

retain the proposed residence situation guidance for overseas military personnel (Sections C.4.a–b and C.13.f–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 facilities are primarily serving long-term non-acute patients who live and sleep at the facility most of 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.3 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

juveniles 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 subcategory 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

the subcategory of people in emergency and transitional shelters with sleeping facilities for people experiencing homelessness. 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 shelters and people experiencing homelessness (Section C.21).

The proposed residence guidance already allows people who are temporarily displaced by natural disasters to be counted at their usual residence to which they intend to return. People in temporary group living quarters established for victims of natural disasters will be counted where they live and sleep most of the time (or at the facility if they do not report a usual home elsewhere). In addition, people who are temporarily displaced or experiencing homelessness, and are staying in a residence for a short or indefinite period of time, 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.

7. Comments on College Students and Boarding School Students

Two comments were related to boarding school students, and two comments were related to college students. One commenter simply stated that they agree with the Census Bureau's proposal regarding how to count boarding school students and college students. One commenter suggested that they agree with counting college students at their college residence because that would better ensure that all college students are counted in the census. One commenter suggested that boarding school students should be counted at the school because that is where they live and sleep most of the time, and they participate in (and consume the resources of) the community where the school is located. This commenter also stated that counting boarding school students at their parental home is inconsistent with the fact that college students are counted at their college residence, considering that college students are often just as dependent on their parents as boarding school students.

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 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 these people typically stay at the facility 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 because people must be counted at their 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 that other RV park when they are 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 agree 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 stated that every citizen should be counted in the census. One commenter suggested that the Census Bureau count people who are away from their home 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 States⁹ 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.¹⁰

⁹ In 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.

¹⁰ Military and civilian employees of the U.S. government who are deployed or stationed/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 the 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

(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 stateside 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.

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.

(i) *Other nonrelatives, such as friends*—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 school.

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 stateside 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, including newborn babies still in the hospital 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 will 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 facilities¹¹ 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*—

¹¹ Nursing facilities/skilled-nursing facilities, inpatient hospice facilities, assisted living facilities, and housing intended for older adults may coexist within the same entity or organization in some cases. For example, an assisted living facility may have a skilled-nursing floor or wing that meets the nursing facility criteria, which means that specific floor or wing is counted according to the guidelines for nursing facilities/skilled-nursing facilities, while the rest of the living quarters in that facility are counted according to the guidelines for assisted living facilities.

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. If 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.

14. Merchant Marine Personnel on U.S. Flag Maritime/Merchant Vessels

(a) *Crews of U.S. flag maritime/merchant vessels docked in a U.S. port, sailing from one 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.

(c) *Crews of U.S. flag maritime/merchant vessels docked in a foreign port or sailing from one foreign port to another foreign port on Census Day*—Not counted in the stateside census.

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. If staff members do not have a usual home elsewhere, they are counted at the facility.

(c) *People in federal detention centers on Census Day, such as Metropolitan Correctional Centers, Metropolitan Detention Centers, Bureau of Indian Affairs Detention Centers, Immigration and Customs Enforcement (ICE) Service Processing Centers, and ICE contract detention facilities*—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.

(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-correctional) 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-correctional) 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-correctional) 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-correctional) 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. Jarmia,

Associate Director for Economic Programs,
Performing the Non-Exclusive Functions and
Duties of the Director, Bureau of the Census.

(FR Doc. 2018-02370 Filed 2-7-18; 8:45 am)

BILLING CODE 3510-07-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 fully 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 warn mariners in waters where 72 COLREGS apply.

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

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Kyle Fralick, (Admiralty and Maritime Law), Office of

the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE, Suite 3000, Washington Navy Yard, DC 20374-5066, telephone 202-685-5040.

