performs the best, with the lowest error, the second lowest mean absolute error, and the lowest absolute proportional errors. The two linear trend models perform the worst on this forecasting exercise. For the forecast of the 2017 population, the state space model and the linear trend model using data from 2010-2017 perform the best. The state space model has slightly lower mean errors, and the two models have similar mean absolute errors and absolute proportional errors.

<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Linear model (full period)</td>
<td>22,800</td>
<td>62,860</td>
<td>0.015</td>
<td>7,827</td>
<td>32,003</td>
<td>0.007</td>
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<tr>
<td>Linear model (4 years)</td>
<td>27,399</td>
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<td>33,420</td>
<td>39,396</td>
<td>0.014</td>
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<tr>
<td>Delta in last two years</td>
<td>20,383</td>
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<td>-2,509</td>
<td>33,378</td>
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</table>

20. Overall, the state space model performs the best across the two validation exercises. It has an average absolute proportional error of only .8% and an average absolute error of only about 40,000 people in each state. As a result, I use the state space model as my main forecasting model to generate population projections. However, the results of all the analyses that follow would be substantively similar using any of these population forecasting approaches.
D. Incorporating Uncertainty

21. All modeled estimates have uncertainty. My analyses use bootstrap simulations to incorporate two sources of uncertainty in all my models:

- The uncertainty in the population forecasts in every geographic unit
- Where available, uncertainty in the undercount estimates for each group

E. Baseline estimates of 2020 populations with no undercount

22. I used the official Census population estimates to project each geographic unit’s population in 2020. Table 2 shows the population projections for a selection of cities and counties involved in lawsuits regarding the citizenship question. Table 3 shows the population projections for each state. All of the analysis of apportionment that follows fully incorporates the uncertainties in the projections discussed above. But for simplicity, the tables themselves do not show the uncertainties.

Table 2: Population Projections in Select Counties and Cities

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<td>Seattle, WA</td>
<td>608,664</td>
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<td>780,550</td>
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³ The projections shown here do not include the overseas military population, federal employees, and dependents. However, the apportionment projections in Table 5 do include these groups.
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<td>New Hampshire</td>
<td>1,316,470</td>
<td>1,342,795</td>
<td>1,366,068</td>
</tr>
<tr>
<td>New Jersey</td>
<td>8,791,894</td>
<td>9,005,614</td>
<td>9,106,936</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2,059,179</td>
<td>2,088,070</td>
<td>2,095,989</td>
</tr>
<tr>
<td>New York</td>
<td>19,378,162</td>
<td>19,849,399</td>
<td>19,885,662</td>
</tr>
<tr>
<td>North Carolina</td>
<td>9,535,483</td>
<td>10,273,419</td>
<td>10,633,613</td>
</tr>
<tr>
<td>North Dakota</td>
<td>672,591</td>
<td>755,393</td>
<td>752,711</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,536,504</td>
<td>11,658,609</td>
<td>11,713,996</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,751,351</td>
<td>3,930,864</td>
<td>3,974,666</td>
</tr>
<tr>
<td>Oregon</td>
<td>3,831,074</td>
<td>4,142,776</td>
<td>4,269,590</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>12,702,379</td>
<td>12,805,537</td>
<td>12,838,064</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,052,567</td>
<td>1,059,639</td>
<td>1,059,639</td>
</tr>
<tr>
<td>South Carolina</td>
<td>4,625,364</td>
<td>5,024,369</td>
<td>5,213,894</td>
</tr>
<tr>
<td>South Dakota</td>
<td>814,180</td>
<td>869,666</td>
<td>891,229</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,346,105</td>
<td>6,715,984</td>
<td>6,915,723</td>
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<tr>
<td>Texas</td>
<td>25,145,561</td>
<td>28,304,596</td>
<td>29,593,219</td>
</tr>
<tr>
<td>Utah</td>
<td>2,763,885</td>
<td>3,101,833</td>
<td>3,274,374</td>
</tr>
<tr>
<td>Vermont</td>
<td>625,741</td>
<td>623,657</td>
<td>622,506</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,001,024</td>
<td>8,470,020</td>
<td>8,632,998</td>
</tr>
<tr>
<td>Washington</td>
<td>6,724,540</td>
<td>7,405,743</td>
<td>7,785,568</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,852,994</td>
<td>1,815,857</td>
<td>1,777,893</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,986,986</td>
<td>5,795,483</td>
<td>5,858,478</td>
</tr>
<tr>
<td>Wyoming</td>
<td>563,626</td>
<td>579,315</td>
<td>565,592</td>
</tr>
</tbody>
</table>
III. Estimating Proportion of People Likely to be Undercounted Due to Citizenship Question

23. I was not asked to and I did not attempt to calculate the specific undercount that the addition of the citizenship question might cause. However, I evaluated a range of potential undercounts of individuals who live in households with at least one non-citizen, Hispanics or foreign-born member to demonstrate the potential effects that the addition of the citizenship question might have. Theory indicates that the addition of a citizenship question could lead to unit non-response, which occurs when a household does not respond to the Census, thereby depressing response rates among non-citizens and immigrant communities. Indeed, the Census acknowledges that it is “a reasonable inference that a question on citizenship would lead to some decline in overall self-response because it would make the 2020 Census modestly more burdensome in the direct sense, and potentially much more burdensome in the indirect sense that it would lead to a larger decline in self-response for noncitizen households.” (Abowd 2018, Section B2, p. AR 001281)

24. In my analysis, I use this information to look at three potential undercount scenarios:

a. First, I used a 5.8% undercount estimate based on the results of the Census Bureau’s internal study of the effect of a citizenship question on self-response rates. For these analyses, I assumed that respondents that do not self-respond would not be enumerated.

b. Second, I was asked by legal counsel to examine a potential 10% undercount for the analysis of state-level apportionment as an outer bound for the potential effects of the citizenship question on population enumerations and apportionment. This higher number reflects the Census’s finding that the differences between citizen and noncitizen
response rates and data quality are likely to be “amplified” compared to historical levels (Abowd 2018, Section B4, p. AR 001282). The Chief Scientist at the Census has acknowledged that the 5.8% estimate of the effect of the citizenship question on self-response rates is “a conservative estimate of the differential impact of the citizenship question on the self-response rates of noncitizens compared to citizens” (Abowd, J. Dep., Aug. 15, 2018, p. 202).

c. Third, I was asked by legal counsel to examine a potential 2% undercount as a lower bound for the potential effects of the citizenship question on population enumerations. My report shows the results for cities and counties, and the calculations for a 2% undercount in states are PX-324. I was not asked to and I did not do any analysis of the impact of the Census Bureau’s Non-Response Follow-Up (“NRFU”) on non-response rates, but note that the 2% scenario could be viewed as taking into account some NRFU success after an initial larger nonresponse rate.

25. The recent Census Bureau studies discussed above focus largely on the effects of a citizenship question on self-response rates in non-citizen households. As a result, the first set of analyses I conducted for each of these undercount scenarios focuses on people in households with a non-citizen in them. Beyond the effects on non-citizen households, there are also strong theoretical reasons to believe that citizen Hispanics would also be less likely to respond to the Census if a citizenship question is included. Citizen Hispanics in immigrant communities could fear deportation due to their Census responses.\footnote{Title 13, U.S.C. prohibits the use of Census data for enforcement purposes, but respondents may still have this concern (Brown et al. 2018).} Moreover, a large
fraction of citizen Hispanics are likely to know non-citizens or even people that have been deported. The Census’s internal analysis has shown that citizenship-related questions are likely to be more sensitive for Hispanics (Brown et al. 2018, p. 10). Indeed, the Census has found clear evidence there are likely to be differential impacts on self-response rates among Hispanics from the addition of a citizenship question. Hispanics have a greater breakoff rate (i.e., item non-response) on the citizenship question on the American Community Survey (ACS) than other demographic groups. There is also evidence of growing unit nonresponse rates among Hispanics on the ACS (Brown et al. 2018, p. 12). For these reasons, I analyzed the effect of all three undercount scenarios (2%, 5.8% and 10%) on both people in non-citizen households and citizen Hispanics.