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 fully 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(f)(ii), pertaining to the vertical placement of task lights; Rule 23(a), the requirement to display a forward and aft masthead light underway, 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

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

From: Sverdlov, Alexander V. [b(6)]
Sent: 1/22/2020 11:20:16 AM
To: Sharma, Sapna (Federal) [SSharma@doc.gov]; Olson, Stephanie (Federal) [SOlson@doc.gov]; Cannon, Michael (Federal) [MCannon@doc.gov]
CC: Rosenberg, Brad (CIV) [b(6)]
Subject: Battle deposition transcript
Attachments: 30b6KarenRBattle_COND.pdf; ATT00001.htm; 30b6KarenRBattle_PDFTran.pdf; ATT00002.htm

Mike, Stephanie, Sapna,

Attached please find the official deposition transcript.

b(5) - AC/WP

b(5) - AC/WP

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. : 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

Page 2

1
2 Deposition of KAREN R. BATTLE, held at the
3 offices of:
4 U.S. Department of Commerce
5 1401 Constitution Avenue, N.W.
6 Washington, D.C. 20230
7
8 Pursuant to Notice, before Robert Michael
9 Jakupciak, RPR, a Notary Public in and for the
10 District of Columbia, when were present on behalf of
11 the respective parties:
12
13
14
15
16
17
18
19
20
21
22

Page 3

1 APPEARANCES
2 On behalf of Plaintiff State of Alabama:
3 JAMES W. DAVIS, ESQUIRE
4 BRENTON M. SMITH, ESQUIRE
5 Office of the Attorney General
6 501 Washington Avenue
7 P.O. Box 300152
8 Montgomery, Alabama 36130-0152
9 (334) 242-7300
10 jim.davis@alabamaag.gov
11 brenton.smith@alabamaag.gov
12
13
14 On behalf of Morris J. Brooks, Jr.:
15 Congressman Morris Brooks
16 2101 W. Clinton Avenue, Suite 302
17 Huntsville, Alabama 35805
18 (256) 355-9400
19 marshall.yates@mail.house.gov
20
21
22

Page 4

1 APPEARANCES (Cont'd.)
2 On behalf of the Intervenor Defendant Diana
3 Martinez:
4 ANDREA E. SENTENO, ESQUIRE
5 MALDEF
6 1016 16th Street, N.W., Suite 100
7 Washington, D.C. 20036
8 (202) 293-2828
9 **b(6)**
10
11
12 On behalf of Defendants U.S. Department of Commerce,
13 Wilbur L. Ross, Bureau of the Census, and Ron S.
14 Jarmin:
15 ALEXANDER V. SVERDLOV, ESQUIRE
16 BRAD P. ROSENBERG, ESQUIRE
17 U.S. Department of Justice
18 **b(6)**
19
20
21
22

Page 5

1 APPEARANCES (Cont'd.)
2 and
3 SAPNA SHARMA, ESQUIRE
4 MICHAEL A. CANNON, ESQUIRE
5 U.S. Department of Commerce
6 Office of the General Counsel
7 1401 Constitution Avenue, N.W.
8 Washington, D.C. 20230
9 ssharma@doc.gov
10 mcannon@doc.gov
11
12
13 On behalf of Intervenor Defendant State of New York:
14 AMANDA MEYER, ESQUIRE
15 State of New York
16 Office of the Attorney General
17 28 Liberty Street
18 New York, New York 10005
19 (212) 416-6225
20 amanda.meyer@ag.ny.gov
21
22

<p style="text-align: right;">Page 6</p> <p>1 A P P E A R A N C E S (Cont'd.)</p> <p>2 On behalf of the Intervenor Defendant San Jose,</p> <p>3 California; King County, Washington; City of</p> <p>4 Atlanta, Georgia:</p> <p>5 DORIAN LAWRENCE SPENCE, ESQUIRE</p> <p>6 Lawyers Committee for Civil Rights Under Law</p> <p>7 1401 New York Avenue, N.W., Suite 400</p> <p>8 Washington, D.C. 20019</p> <p>9 (202) 663-8324</p> <p>10 dspence@lawyerscommittee.org</p> <p>11</p> <p>12</p> <p>13 On behalf of Intervenor Defendant County of Santa</p> <p>14 Clara, California:</p> <p>15 (Present by phone.)</p> <p>16 JONATHAN WEISSGLASS, ESQUIRE, ESQUIRE</p> <p>17 Law Office of Jonathan Weissglass</p> <p>18 410 12th Street, Suite 250-B</p> <p>19 Oakland, California 94607</p> <p>20 (510) 836-4200</p> <p>21 jonathan@weissglass.com</p> <p>22</p>	<p style="text-align: right;">Page 8</p> <p>1 C O N T E N T S</p> <p>2 THE WITNESS: KAREN R. BATTLE</p> <p>3 EXAMINATION PAGE NO.</p> <p>4 By Mr. Davis 11</p> <p>5</p> <p>6</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 BATTLE EXHIBIT NUMBER PAGE NO.</p> <p>10 Exhibit 1 Notice of Deposition 14</p> <p>11 Exhibit 2 Chart titled Administrative 24</p> <p>12 Records Expected To Be Used in</p> <p>13 the 2020 Census To Impute or</p> <p>14 Assign Characteristics</p> <p>15 Exhibit 3 2020 Census Program Internal 32</p> <p>16 Memorandum Series: 2018.08.i,</p> <p>17 dated 3/26/18</p> <p>18 Exhibit 4 Document titled Congressional 44</p> <p>19 Apportionment - Frequently Asked</p> <p>20 Questions</p> <p>21 Exhibit 5 Memorandum from John M. Abowd 61</p> <p>22 dated 1/19/18</p>
<p style="text-align: right;">Page 7</p> <p>1 A P P E A R A N C E S (Cont'd.)</p> <p>2</p> <p>3</p> <p>4 Also Present:</p> <p>5 Marc Perry, Esquire</p> <p>6 Miles Ryan, Esquire</p> <p>7 Stephanie Olson, Esquire</p> <p>8</p> <p>9</p> <p>10 Also Present by phone:</p> <p>11 Edmund Gerard LaCour</p> <p>12 Winfield Sinclair</p> <p>13 Bryan Kusmin</p> <p>14 Ming Ming Yang</p> <p>15 Don Lewis</p> <p>16 Julia Gomez</p> <p>17 Sean Brebbia</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 9</p> <p>1 E X H I B I T S</p> <p>2 BATTLE EXHIBIT NUMBER PAGE NO.</p> <p>3 Exhibit 6 Background Sheet 2 66</p> <p>4 Exhibit 7 Memorandum dated 5/22/12 from 93</p> <p>5 Patrick J. Cantwell</p> <p>6 Exhibit 8 Document titled Alternative 105</p> <p>7 Sources of Citizenship Data for</p> <p>8 the 2020 Census dated 12/22/17</p> <p>9 Exhibit 9 Presidential Documents - 110</p> <p>10 Executive Order 13880</p> <p>11 Exhibit 10 Memorandum of Understanding - 115</p> <p>12 Agreement No. 2064-FY20-NFE-0324</p> <p>13 Exhibit 11 Memorandum of Agreement - 116</p> <p>14 Agreement No. 2064-FY20-NFE-0335</p> <p>15 Exhibit 12 Existing Administrative Records 117</p> <p>16 Data Available at Census for</p> <p>17 Early Evaluation of Use for</p> <p>18 Citizenship Project</p> <p>19 Exhibit 13 Statement of the Director of the 122</p> <p>20 Bureau of the Census dated</p> <p>21 9/18/85</p> <p>22</p>

	Page 10
1	E X H I B I T S
2	BATTLE EXHIBIT NUMBER PAGE NO.
3	Exhibit 14 Memorandum to Wilbur Ross dated 138
4	3/1/18
5	Exhibit 15 Excerpts from Deposition of Dr. 147
6	John Abowd dated 8/29/18
7	Exhibit 16 Privacy Impact Assessment for DHS 166
8	Immigration-Related Information
9	Sharing with U.S. Census Bureau
10	
11	
12	
13	
14	
15	
16	
17	(Exhibits attached to transcript.)
18	
19	
20	
21	
22	

	Page 11
1	P R O C E E D I N G S
2	Whereupon,
3	KAREN R. BATTLE,
4	called as a witness, and having been first duly
5	sworn, was examined and testified as follows:
6	EXAMINATION BY COUNSEL FOR PLAINTIFF
7	BY MR. DAVIS:
8	Q Good morning.
9	A Good morning.
10	Q Would you state your name, please?
11	A My name is Karen Battle.
12	Q Ms. Battle, my name is Jim Davis. First
13	off, is it Ms., Mrs., Doctor?
14	A Mrs.
15	Q I represent the State of Alabama in a
16	lawsuit against the Department of Commerce. You are
17	familiar with that litigation; correct?
18	A Yes.
19	Q And you have been identified as a
20	representative of the Department of Commerce for
21	purposes of that deposition; correct?
22	A Yes.