A. Undercount Estimate Based on Original Survey Experiment

26. An empirical approach to determine the potential undercount caused by a citizenship question is through a randomized control trial (RCT). The Census Bureau suggests that an appropriate RCT could compare self-response rates between households “randomly chosen to have [] a citizenship question (the treated group), and a randomly chosen set of control households [that] receive a [] Census questionnaire without citizenship” (Brown et al. 2018, p. 39)

27. We were unable to conduct a real-world RCT. A similar approach, however, is to conduct an experiment that mimics an RCT on a nationally representative survey of Americans. As part of this case, the State of New York and other plaintiffs funded a nationally representative survey that included an experiment along these lines to examine whether the inclusion of a

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5 See Abowd (2018, Section b3) and Brown et al. (2018, 7).
citizenship question would reduce the likelihood that people would complete the Census.\textsuperscript{6} This survey was designed by Dr. Matt Barreto and conducted by Pacific Market Research.\textsuperscript{7}

1. **Design of Survey**

28. This survey included a probability sample of 6,309 people, including over-samples of Hispanics, Californians, and people in several cities and counties (San Jose, CA, Cameron County, TX, and Hidalgo County, TX).\textsuperscript{8} It was conducted via phone by Pacific Research Group to both landlines and cell phones using live interviews and random digit dialing. The survey asked a number of questions about the Census and assessed reactions to the inclusion of a citizenship question. The survey did not include a question about the citizenship of respondents. But it did include a question about whether respondents were born in the United States or a foreign country.

29. In my analysis, I focus on an experiment embedded in the survey that mimics the RCT approach suggested by Brown et al. (2018). This enables us to estimate the causal effect of the citizenship question on the likelihood that various demographic subgroups will complete the Census.

30. In the experiment on our survey, the control group received a vignette stating that the government had decided not to include a citizenship question on the census, while the treatment group received a vignette stating that the government had decided to include a citizenship question on the census. Then the survey asked whether respondents would ‘participate and fill out the 2020 Census form, or not?’

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\textsuperscript{6} As part of my work as an expert in this matter, I reviewed Professor Barreto’s expert report that describes the survey methodology and his analysis of the results. However, I ran all of the analyses of the survey used in this report myself. I did not directly use any of Professor Barreto’s findings for my report.

\textsuperscript{7} Data and statistical code to replicate my analysis of this survey is available in my replication materials.

\textsuperscript{8} The survey includes sampling weights that incorporate these over-samples and make the results representative at the national-level.
Control Group: Now that you’ve heard a little bit about the 2020 Census let me ask you one final question about how likely you are to participate. If the government decides in 2020 to NOT include a question about citizenship status, and instead only asks you to report the race, ethnic background, gender of people living in your household, and the government provides assurances that your information will be kept confidential and ONLY used for purposes of counting the total population and nothing more, would you participate and fill out the 2020 Census form, or not?

Treatment Group: Now that you’ve heard a little bit about the 2020 Census let me ask you one final question about how likely you are to participate. If the government decides in 2020 to include a question about citizenship status, and asks you to report the race, ethnic background, gender and citizenship status of people living in your household, and the government provides assurances that your information will be kept confidential and ONLY used for purposes of counting the total population and nothing more, would you participate and fill out the 2020 Census form, or not?

31. This experimental design is a strong one for assessing the causal effect of the citizenship question on the likelihood that people will complete the Census. However, it does have limitations. First, the experiment on the survey imperfectly captures the actual experience of completing the Census. Second, many respondents are probably already aware of the potential inclusion of the citizenship question on the Census, which could lead to Stable Unit Treatment Value Assumption (SUTVA) violations. These SUTVA violations could attenuate the effects we detect in the experiment by artificially reducing the differences between the treatment and control groups. Overall, I think these limitations mean the survey-based
analysis is conservative in its estimates of the citizenship question on self-response rates on the Census.

2. Results of Survey

32. My primary analyses focus on two immigrant communities that theory indicates are particularly likely to be impacted by the citizenship question. First, I analyze the impact on Latinos.\(^9\) This analysis is helpful because there is little publicly available Census analysis of the potential effects of the citizenship question on this group. Second, I analyze the impact on non-Latino people that are not born in the United States.\(^{10}\)

33. I ran three sets of analyses that are shown in Table 4. My primary analysis of the effect of the citizenship question on each group is a weighted regression that evaluates the treatment effect of the citizenship question. In other words, it evaluates whether people in the treatment group, that were told the Census would include a citizenship question, are less likely to indicate they would respond to the Census than people in the control group that were told it would not include a citizenship question.

34. As robustness checks, I also ran two additional models. The middle column of Table 4 for each group is a weighted regression model that includes control variables for other factors that might affect respondents’ willingness to complete the Census, including their age, race, and state of residence. The third column of Table 4 for each group is an unweighted regression model that includes this same set of control variables for other factors that might affect respondents’ willingness to complete the Census. All of my main analyses in the results below are based on linear probability models. However, logistic regression models yield similar results.

\(^9\) Note that I use the terms Hispanic and Latino interchangeably throughout this declaration.

\(^{10}\) I include in this group both people that explicitly stated they were born in a foreign country and the small number of people that refused to answer the nativity question on the survey.
35. Overall, Table 4 shows that the citizenship question makes both Latinos and Foreign-born non-Latinos less likely to respond to the Census. The weighted regression model in column (1) indicates that Latinos are about 5.9% less likely to complete the Census if it includes a citizenship question. The results are similar in the other two models shown in columns (2) and (3). For foreign-born, non-Latinos, the weighted regression in column (4) indicates that they are about 11.3% less likely to complete the Census if it includes a citizenship question. The results are substantively similar, though more statistically significant, in the other two models shown in columns (5) and (6).

Table 4: Experiment Results on Effects of Citizenship Question on Census Response among Latinos and Foreign-born

<table>
<thead>
<tr>
<th>Citizenship Question</th>
<th>Latinos</th>
<th>Foreign-born (not Latino)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td>(0.029)</td>
<td>(0.028)</td>
<td>(0.016)</td>
</tr>
<tr>
<td>Survey Weights Controls</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Observations</td>
<td>2,362</td>
<td>2,362</td>
</tr>
<tr>
<td>R²</td>
<td>0.043</td>
<td>0.021</td>
</tr>
<tr>
<td>Adjusted R²</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Log Likelihood</td>
<td>-2,851,497</td>
<td>-2,763.581</td>
</tr>
</tbody>
</table>

*Note:* *p<0.1; **p<0.05; ***p<0.01

IV. Baseline Estimates of Proportion of Population in Immigrant Communities Vulnerable to Undercount

36. In order to analyze the effects of an undercount of individuals that live in households with at least one non-citizen and Hispanic on total population enumerations, I used the American Community Survey (ACS) to generate baseline estimates of the proportion of the 2020 population in each state, county, and large city in the following groups that are vulnerable to an undercount:
- Non-citizen households (based on whether any member of a household in the ACS self-reports that they are a noncitizen)\textsuperscript{11}
- All Hispanics and citizen Hispanics
- Foreign-born, non-Hispanics

37. To forecast the population margins of each group within each state (e.g., percent Hispanic), I used the individual-level data in the American Community Survey (ACS) from 2007-2016 to forecast the 2020 population distributions using the same approach that I used to forecast state populations. Individual-level data in the ACS is not readily available below the state-level (e.g., for counties and cities). As a result, I used population tables published by the Census based on the five-year ACS samples (2012-2016) to estimate the demographic distributions within counties and cities.\textsuperscript{12} I did not attempt to estimate how these substate population distributions are likely to change between 2016 and 2020. Thus, my estimates of the percentage of county and city population that are members of immigrant communities are probably low due to the general growth of these populations.

A. State-level Effects of Undercount - Effect of Undercount on State Population Enumerations

38. I analyzed the effects of each undercount scenario on the enumerated population of each state in 2020. The results are shown in Table 5. Column (1) shows the baseline apportionment population projections for each state. Column (2) shows the average change in the enumerated population if 5.8\% of people in non-citizen households are not counted due to

\textsuperscript{11} It is important to note that the Census has found that the ACS might be drastically undercounting the number of households with noncitizens. The ACS implies that about 10\% of people live in households with a noncitizen in them. However, Census Bureau found that many people may be misreporting their citizenship status on the ACS. Based on administrative records, they estimate that 28.6 percent of all households could potentially contain at least one noncitizen. So my estimate of the percentage of people that reside in households with a noncitizen based on the ACS is likely conservative.