	Page 12
1	Q Have you ever given a deposition before?
2	A Yes.
3	Q How many times? More than five?
4	A Once.
5	Q Once. Okay. How long ago was that?
6	A Three months ago.
7	Q What kind of case was that?
8	A A human resources case.
9	Q I have some questions about the lawsuit
10	today. If at any point you don't understand my
11	question, let me know. If you need a break, let me
12	know. Where do you work?
13	A I work in the Population Division at the
14	U.S. Census Bureau.
15	Q What is your title?
16	A Division Chief, Chief of the Population
17	Division.
18	Q How long have you held that position?
19	A I have been the Division Chief for five
20	years.
21	Q Did you have any positions in the Division
22	before you were Chief?

	Page 13
1	A Yes.
2	Q What were those, and approximately for
3	what term?
4	A Prior to becoming the Division Chief I
5	served as the Assistant Division Chief for Special
6	Population Statistics, and I served in that position
7	from 2007 to 2014.
8	Prior to that I served as the Branch Chief
9	over the Sex and Age Statistics Branch, and I served
10	in that position from 2004 to 2007.
11	Prior to that I served as the Special
12	Assistant to the Division Chief from approximately
13	2004 -- 2000 to 2004. And prior to that I served as
14	a Data Analyst in the Racial Statistics Branch and
15	the Ethnicity and Ancestry Branch. And prior to
16	that I was a summer intern in 1998.
17	Q So have you been employed by the Census
18	Bureau since 1998?
19	A Yes.
20	Q Tell me about your education background,
21	please.
22	A I have a Master's Degree in Sociology from

4 (Pages 10 - 13)

Page 14

1 the Western Michigan University.

2 Q Did you work -- did you have any

3 employment before you were employed by the Bureau of

4 Census?

5 A I held research positions at universities.

6 Q Which universities?

7 A The Western Michigan University, and after

8 leaving Western Michigan University, I spent several

9 years working at the University of Wisconsin in

10 Madison in a research position.

11 Q I have a notebook here, Mrs. Battle, with

12 some documents that we are going to be discussing

13 during the deposition. They are behind tabs so that

14 everyone can find it easily, but the ones we will be

15 marking as an exhibit probably won't correspondence

16 to the tab numbers.

17 Would you look at Tab 18 in the notebook,

18 please?

19 MR. DAVIS: And we will mark that as

20 Exhibit 1, if you please.

21 (Battle Exhibit Number 1

22 was marked for identification.)

Page 15

1 BY MR. DAVIS:

2 Q Have you reviewed this Notice of

3 Deposition that has been marked as Exhibit 1, Mrs.

4 Battle?

5 MR. SVERDLOV: Objection. Vague.

6 BY MR. DAVIS:

7 Q Have you seen it before this morning?

8 A Yes.

9 Q Are you familiar with the topics that are

10 listed?

11 A Yes.

12 Q And there have been discussions following

13 issuing of the deposition between counsel, some of

14 these topics have been narrowed. But are you

15 prepared today to speak on behalf of the Department

16 of Commerce for the topics listed on this deposition

17 notice as narrowed through further discussions by

18 counsel?

19 MR. SVERDLOV: Objection. Misleading.

20 The deposition notice is for a representative of the

21 Census Bureau to testify, not the Department of

22 Commerce.

Page 16

1 MR. DAVIS: You are correct. I misspoke.

2 BY MR. DAVIS:

3 Q Same question, except substitute "census

4 bureau" for "commerce"?

5 A Could you repeat that?

6 Q Yes, ma'am. Are you prepared today to

7 speak on behalf of the Census Bureau for the topics

8 listed on this deposition notice as those topics

9 have been narrowed through discussions between

10 counsel?

11 MR. SVERDLOV: Objection. Compound.

12 A Yes.

13 Q Mrs. Battle, just some preliminaries.

14 There is a census every ten years; correct?

15 A Yes.

16 Q And after each census the Bureau of Census

17 releases population statistics?

18 MR. SVERDLOV: Objection. Vague.

19 A Yes.

20 Q Okay. And part of the data the Census

21 Bureau releases is population totals for the United

22 States and for each state; is that correct?

Page 17

1 MR. SVERDLOV: Objection. Vague.

2 A Yes.

3 Q Are there known under-counts in the

4 census?