\textsuperscript{12} For the selection of cities and counties in Tables 2, 7, and 8, I converted the number of non-citizens to the number of people in households with a non-citizen using the ratio of these groups in the individual-level 5-year ACS sample (2012-16) for people in the PUMAs that overlapped each city and county. This analysis is necessarily approximate since PUMAs in the ACS micro-data contain multiple cities and counties.
the citizenship question. Column (3) shows the average change in the enumerated population if 5.8% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (4) shows the average change in the enumerated population if 10% of people in non-citizen households are not counted due to the citizenship question. Column (5) shows the average change in the enumerated population if 10% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (6) shows the average change in the enumerated population in each state based on the results of the survey experiment. Specifically, this scenario assumes that 5.9% of Hispanics and 11.3% of foreign-born, non-Latinos are not counted in the enumerated population.

39. For the analysis of apportionment, I also incorporated estimates of the overseas military population and federal employees, and their dependents living with them. Specifically, I used the 2010 population figures for the overseas military population and federal employees, and their dependents living with them, for each state, and divided this number by half to approximately reflect the reduction in the nation’s military deployments over the past decade. See https://www.census.gov/data/tables/2010/dec/2010-apportionment-data.html, for 2010 population figures. See also Pew Foundation study, http://www.pewresearch.org/fact-tank/2017/08/22/ u-s-active-duty-military-presence-overseas-is-at-its-smallest-in-decades/, for more information on the reduction in the number of overseas military personnel over the past decade.
Table 5: Effect of Undercount on State Population Enumerations in 2020

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Apportionment Pop. Projection</th>
<th>5.8% Undercount Noncitizens</th>
<th>5.8% Undercount Noncitizens + Hispanic</th>
<th>10% Undercount Noncitizens</th>
<th>10% Undercount Noncitizens + Hispanic</th>
<th>Survey Experiment Foreign-born + Hispanics</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
</tr>
<tr>
<td>Alabama</td>
<td>4,928,974</td>
<td>-0.3%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Alaska</td>
<td>745,119</td>
<td>-0.5%</td>
<td>-0.8%</td>
<td>-0.8%</td>
<td>-1.4%</td>
<td>-1.4%</td>
</tr>
<tr>
<td>Arizona</td>
<td>7,430,408</td>
<td>-0.0%</td>
<td>-2.1%</td>
<td>-1.5%</td>
<td>-3.6%</td>
<td>-2.6%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>3,050,993</td>
<td>-0.4%</td>
<td>-0.6%</td>
<td>-0.7%</td>
<td>-1%</td>
<td>-0.8%</td>
</tr>
<tr>
<td>California</td>
<td>40,950,557</td>
<td>-1.7%</td>
<td>-2.9%</td>
<td>-3.9%</td>
<td>-5%</td>
<td>-4.1%</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,831,235</td>
<td>-2.7%</td>
<td>-1.5%</td>
<td>-1.9%</td>
<td>-2.9%</td>
<td>-2.0%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,593,415</td>
<td>-0.8%</td>
<td>-1.3%</td>
<td>-1.3%</td>
<td>-2.6%</td>
<td>-2.4%</td>
</tr>
<tr>
<td>Delaware</td>
<td>991,133</td>
<td>-0.6%</td>
<td>-1%</td>
<td>-1%</td>
<td>-1%</td>
<td>-1.5%</td>
</tr>
<tr>
<td>Florida</td>
<td>22,017,594</td>
<td>-1%</td>
<td>-2%</td>
<td>-1.7%</td>
<td>-3.4%</td>
<td>-2.7%</td>
</tr>
<tr>
<td>Georgia</td>
<td>10,396,413</td>
<td>-0.7%</td>
<td>-0.9%</td>
<td>-1.2%</td>
<td>-1.6%</td>
<td>-1.5%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,432,924</td>
<td>-1%</td>
<td>-1.6%</td>
<td>-1.7%</td>
<td>-2.8%</td>
<td>-2%</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,580,654</td>
<td>-0.4%</td>
<td>-0.9%</td>
<td>-0.8%</td>
<td>-1.6%</td>
<td>-1.2%</td>
</tr>
<tr>
<td>Illinois</td>
<td>12,718,521</td>
<td>-0.4%</td>
<td>-1.4%</td>
<td>-1.4%</td>
<td>-2.4%</td>
<td>-2.3%</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,770,795</td>
<td>-0.4%</td>
<td>-0.6%</td>
<td>-0.7%</td>
<td>-1.1%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,186,710</td>
<td>-0.4%</td>
<td>-0.6%</td>
<td>-0.7%</td>
<td>-1%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,931,128</td>
<td>-0.6%</td>
<td>-1%</td>
<td>-1%</td>
<td>-1.7%</td>
<td>-1.5%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,514,011</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.5%</td>
<td>-0.7%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>4,694,542</td>
<td>-0.2%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.5%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Maine</td>
<td>1,554,512</td>
<td>-0.2%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.5%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Maryland</td>
<td>6,185,838</td>
<td>-0.9%</td>
<td>-1.2%</td>
<td>-1.6%</td>
<td>-2%</td>
<td>-2.1%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,972,768</td>
<td>-0.9%</td>
<td>-1.4%</td>
<td>-1.5%</td>
<td>-2.4%</td>
<td>-2.4%</td>
</tr>
<tr>
<td>Michigan</td>
<td>3,676,306</td>
<td>-0.4%</td>
<td>-0.6%</td>
<td>-0.6%</td>
<td>-1%</td>
<td>-1.3%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>5,966,266</td>
<td>-0.5%</td>
<td>-0.6%</td>
<td>-0.8%</td>
<td>-1.1%</td>
<td>-1.6%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,960,101</td>
<td>-0.2%</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.5%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>Missouri</td>
<td>6,101,875</td>
<td>-0.2%</td>
<td>-0.4%</td>
<td>-0.4%</td>
<td>-0.7%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Montana</td>
<td>1,991,584</td>
<td>-0.8%</td>
<td>-0.3%</td>
<td>-0.8%</td>
<td>-0.6%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,960,312</td>
<td>-0.5%</td>
<td>-0.9%</td>
<td>-0.9%</td>
<td>-1.5%</td>
<td>-1.2%</td>
</tr>
<tr>
<td>Nevada</td>
<td>3,178,894</td>
<td>-1.3%</td>
<td>-2.1%</td>
<td>-2.2%</td>
<td>-3.6%</td>
<td>-3%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,966,556</td>
<td>-0.4%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.6%</td>
<td>-0.6%</td>
</tr>
<tr>
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<td>-2%</td>
<td>-3.3%</td>
<td>-3%</td>
</tr>
<tr>
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<td>-3.1%</td>
<td>-1.3%</td>
<td>-3.8%</td>
<td>-3.8%</td>
</tr>
<tr>
<td>New York</td>
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<td>-1.9%</td>
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<td>-3.3%</td>
<td>-3.1%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>10,686,752</td>
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<td>-0.8%</td>
<td>-1%</td>
<td>-1.4%</td>
<td>-1.2%</td>
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<tr>
<td>North Dakota</td>
<td>7,754,568</td>
<td>-0.2%</td>
<td>-0.4%</td>
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<td>-0.7%</td>
<td>-0.7%</td>
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<tr>
<td>Ohio</td>
<td>11,729,094</td>
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<tr>
<td>Oklahoma</td>
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<tr>
<td>Oregon</td>
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<td>-1.6%</td>
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</tr>
<tr>
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<td>-0.6%</td>
<td>-0.9%</td>
<td>-0.6%</td>
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<td>-2.9%</td>
<td>-4.6%</td>
<td>-3.9%</td>
</tr>
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<td>-1.1%</td>
<td>-1.9%</td>
<td>-1.4%</td>
</tr>
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<td>-0.3%</td>
<td>-0.5%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,653,354</td>
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<td>-1%</td>
<td>-1.2%</td>
<td>-1.7%</td>
<td>-1.8%</td>
</tr>
<tr>
<td>Washington</td>
<td>7,799,983</td>
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<td>-1.3%</td>
<td>-1.5%</td>
<td>-2.9%</td>
<td>-1.8%</td>
</tr>
<tr>
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<td>-0.2%</td>
<td>-0.2%</td>
<td>-0.3%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,584,100</td>
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<td>-0.6%</td>
<td>-0.6%</td>
<td>-1.1%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>567,929</td>
<td>-0.3%</td>
<td>-0.8%</td>
<td>-0.5%</td>
<td>-1.3%</td>
<td>-1%</td>
</tr>
</tbody>
</table>

40. Overall, Table 5 indicates that each state would be affected by an undercount on the Census.

The largest impacts would be in states with large numbers of Hispanics, non-Citizens, and foreign-born residents. For example, California would be undercounted by 1.7-5.0% in these scenarios; Florida would be undercounted by 1-3.4%; New Jersey would be undercounted by...
1.2-3.3%, New York would be undercounted by 1.2-3.2%; and Texas would be undercounted by 1.3-4.6%.

41. Figure 1 shows a map of the results from the survey experiment (column 6 in Table 5). This map graphically shows that heavily Latino states on the southern border have the largest impacts from an undercount. States in the northeast, such as New York, New Jersey, and Massachusetts, with significant foreign-born populations also have significant impacts.

![Figure 1: Effects on State Populations](image)

42. I used the population projections and estimated effects of the various undercount scenarios on the enumerated population of each state to examine the likely effect of the citizenship question on the apportionment of seats in the House of Representatives. Article 1, Section 2, of the United States Constitution states: “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.”

43. Since the first census in 1790, five methods of apportionment have been used. The government currently uses a method called the Method of Equal Proportions, which was
adopted by Congress in 1941 following the census of 1940. This method first assigns each state one seat. Then, additional seats in the House of Representatives are signed to a “priority” value. The priority value for each seat is determined by multiplying the population of a state by a “multiplier.” The multiplier is $1/\sqrt{n(n-1)}$. So the formula for calculating the multiplier for the second seat is $1/\sqrt{2(2-1)}$ or 0.70710678, the formula for calculating the multiplier for the third seat is $1/\sqrt{3(3-1)}$ or 0.40824829, and so on. The Census provides an official table of these multipliers, which I used for my calculations.¹³

44. The next step is to multiply the multipliers by the population total for each of the 50 states (the District of Columbia is not included in these calculations). The resulting numbers are the priority values. Multipliers and priority values must be calculated for the largest number of seats that could be assigned to a state. In my analysis, I calculated the priority values for each state for seats 2 through 60. The next step is to rank and number the resulting priority values starting with seat 51 until all 435 seats have been assigned. The final step is to tally the number of seats for each state to arrive at the total number of seats in the House of Representatives apportioned to each state.

45. I conducted these steps for 500 simulations of the population projections and undercount scenarios in each state. Table 6 shows the results. Column (1) shows the baseline projections for the number of seats that each state is likely to receive in 2020 if there is a full population enumeration. Column (2) shows the average change in the number of congressional seats if 5.8% of people in non-citizen households are not counted due to the citizenship question. Column (3) shows the average change in seats if 5.8% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (4) shows the average

¹³ See https://www.census.gov/population/apportionment/about/computing.html
change in seats if 10% of people in non-citizen households are not counted due to the citizenship question. Column (5) shows the average change if 10% of non-citizen households and Hispanics are not counted due to the citizenship question. Column (6) shows the average change in seats in each state based on the results of the survey experiment. Specifically, this scenario assumes that 5.9% of Hispanics and 11.3% of foreign-born, non-Latinos are not counted in the enumerated populations. Also, each column includes 95% confidence intervals for the seat projections in parentheses. This means that there is a 95% chance that the true number of seats gained or lost in each scenario will be in this range.

46. First, we can examine Columns (2) and (3) of Table 6, which show the effects of a 5.8% undercount of people in non-citizens households and Hispanics. In these scenarios, California is extremely likely to lose a seat. Additionally, if there is an undercount of 5.8% of both people in non-citizen households and Hispanics, there is more than a 51% chance that Texas will lose a seat. There is also a risk that Arizona, Florida, Illinois, and New York could lose seats in some simulations.

47. Columns (4) and (5) of Table 6 show the effects of a 10% undercount of non-citizen households and Hispanics. If only people in non-citizen households are undercounted, California and Texas would be more likely than not to lose a seat. Arizona, Florida, Illinois, and New York would also be at risk of losing seats. If both non-citizens and Hispanics are undercounted, Arizona, California, Florida, and Texas would be likely to lose seats. Illinois and New York would also be at risk of losing a seat.
Table 6: Effect of Undercount on Congressional Apportionment

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Seats</th>
<th>5.8% Undercount</th>
<th>10% Undercount</th>
<th>Survey Experiment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Noncitizens</td>
<td>Noncitizens+</td>
<td>Noncitizens</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hispanic</td>
<td>Hispanic</td>
<td>Hispanic</td>
</tr>
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<td>1 (0,1)</td>
<td>1 (0,1)</td>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
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<td>0 (-1,0)</td>
<td>0 (-1,0)</td>
</tr>
<tr>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
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<td>-1 (-1,0)</td>
<td>-1 (-1,0)</td>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
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<td>0 (-1,0)</td>
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<td>0 (0,0)</td>
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<td>0 (0,0)</td>
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<td>0 (0,1)</td>
<td>0 (0,1)</td>
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<td>0 (0,0)</td>
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<td>0 (0,0)</td>
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<td>0 (0,0)</td>
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<td>0 (0,0)</td>
<td>0 (0,0)</td>
<td>0 (0,0)</td>
</tr>
</tbody>
</table>

48. Column (6) shows the effects of the undercount of Hispanics and foreign-born residents found in the survey experiment. In this scenario, California, Florida, and Texas would most likely all lose seats. Arizona, Illinois, and New York could lose a seat as well.
49. The states that lose seats in Congress would likely see decreases in their share of outlays of federal funding due to their reduction in voting power in Congress. See Elis, Malhotra, and Meredith 2009 (PX-325). The Elis article attached here is just an example. It is a well-established finding in political science and political economy that the loss of political power as a result of the loss of representation leads to the loss of funding. This finding is based on a body of research showing that counties in areas of states that were underrepresented in state legislatures or Congress due to malapportionment received substantially lower shares of distributive spending. In the wake of the Baker v. Carr family of Supreme Court cases that required one-person, one-vote, counties that were underrepresented due to malapportionment saw both their representation in legislatures and their share of spending increase substantially when the equal populace district requirement was implemented. See Ansolabehere, Gerber, and Snyder 2002 (PX-326). Additionally, it is also based on another body of research comparing states that barely gain or lose Representatives in Congress. See PX-325. The census thresholds sometimes are quite close where a state could gain or lose seats. So this research compares those states that are just above and below the population thresholds to gain or lose a seat, and it has found that the states that just barely gain a seat receive more money than the states that barely lose a seat.

B. City and County Effects of Undercount

50. I also examined the effects of the various undercount scenarios for cities and counties. Irrespective of state-level impacts on apportionment, the enumeration of subnational areas is crucially important for a number of purposes. It affects the distribution of federal and state funds that are tied to population formulas. In addition, it affects the allocation of legislative seats within states since legislative districts are required to be equipopulous.
51. This allocation of voting power within states, in turn, affects distributive spending programs influenced by the legislature. See PX-326. Areas with greater population enumerations, and thus more voting power, are likely to receive more funding. This article is just another example of this well-established finding in political science. There is a large body of political science research concluding that vote dilution due to malapportionment leads to a reduction in voting power and less distributive spending.

52. It is reasonable to assume that undercounts like those addressed in my report will more likely than not impact intrastate redistricting because there is no reason to think that a state legislature would correct an undercount on the Census. I think it’s a reasonable assumption that state governments would not consciously try to remedy an undercount.