5 MR. SVERDLOV: Objection. Vague.

6 A Yes.

7 Q Are any particular populations more likely

8 to be subject to under-counts than other populations

9 in the country?

10 A The Census Bureau does assess the coverage

11 on the population after the decennial census, and

12 there are two methods that the Census Bureau uses to

13 do that, and those methods have identified certain

14 subpopulations that are under-counted.

15 Q What subpopulations tend to be

16 under-counted?

17 MR. SVERDLOV: Objection. Vague.

18 A We know from our analyses that young

19 children, children under the age of five, tend to be

20 under-counted in the decennial census. In addition,

21 there are other racial and ethnic populations that

22 may be under-counted in the decennial census; for

Page 18

1 example, young black males or the Hispanic
 2 population or the American Indian or Alaskan Native
 3 population.
 4 Q Are there over-counts in the census?
 5 A Yes.
 6 Q How does that work? Who is over-counted?
 7 MR. SVERDLOV: Objection. Vague and
 8 compound.
 9 A Well, our analyses have showed that there
 10 may be populations, such as the white population,
 11 that may be over-counted.
 12 (Joining the phone conference is
 13 Congressman Mo Brooks.)
 14 A So there are some populations that might
 15 be over-counted. For example, it could be the white
 16 population or some different components along those
 17 lines.
 18 Q The Census Bureau again knows that when it
 19 releases a count say of the total population for the
 20 State of Alabama, would that total population count,
 21 could that be characterized as an estimate?
 22 MR. SVERDLOV: Objection. Vague, compound

Page 19

1 and misleading.
 2 A The decennial census publishes enumerated
 3 population counts, not estimates.
 4 Q Okay. Say after the 2010 census the
 5 population for the State of Alabama was reported to
 6 be 4,779,736. Is that as of a particular date?
 7 MR. SVERDLOV: Objection. Vague and
 8 assumes facts not in evidence.
 9 A Yes. The decennial census reference date
 10 is April 1st of the census year.
 11 Q But your assessments following the census
 12 have shown that some populations are under-counted;
 13 correct?
 14 A Yes.
 15 Q And there may be over-counts as well; is
 16 that correct?
 17 A Yes.
 18 Q So the total population of the State of
 19 Alabama, assuming its 4,779,000 and change, that may
 20 not mean that there were exactly that number of
 21 residents in Alabama as of April 1, 2010?
 22 MR. SVERDLOV: Objection.

Page 20

1 BY MR. DAVIS:
 2 Q Would you agree with that?
 3 MR. SVERDLOV: Objection. Compound and
 4 argumentative.
 5 A The state population counts that come out
 6 from the decennial census represent the population
 7 that was enumerated as of that census reference
 8 date.
 9 Q Okay. Let's talk, Mrs. Battle, about how
 10 the Bureau gets to that number. The decennial
 11 census starts with questionnaires; correct?
 12 A Yes.
 13 Q Okay. And how do you know who to send the
 14 questionnaires too?
 15 A The Census Bureau maintains what's called
 16 a master address file which contains the addresses
 17 for all of the housing units and group quarters
 18 facilities in the United States.
 19 Q And you send a questionnaire to all of
 20 those addresses?
 21 A There are different types of enumeration
 22 approaches for different areas within the United

Page 21

1 States, but about 95 percent of the housing units do
 2 receive a mailing to either instruct them to go
 3 online to respond to the decennial census or they
 4 can fill out a paper response. There are other
 5 sections of the country where the Census Bureau may
 6 go out and just enumerate those areas that may be
 7 more rural or hard to enumerate, for example.
 8 Q Okay. And when you say that they go out
 9 and enumerate those areas, what do you mean?
 10 A I mean that an enumerator will have their
 11 device to be able to collect the information on the
 12 decennial census form and will go out to the housing
 13 unit or location and attempt to collect the data at
 14 that point.
 15 Q For people to whom the Bureau sends a
 16 questionnaire, I assume you don't get a hundred
 17 percent response rate from those questionnaires; is
 18 that correct?
 19 MR. SVERDLOV: Objection. Compound.
 20 A That is correct.
 21 Q What happens then? What does the Census
 22 Bureau do if you do not receive a response from a