53. Table 7 shows the impact on the counties and cities that are involved in the lawsuits regarding the citizenship question. The left column shows the baseline 2020 population projection. It also shows the absolute change in population and percentage change in the geographic unit’s population due to three undercount scenarios. First, I examine a 2% undercount scenario. Second, I examine a 5.8% undercount scenario. For each of these scenarios, I examine undercounts among people in non-citizen households and among non-citizens households + Hispanics. Finally, I examine a scenario based on the results of the survey experiment.

54. Table 7 shows the effects on a selection of cities and counties involved in the lawsuits regarding the citizenship question. All of these local governments would most likely face smaller population enumerations due to an undercount from the addition of a citizenship question. Some of the largest effects would be in Miami, FL, New York, NY, Central Falls,
RI, and Providence RI. In the survey experiment scenario (right-hand column), each of these cities could see a reduction of around 4% or more in their enumerated populations.

Table 7: Effect on Population Counts in Select Counties and Cities

<table>
<thead>
<tr>
<th>County</th>
<th>2001 Population</th>
<th>Green vs. Hispanic</th>
<th>Green vs. Hispanic</th>
<th>Green vs. Hispanic</th>
<th>Green vs. Hispanic</th>
<th>Green vs. Hispanic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix, AZ</td>
<td>1,096,376</td>
<td>103,035 -0.6%</td>
<td>109,690 -1.0%</td>
<td>114,854 -1.2%</td>
<td>129,484 -0.9%</td>
<td>135,503 -0.2%</td>
</tr>
<tr>
<td>Los Angeles County, CA</td>
<td>16,006,079</td>
<td>1,939,277 11.7%</td>
<td>18,948,962 -2.5%</td>
<td>22,644,850 -3.9%</td>
<td>30,283,283 -4.4%</td>
<td>44,988,163 -4.5%</td>
</tr>
<tr>
<td>Monterey County, CA</td>
<td>448,006</td>
<td>7,444 -0.9%</td>
<td>5,225 -1.2%</td>
<td>6,159 -2.5%</td>
<td>10,222 -5.0%</td>
<td>19,216 -4.1%</td>
</tr>
<tr>
<td>San Francisco, CA</td>
<td>690,148</td>
<td>9,444 -1.1%</td>
<td>9,444 -1.1%</td>
<td>9,444 -1.1%</td>
<td>9,444 -1.1%</td>
<td>9,444 -1.1%</td>
</tr>
<tr>
<td>Santa Cruz, CA</td>
<td>1,045,853</td>
<td>6,943 -0.7%</td>
<td>10,743 -1.0%</td>
<td>18,845 -1.8%</td>
<td>31,153 -2.7%</td>
<td>37,766 -1.7%</td>
</tr>
<tr>
<td>Washington, DC</td>
<td>722,668</td>
<td>1,697 -0.3%</td>
<td>5,090 -0.5%</td>
<td>5,090 -0.5%</td>
<td>5,090 -0.5%</td>
<td>5,090 -0.5%</td>
</tr>
<tr>
<td>Miami, FL</td>
<td>491,205</td>
<td>4,068 -1.1%</td>
<td>7,734 -1.9%</td>
<td>11,148 -2.4%</td>
<td>23,428 -4.1%</td>
<td>24,713 -4.1%</td>
</tr>
<tr>
<td>Chicago, IL</td>
<td>2,704,074</td>
<td>14,334 -0.5%</td>
<td>20,059 -0.7%</td>
<td>20,059 -0.7%</td>
<td>20,059 -0.7%</td>
<td>20,059 -0.7%</td>
</tr>
<tr>
<td>Prince Georges County, MD</td>
<td>581,412</td>
<td>4,888 -0.5%</td>
<td>9,016 -0.5%</td>
<td>12,724 -1.4%</td>
<td>14,858 -1.6%</td>
<td>21,693 -2.3%</td>
</tr>
<tr>
<td>New York, NY</td>
<td>6,661,147</td>
<td>35,280 -0.5%</td>
<td>84,728 -1.3%</td>
<td>166,254 -1.9%</td>
<td>242,811 -2.3%</td>
<td>396,647 -4.4%</td>
</tr>
<tr>
<td>Columbus, OH</td>
<td>921,485</td>
<td>2,375 -0.3%</td>
<td>2,766 -0.3%</td>
<td>6,986 -0.7%</td>
<td>8,027 -0.9%</td>
<td>19,140 -4.4%</td>
</tr>
<tr>
<td>Philadelphia, PA</td>
<td>1,025,672</td>
<td>5,041 -0.5%</td>
<td>7,260 -0.5%</td>
<td>11,358 -1.2%</td>
<td>21,185 -1.2%</td>
<td>32,116 -2.1%</td>
</tr>
<tr>
<td>Pittsburgh, PA</td>
<td>297,216</td>
<td>859 -0.3%</td>
<td>611 -0.2%</td>
<td>1,292 -0.2%</td>
<td>1,789 -0.2%</td>
<td>3,151 -1.6%</td>
</tr>
<tr>
<td>Central Falls, RI</td>
<td>16,620</td>
<td>100 -1.1%</td>
<td>100 -1.0%</td>
<td>100 -1.0%</td>
<td>100 -1.0%</td>
<td>100 -1.0%</td>
</tr>
<tr>
<td>Providence, RI</td>
<td>194,352</td>
<td>1,240 -0.7%</td>
<td>1,240 -1.1%</td>
<td>9,022 -5.2%</td>
<td>12,604 -5.4%</td>
<td>18,933 -5.9%</td>
</tr>
<tr>
<td>Cameron County, TX</td>
<td>421,065</td>
<td>5,335 -0.8%</td>
<td>7,799 -1.3%</td>
<td>16,033 -3.1%</td>
<td>22,201 -4.3%</td>
<td>28,177 -4.5%</td>
</tr>
<tr>
<td>El Paso County, TX</td>
<td>691,660</td>
<td>8,144 -0.5%</td>
<td>12,007 -1.7%</td>
<td>16,047 -2.9%</td>
<td>21,439 -6.2%</td>
<td>28,069 -6.6%</td>
</tr>
<tr>
<td>Hidalgo County, TX</td>
<td>892,083</td>
<td>6,655 -0.9%</td>
<td>16,540 -2.7%</td>
<td>16,540 -2.7%</td>
<td>16,540 -2.7%</td>
<td>16,540 -2.7%</td>
</tr>
<tr>
<td>Seattle, WA</td>
<td>780,650</td>
<td>3,483 -0.3%</td>
<td>3,483 -1.1%</td>
<td>7,280 -0.9%</td>
<td>8,661 -1.1%</td>
<td>17,084 -0.2%</td>
</tr>
</tbody>
</table>

55. The three Texas counties would also face particularly negative impacts. Each of these heavily Latino counties could have a reduction in their enumerated populations of over 5%.

56. Figure 2 shows the reduction in the enumerated population for every county in the country based on the survey experiment (last column of Table 7). It shows that the largest effects are in counties on the southern border, the California coast, and in the region around New York City. The counties and cities that are plaintiffs in this suit are labeled on the graph. All of these geographic units are in the most heavily impacted areas of the country.
Figure 2: Effects on County Populations

57. Table 8 shows the change in each area’s share of its state population due to the undercount. This statistic is important for estimating the potential effects of the undercount on state-level formula grants, as well as on the relative voting power of each geographic area in congressional and state legislative elections. Geographic areas that see a reduction in their share of the state population are likely to get less representation in Congress and their state legislature. This reduction in voting power is likely to lead to less distributive spending. See PX-326. As stated before, this article is just an example. There is a large body of political science research that finds localities have their vote diluted because they are malapportioned. This implies that if the enumerated populations used for redistricting are smaller than their actual populations, then this reduction in voting power is very likely to lead to less distributive spending.
Table 8: Effect on Relative Representation in Select Counties and Cities

<table>
<thead>
<tr>
<th></th>
<th>2% Undercount</th>
<th>5.8% Undercount</th>
<th>Survey Experiment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Noncitizens</td>
<td>Noncitizens+</td>
<td>Noncitizens</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hispanics</td>
<td>Hispanics</td>
</tr>
<tr>
<td>Phoenix, AZ</td>
<td>-0.4%</td>
<td>-0.4%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Los Angeles County, CA</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Monterey County, CA</td>
<td>-0.4%</td>
<td>-0.4%</td>
<td>-1%</td>
</tr>
<tr>
<td>San Francisco, CA</td>
<td>0%</td>
<td>0.2%</td>
<td>0.1%</td>
</tr>
<tr>
<td>San Jose, CA</td>
<td>-0.2%</td>
<td>-0.1%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Miami, FL</td>
<td>-0.9%</td>
<td>-1.1%</td>
<td>-2.1%</td>
</tr>
<tr>
<td>Chicago, IL</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Prince Georges County, MD</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>New York, NY</td>
<td>-0.3%</td>
<td>-0.4%</td>
<td>-0.8%</td>
</tr>
<tr>
<td>Columbus, OH</td>
<td>-0.3%</td>
<td>-0.3%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Philadelphia, PA</td>
<td>-0.2%</td>
<td>-0.3%</td>
<td>-0.8%</td>
</tr>
<tr>
<td>Pittsburgh, PA</td>
<td>-0.2%</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Central Falls, RI</td>
<td>-0.9%</td>
<td>-1.3%</td>
<td>-2.3%</td>
</tr>
<tr>
<td>Providence, RI</td>
<td>-0.6%</td>
<td>-0.7%</td>
<td>-1.4%</td>
</tr>
<tr>
<td>Cameron County, TX</td>
<td>-0.6%</td>
<td>-1.1%</td>
<td>-1.3%</td>
</tr>
<tr>
<td>El Paso County, TX</td>
<td>-0.5%</td>
<td>-1%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Hidalgo County, TX</td>
<td>-0.7%</td>
<td>-1.2%</td>
<td>-1.7%</td>
</tr>
<tr>
<td>Seattle, WA</td>
<td>-0.2%</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
</tbody>
</table>

58. Table 8 shows the relative change in each area’s population using three undercount scenarios. First, I examine a 2% undercount scenario. Second, I examine a 5.8% undercount assumption. For each of these scenarios, I examine undercounts among people in non-citizen households and among non-citizens households + Hispanics. Finally, I examine a scenario based on the results of the survey I discussed in depth above.

59. Under nearly every scenario, each of the cities and counties would face declines in their share of their respective state populations due to an undercount from the citizenship question. Once again, some of the largest effects would be in Miami, FL, New York, NY, Central Falls, RI, Providence RI, and the three Texas counties. Each of these areas would have a reduction in their ‘relative populations’ (i.e., share of the state population) of several percentage points based on the survey experiment.
V.  Aggregate Effects on Share of Population in Different Types of Counties

60. I examined the macro effects of an undercount due to the addition of a citizenship question on the distribution of the enumerated population across urban and rural areas. For simplicity, I use the survey estimates on foreign-born people and Hispanics. But the results are broadly similar for other undercount scenarios.\textsuperscript{14} The best available definition of urban and rural areas is based on a classification system developed by the National Center for Health Statistics (NCHS).\textsuperscript{15} This classification system is often used to study the associations between the urbanization level of residence and health and to monitor the health of urban and rural residents. NCHS has developed a six-level urban-rural classification scheme for U.S. counties and county-equivalent entities. The most urban category consists of “central” counties of large metropolitan areas and the most rural category consists of nonmetropolitan “noncore” counties. Figure 3 shows a map of the NCHS classification scheme.

\textsuperscript{14} For confidentiality reasons, it is not possible to match the ACS micro-data to smaller cities and counties. So, for this analysis, I calculated the ratio of people in non-citizen households to individual non-citizens for each state in the 2016 ACS. I then multiplied these ratios by the estimates of the number of non-citizens in each city and county to estimate the number of people in households with a non-citizen.

\textsuperscript{15} See https://www.cdc.gov/nchs/data_access/urban_rural.htm
Figure 3: 2013 Urban-Rural Classification Scheme for Counties

61. Figure 3 shows that an undercount due to a citizenship question would have the most substantial impact in large metropolitan counties with major cities. Based on the survey experiment, these counties would have a reduction in their enumerated population of 2.9%.\(^{16}\) This group of counties would also have a reduction in their share of the national population of 1.1%. This reduction in urban areas’ relative population would likely lead to dilution in their voting power and a reduction in their representation in Congress and state legislatures.

At the other end of the continuum, noncore rural counties would only have a reduction in their enumerated population of .5%. Moreover, they would actually see a sizable 1.4% increase in their share of the national population. This would lead to an increase in their representation in the legislature. Thus, the undercount caused by a citizenship question on the

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\(^{16}\) The patterns are broadly similar in the other scenarios.
Census would lead to a redistribution of political power in America. It would reduce the representation of urban counties, and increase the voting power of rural counties.

Table 9: Effect on Distribution of Enumerated Population Across Urban and Rural Counties

<table>
<thead>
<tr>
<th>County</th>
<th>2020 Population Projection</th>
<th>Percentage Change Due to Undercount</th>
<th>Percentage Change in Relative Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large central metro</td>
<td>103,025,259</td>
<td>-2.9%</td>
<td>-1.1%</td>
</tr>
<tr>
<td>Large fringe metro</td>
<td>83,761,694</td>
<td>-1.8%</td>
<td>.1%</td>
</tr>
<tr>
<td>Median metro</td>
<td>69,737,033</td>
<td>-1.5%</td>
<td>.3%</td>
</tr>
<tr>
<td>Small metro</td>
<td>30,116,705</td>
<td>-1%</td>
<td>.9%</td>
</tr>
<tr>
<td>Micropolitan</td>
<td>27,375,961,605</td>
<td>-.8%</td>
<td>1.1%</td>
</tr>
<tr>
<td>Noncore</td>
<td>18,760,860</td>
<td>-.5%</td>
<td>1.4%</td>
</tr>
</tbody>
</table>

VI. Conclusion

62. I have reached the following conclusions:

a. The undercount caused by the inclusion of a citizenship question on the Census is likely to have effects on the population counts of each state, and the apportionment of representatives across states for the U.S. House. There is a very high probability that California will lose a congressional seat, and it is more likely than not that Texas will lose a congressional seat. There is also a substantial risk that Arizona, Florida, Illinois, and New York could lose a seat.

b. The citizenship question is also likely to have effects on the population counts of large counties and cities within each state. This will affect the distribution of voting power within states, and lead to the dilution of the voting power of New York, NY, Miami, FL, Providence, RI, and other large cities with substantial immigrant populations.
c. Overall, the citizenship question will lead to a large-scale shift in the
distribution of political power in the United States. It would dilute the
voting power of urban counties, and increase the voting power of rural
counties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 26, 2018

Washington, DC

Christopher Warshaw
Appendix

Table A1: Effect of 2% Undercount on State Population Enumerations in 2020

<table>
<thead>
<tr>
<th>State</th>
<th>Baseline Apportionment Pop. Projection</th>
<th>Noncitizens</th>
<th>Noncitizens + Hispanic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>4,928,974</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Alaska</td>
<td>745,119</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Arizona</td>
<td>7,349,198</td>
<td>-0.3%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>3,056,993</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>California</td>
<td>40,549,557</td>
<td>-0.6%</td>
<td>-1%</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,831,253</td>
<td>-0.2%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,593,415</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Delaware</td>
<td>991,133</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Florida</td>
<td>22,017,594</td>
<td>-0.3%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Georgia</td>
<td>10,796,611</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1,432,921</td>
<td>-0.3%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>Idaho</td>
<td>1,830,654</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Illinois</td>
<td>12,718,521</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,770,793</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,186,710</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,931,128</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,514,011</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>4,694,542</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Maine</td>
<td>1,351,512</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Maryland</td>
<td>6,195,838</td>
<td>-0.3%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,972,768</td>
<td>-0.3%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Michigan</td>
<td>9,976,301</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>5,696,268</td>
<td>-0.2%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,990,101</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Missouri</td>
<td>6,191,875</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Montana</td>
<td>1,081,584</td>
<td>0%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1,960,312</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Nevada</td>
<td>3,178,894</td>
<td>-0.4%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,368,556</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>9,114,710</td>
<td>-0.4%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>2,100,036</td>
<td>-0.3%</td>
<td>-1.1%</td>
</tr>
<tr>
<td>New York</td>
<td>19,907,138</td>
<td>-0.4%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>10,688,762</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>754,368</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,729,092</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,981,432</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Oregon</td>
<td>4,278,356</td>
<td>-0.2%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>12,851,327</td>
<td>-0.1%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,060,979</td>
<td>-0.2%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>5,224,199</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>884,019</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,930,386</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Texas</td>
<td>29,654,648</td>
<td>-0.4%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Utah</td>
<td>3,277,814</td>
<td>-0.2%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>Vermont</td>
<td>624,804</td>
<td>-0.1%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Virginia</td>
<td>8,651,354</td>
<td>-0.2%</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Washington</td>
<td>7,799,983</td>
<td>-0.3%</td>
<td>-0.4%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1,781,304</td>
<td>0%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>5,864,100</td>
<td>-0.1%</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>567,929</td>
<td>-0.1%</td>
<td>-0.3%</td>
</tr>
</tbody>
</table>
Christopher S. Warshaw