<p style="text-align: right;">Page 22</p> <p>1 particular household?</p> <p>2 A The Census Bureau has a contact strategy</p> <p>3 where there are a series of attempts to contact a</p> <p>4 household through mailings. If those contacts do</p> <p>5 not result in a returned questionnaire, then the</p> <p>6 Census Bureau will have that particular housing unit</p> <p>7 that has not responded go into what's called the</p> <p>8 non-response follow-up universe, and then the Census</p> <p>9 Bureau will actually have enumerators go out and</p> <p>10 start knocking on the doors to try to collect the</p> <p>11 data.</p> <p>12 Q And if you reach the point where you are</p> <p>13 sending enumerators to go to the household to try to</p> <p>14 collect the data, let's say they go once and no one</p> <p>15 is there, they get no response; are there follow-up</p> <p>16 visits?</p> <p>17 A Well, for the 2020 census the Census</p> <p>18 Bureau is employing a new strategy for the</p> <p>19 non-response follow-up operation. And what we are</p> <p>20 doing is using statistical models to determine if</p> <p>21 the housing units within the non-response follow-up</p> <p>22 universe are indeed occupied. And if we have</p>	<p style="text-align: right;">Page 24</p> <p>1 (Battle Exhibit Number 2</p> <p>2 was marked for identification.)</p> <p>3 BY MR. DAVIS:</p> <p>4 Q All right. Mrs. Battle, as I understand</p> <p>5 your testimony, you said if there is a household you</p> <p>6 send a questionnaire and you get no response, if you</p> <p>7 have administrative records related to that</p> <p>8 household that suggests that household is occupied,</p> <p>9 you would send a enumerator only a single time; is</p> <p>10 that correct?</p> <p>11 A The Census Bureau will be using</p> <p>12 statistical models that incorporate data from</p> <p>13 administrative records to identify households in the</p> <p>14 non-response follow-up universe that are occupied,</p> <p>15 and if we have administrative records that have</p> <p>16 information on the characteristics of those</p> <p>17 individuals, then we can use that to enumerate the</p> <p>18 household after one attempt.</p> <p>19 Q Okay. I want to come back to the</p> <p>20 statistical models, but first deal with the question</p> <p>21 I asked previously. If you get to the point where</p> <p>22 you use administrative records to enumerate that</p>
<p style="text-align: right;">Page 23</p> <p>1 information that indicates that that housing unit is</p> <p>2 indeed occupied, and we also have administrative</p> <p>3 records available that are associated or linked to</p> <p>4 that particular housing unit, then we would only</p> <p>5 make one attempt to have an individual out there</p> <p>6 knocking on the door to try to collect that</p> <p>7 information. And if they are not successful, then</p> <p>8 we would utilize the administrative records to</p> <p>9 enumerate that household.</p> <p>10 Q Okay. What administrative records would</p> <p>11 you use to enumerate that household?</p> <p>12 A We actually have a reference sheets.</p> <p>13 Q Sure. Your counsel gave us some documents</p> <p>14 before the deposition. Would one of those documents</p> <p>15 help you respond to this question?</p> <p>16 A Yes.</p> <p>17 Q I'm going to just give you the stack and</p> <p>18 you tell me which one would be helpful to you.</p> <p>19 A This one.</p> <p>20 Q Okay.</p> <p>21 MR. DAVIS: Then let's mark this as our</p> <p>22 next exhibit, please.</p>	<p style="text-align: right;">Page 25</p> <p>1 household, what administrative records does the</p> <p>2 Census Bureau use? And at this point you are</p> <p>3 referring to Exhibit 2.</p> <p>4 A Yes. So what you'll see in this chart, in</p> <p>5 the left column are data sources that are used. We</p> <p>6 have administrative records from the Internal</p> <p>7 Revenue Service, the 1040, 1099 returns; we have</p> <p>8 data on the Medicare enrollment, we have data from</p> <p>9 the Census Numident, which is actually the numerical</p> <p>10 identification file that we receive from the Social</p> <p>11 Security Administration that contains data on every</p> <p>12 Social Security Number that's ever been issued.</p> <p>13 We also have information from the Census</p> <p>14 Household Composition Key, we have information from</p> <p>15 HUD which reflects data on public and Indian</p> <p>16 housing, as well as tenant rental assistance</p> <p>17 information.</p> <p>18 We have data from the Indian Health</p> <p>19 Service Patient Registration. We have data from the</p> <p>20 United States Postal Service. They have information</p> <p>21 on addresses that where they attempt to deliver but</p> <p>22 they are undeliverable as addressed. That's the</p>