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George Washington University, Washington, DC  
Associate Professor (starting September 1, 2020)  
Assistant Professor, 2017 - 2020

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Associate Professor of Political Science (without tenure), 2016 - 2017  
Assistant Professor of Political Science, 2012 - 2016

Education

Stanford University, Ph.D., Political Science, 2012  
Fields: American Politics, Comparative Politics, and Political Methodology (Statistics)

Stanford Law School, Juris Doctorate, 2011

Williams College, B.A., magna cum laude, 2002

Research Interests

American Politics, Representation, Elections, Public Opinion, State & Local Politics, Environmental Politics and Policy, Statistical Methodology

Research

Publications

Peer Reviewed Articles

22. "The Impact of Partisan Gerrymandering on Political Parties." Forthcoming, Legislative Studies Quarterly. (with Nicholas Stephanopoulos)

21. "Using Screeners to Measure Respondent Attention on Self-Administered Surveys: Which Items and How Many?" Forthcoming, Political Science Research and Methods. (with Adam Berinsky, Michele Margolis, and Mike Sances)


**Editor Reviewed Articles in Journals and Law Reviews**


**Book Chapters**


**Policy Reports**


**Unpublished Work**

**Book Project**


**Articles Under Review**

"The Effect of Local COVID-19 Fatalities on Americans’ Political Preferences." (with Lynn Vavreck and Ryan Baxter-King)

**Works in Progress**

"Electoral Accountability for Ideological Extremism in American Elections" (with Devin Caughey)
"Gerrymandering in Local Governments" (with Laura Royden)
"Moderates" (with Anthony Fowler, Seth Hill, Jeff Lewis, Chris Tausanovitch, Lynn Vavreck)
"Partisan Selection in California City Councils" (with Justin de Benedictis-Kessner and Dan Jones)
"The Effect of Television Advertising in United States Elections" (with John Sides and Lynn Vavreck)
"When Mass Opinion Goes to the Ballot Box: A National Assessment of State Level Issue Opinion and Ballot Initiative Results" (with Jonathan Robinson and John Sides)
"Inequalities in Participation, Voting, and Representation in Local Governments" (with Justin de Benedictis-Kessner and John Sides)
"Sexism and the Election of Female Candidates in American Elections" (with Alex Kurtz and Brian Schaffner)
"The Ideology of State Party Platforms " (with Justin Phillips and Gerald Gamm)

Non-Academic Writing


"The Supreme Court is deciding a gerrymandering case. Here’s the social science that the Justices need to know." Washington Post, Monkey Cage. June 1, 2019.

"New research shows just how badly a citizenship question would hurt the 2020 Census." Washington Post, Monkey Cage. April 22, 2019. (with Matt Barreto, Matthew A. Baum, Bryce J. Dietrich, Rebecca Goldstein, and Maya Sen)


Invited Talks

2019-2020: Princeton, UC Berkeley, University of Maryland
2018-2019: Stanford; Northeast Political Methodology Meeting at NYU; University of Maryland
2017-2018: USC PIPE Symposium on Studying Subnational Policy Making; BYU; University of Chicago Conference on Political Polarization
2016-2017: University of Virginia; UCLA
2015-2016: Washington University in St. Louis; Texas A&M; Arizona State University Conference on Campaigns, Elections and Representation
2014-2015: Yale; Columbia; Duke
2013-2014: Princeton; Boston University; Rochester University
2012-2013: MIT American Politics Conference; Columbia Representation Conference; Princeton Media & Politics Conference; Annual Meeting of the Society for Political Methodology
Grants

Russell Sage Foundation, 2019-2021 ($119,475)
GW UFF, 2019-2020 ($14,433)
MIT Elections Lab, 2019-2020 ($14,000)
Jeptha H. and Emily V. Wade Award, 2014-2016 ($59,686)
MIT Energy Institute (MITEI) Seed Grant, 2014-2016 ($137,147)
MIT SHASS Research Fund, 2012-2014 ($8,734)

Software


Awards and Honors

OVPR Early Career Scholar at George Washington University, 2019.
APSA award for best journal article on State Politics & Policy in 2016.
Award for best paper on State Politics & Policy at the 2014 American Political Science Conference.
Graduate Fellowship, Dept. of Political Science, Stanford University, 2006-2012
David A. Wells Prize in Political Economy for Best Undergraduate Economics Thesis, Williams College, 2002
Phi Beta Kappa, Williams College, 2002

Teaching Experience

Instructor:
  Measurement Models (Graduate-level) (GW), 2020
  Political Representation (Graduate-level) (GW), 2019
  Elections (GW), 2018, 2019
  Multi-level and Panel Models (Graduate-level) (GW), 2017, 2018, 2019
  Public Opinion (GW), 2017
  American Political Institutions (Graduate-level) (MIT), 2014, 2016
  Public Opinion and Elections (MIT), 2016
  Energy Policy (MIT), 2013
  Democracy in America (MIT), 2013, 2014
Constitutional Law & Judicial Politics (MIT), 2013, 2015
Making Public Policy (MIT), 2012, 2014

Teaching Assistant:
Introduction to American Law (Stanford University), 2010
Judicial Politics and Constitutional Law (Stanford University), 2009
Political Economy of Energy Policy (Stanford University), 2008
Introduction to International Relations (Stanford University), 2008
Introduction to Public Policy (Stanford University), 2007
Introduction to Econometrics (Williams College), 2002

Graduate Advising

George Washington University:
Alex Beck (Dissertation committee chair)
Colin Emrich (Dissertation committee member)
Jared Heern (Dissertation committee member)

Massachusetts Institute of Technology:
Leah Stokes (Graduated in 2015, Dissertation committee member)
Krista Loose (2016, Dissertation committee member)
Tom O’Grady (2017, Dissertation committee member)
Justin de Benedictis-Kessner (2017, Dissertation committee member)
Alex Copulsky (2017, Masters thesis committee member)
James Dunham (2018, Dissertation committee member)
Parrish Bergquist (2018, Dissertation committee member)
Meg Goldberg (2019, Dissertation committee member)

University Service

George Washington University:
Coordinator, Graduate Political Science Admissions Committee, 2019-2020
Coordinator, American Politics Workshop, 2018-2020
Member, Methods Exam Committee, 2017-2020
Member, Graduate Political Science Admissions Committee, 2018-2019
Massachusetts Institute of Technology:
Member, Energy Education Task Force, 2012-2017
Parking and Transit Committee, 2013-2017
Member, Graduate Political Science Admissions Committee, 2013-2015
Faculty Fellow, Burchard Scholars, 2013-2015

Stanford University (as graduate student):
President, Stanford Environmental Law Society, 2009-2010
Executive Board Member, Stanford Environmental Law Society 2008-2010
Member, University Committee on Graduate Studies, 2007-2009
Member, University Library Committee, 2007-2008
President, Political Science Graduate Students Association, 2007-2008

Professional Service


Member, Program Committee, Midwest Political Science Association Conference, 2020
Lead Organizer, Local Political Economy APSA Pre-Conference at George Washington University, 2019
Member, Planning Committee, Cooperative Congressional Election Study (CCES), 2018
Member, Best Paper Committee, State Politics Section of the American Political Science Assoc., 2018
Editorial Board, Journal of Politics, 2017-18
Executive Committee, Urban Politics Section of the American Political Science Association, 2015-2017
Member, Best Paper Committee, Urban Politics Section of the American Political Science Assoc., 2015

Consulting

Consultant, Abell Foundation, Report on Potential Institutional Reforms for Baltimore’s City Elections


Community Service


Last updated: August 2, 2020
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


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).


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.


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.


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.*


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

/s/ Dale Ho
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* Admitted pro hac vice

** Designates pro hac vice application forthcoming.

*** Not admitted in the District of Columbia; practice limited pursuant to D.C. App. R. 49(c)(3).


Attorneys for the Plaintiffs in 20-CV-5781

LETITIA JAMES  
Attorney General of the State of New York

By: /s/ Elena Goldstein  
Elena Goldstein  
Deputy Chief, Civil Rights Bureau  
Matthew Colangelo  
Chief Counsel for Federal Initiatives  
Morenike Fajana, Special Counsel  
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New York, NY 10005  
Phone: (212) 416-6057
elena.goldstein@ag.ny.gov

*Attorneys for the Plaintiffs in 20-CV-5770*
Hi Sean and Stephanie,
Flagging the below and attached for your situational awareness.

Thanks,
Harry

Sent from my iPhone

Begin forwarded message:

From: "Sheridan, Blaise (Appropriations)" <Blaise_Sheridan@appro.senate.gov>
Date: August 4, 2020 at 11:58:27 AM EDT
To: "Foti, Anthony (Federal)" <AFoti@doc.gov>, "Kumar, Harry (Federal)" <HKumar@doc.gov>
Subject: Senator Shaheen Letter to Director Dillingham

Anthony & Harry,

Hope that you're both doing well. I wanted to flag for you a letter that Senator Shaheen sent to Director Dillingham regarding the decision to expedite Census data collection and processing operations. I already sent to Chris, but wanted to make you aware as well.

Thanks,
Blaise
The Honorable Stephen Dillingham  
Director  
U.S. Census Bureau  
4600 Silver Hill Road  
Washington, DC 20233

Dear Director Dillingham:

I write to express my deep concern regarding the expedited schedule for the 2020 Decennial Census that puts the success of the Constitutionally-mandated count at risk. On August 3, 2020, you announced that data collection operations will be reduced by a month and data processing operations will be compressed by several months in order to allow the Secretary of Commerce to transmit the apportionment counts to the president by December 31, 2020.¹ This announcement comes after it was previously reported that senior White House and Department of Commerce officials are trying to rush the execution of the 2020 Decennial Census for perceived political gain.² This is unacceptable.

Due to the COVID-19 pandemic, on April 13, 2020, you and Secretary of Commerce Wilbur Ross released a joint statement announcing that the Bureau of the Census (Census Bureau) was delaying field operations by three months. At the same time, you requested a fourth-month delay in the statutory deadlines for reporting apportionment and redistricting counts, stating:

“In order to ensure the completeness and accuracy of the 2020 Census, the Census Bureau is seeking statutory relief from Congress of 120 additional calendar days to deliver final apportionment counts. Under this plan, the Census Bureau would extend the window for field data collection and self-response to October 31, 2020, which will allow for apportionment counts to be delivered to the President by April 30, 2021, and redistricting data to be delivered to the states no later than July 31, 2021.”³

You have expressed to me on several occasions a desire to allow career Census Bureau experts to carry out the critical agency mission absent political meddling—most recently, in

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response to a letter Chairman Jerry Moran and I sent you on July 2, 2020, regarding the importance of executing a complete and accurate 2020 Decennial Census, free from political interference. In your response, dated, July, 10, 2020, you asserted:

“The leadership and staff of the Census Bureau are fully committed to a complete and accurate count of all people living in the United States, without exception...I want to be clear that the 2020 Census is nonpartisan in its operation and support, whether during data collection from self-response and field work or the complicated and important work during post-enumeration processing.”

However, I’m seriously concerned that in a mere matter of weeks this is no longer the case. On August 3, 2020, you announced that: “We will end field data collection by September 30, 2020,” a month earlier than the plan you announced in April 2020. I find it impossible to believe that this decision was based on the best recommendations of career Census Bureau experts. Census data collection operations are incredibly complicated even in the best of conditions, but their complexity is greatly exacerbated by the COVID-19 pandemic. In fact, Census experts believe that the results of accelerating the data collection operations under current conditions could be disastrous, with a career official stating, “It's going to be impossible to complete the count in time. I'm very fearful we're going to have a massive undercount.”

Further, in response to a question during a House Committee on Oversight and Reform hearing on July 29, 2020, you contested the expert opinions of Census career staff regarding the need for a delay of statutory requirements. Tim Olson, director of field operations for the 2020 Decennial, stated back in May 2020 that, “We have passed the point where we could even meet the current legislative requirement of Dec. 31...We can't do that anymore.” But, when this issue was raised at the hearing, you disagreed, stating: “I can’t agree with him, we have many more assessments ahead of us here.”

The expedited 2020 Decennial Census schedule, along with the Presidential Memorandum issued on July 21, 2020, excluding undocumented immigrants from the apportionment count, has heightened concerns that the Trump Administration is trying to manipulate the 2020 Decennial Census for political gain. As such, I would like a formal response, in writing, to the following questions regarding the Census’s operational plans for the 2020 Decennial Census. I request a response by August 14, 2020.

1. Is the Census Bureau still requesting a four-month statutory extension of the apportionment and redistricting deadlines? If not, what has changed with regard to the COVID-19 pandemic that no longer make these statutory changes necessary?

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2. What has changed with regard to the COVID-19 pandemic that allows the Bureau to thoroughly complete the nonresponse followup and self-response operations in a compressed timeframe from October 31, 2020, to September 30, 2020? Do career employees agree with this change?

3. Since the nonresponse followup operations will be cut short by a month, will the Census Bureau have to reduce the number of times enumerators approach each household? Will use of administrative records to enumerate unresponsive households increase? Will imputation of data increase, and how much use of imputation is acceptable, especially for “whole households” from which the Bureau could not collect data directly?

4. Is the Census Bureau requesting additional resources to rush data collection operations? What evidence do you have that additional funding will allow the Bureau to complete nonresponse follow-up, as well as operations to count special populations, such as people experiencing homelessness, in a thorough manner, given the unpredictability of coronavirus surges and natural disasters, as well as difficulty the Bureau already has encountered in retaining qualified enumerators and field supervisors?

5. How would a compressed schedule affect vital quality-check activities for the nonresponse followup and self-response operations? Will the Census Bureau still carry out the full re-interview operation as laid out in the detailed operational plan for nonresponse followup? If not, why not, and what will the effect be on the quality of census data?

6. The original schedule included five months to complete data processing and tabulation. How long will these operations last under the new schedule and how will these operations change with the compressed schedule? Will the Bureau still conduct the Count Review program, and if so, how will the schedule for that operation compare to the original timetable?

It is not a lack of resources hampering the data collection process. As the Vice Chair of the Senate Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee, I have worked you and with my colleagues on both sides of the aisle to ensure that the Census Bureau has the resources needed to execute a complete and accurate 2020 Decennial Census. This includes appropriating a $2 billion contingency reserve that was recommended by Secretary Ross but never requested in the budget. This amount has proven critical, as the Census Bureau required about $1.5 billion thus far to respond to the COVID-19 impacts, including hiring additional nonresponse followup enumerators.

As I have said throughout this process, it is imperative that the Census counts every person in the United States, where they live. We only have one chance to get this right. I am deeply concerned about the recent announcement. I expect that as the Census Director, you will uphold a complete and accurate count, free of political meddling. Thank you for your consideration.
Sincerely,

Jeanne Shaheen
Vice Chair
Subcommittee on Commerce,
    Justice, Science and Related Agencies