7 (Pages 22 - 25)

Page 26

1 UAA.
2 So for the NRFU or the non-response
3 follow-up portion of things we focus on that
4 information. We also have data down below where it
5 says Best Rates and Ethnicity, we have data on
6 Medicaid enrollment, as well as data from the TANF
7 program, the Temporary Assistance for Needy
8 Families.
9 And we also use CoreLogic Black Knight,
10 which provides information on property taxes and
11 deeds of, along those lines.
12 So we are able to utilize some of this
13 information to help us determine if this household
14 is occupied and how many people are living there,
15 and we can also use some data from these
16 administrative records to determine age, sex, race,
17 ethnicity and tenure, whether they own or rent that
18 property, and that's what we utilize to help do the
19 enumeration.
20 Q What is the last item listed, Group
21 Quarters Records?
22 A Well, the Group Quarters Records, it's not

Page 27

1 part of the non-response follow-up universe, but we
2 have an operation to enumerate individuals who are
3 residing in group quarters, like prisons and college
4 dormitories and nursing homes.
5 And in those instances much of the data
6 that we collect for those residing in group quarters
7 come from the office's administrative records, as
8 opposed to the census going out to interview each
9 resident in a prison cell or someone who might be in
10 a nursing home bed that's not cognitively
11 functioning.
12 Q Okay.
13 A So we use administrative records in that
14 sense.
15 Q All right. So if this -- say you are
16 trying to enumerate a nursing home. Would you get
17 records from the group or organization that operates
18 that nursing home, a list of residents, for example?
19 MR. SVERDLOV: Objection. Compound.
20 A The Census Bureau works with a, an
21 administrator for that particular nursing home.
22 Q Okay.

Page 28

1 A And that administrator will pull upon
2 their records from their office to provide us with a
3 listing of the residents and their demographic
4 characteristics; age, date of birth, sex and race
5 and ethnicity if possible.
6 Q Okay. And still looking at Exhibit 2,
7 could you tell me what these columns indicate?
8 A Yes. So the first two columns describe
9 the non-response follow-up administrative records
10 enumeration. So this is the instance where we have
11 used statistical models to determine that a housing
12 unit is occupied, and if we are not able to get a
13 response via the enumerator, then we are able to
14 utilize data from these administrative records to
15 determine how many people are in that household and
16 then to fill in their characteristics. So that's
17 really what the NRFU AR Enumeration columns reflect.
18 Next to that we have Count Imputation, and
19 this may take into, occur when we do not have
20 information that would allow us to do a NRFU actual
21 enumeration. So we don't have administrative
22 records that could provide necessarily at first

Page 29

1 glance characteristics, so we have a special
2 operation for count imputation where we utilize
3 administrative records to help us determine the
4 count of people in that household, similar to the
5 NRFU.
6 And then later in the processing we will
7 work to assign the characteristics. So it's a
8 similar process, but the count imputation takes
9 place when at first we don't know that we have the
10 information, the characteristics for that household,
11 but we do have information on the count.
12 Q Okay. So in that case there may be a
13 household where you have administrative records
14 suggesting that four people reside in that
15 household, but you don't have administrative records
16 that tell you their age, gender, those sorts of
17 things? Am I understanding you correctly?
18 A We would have to do further processing to
19 try to determine that.
20 Q Okay. And what further processing would
21 you do?
22 A That is when we have an operation called

Page 30

1 the edit and -- edit and imputation characteristics
2 operation, and at that point we will make another
3 attempt to see if we have administrative records
4 that can be used to fill in the missing
5 characteristics.
6 And if we are not able to, then we utilize
7 what's called a hot deck methodology where you are
8 basically looking for the nearest neighbor and they
9 will be donating their characteristics to the
10 household.
11 Q Let's go back, Mrs. Battle, to the
12 statistical modeling. What do you mean by
13 statistical modeling?
14 MR. SVERDLOV: Objection. Vague.
15 A So when I say statistical models, what I'm
16 basically saying is that there is a mathematical
17 approach where you are developing an equation that
18 is trying to assess the relationship amongst a group
19 of variables to help you predict an outcome.
20 So in this case the Census Bureau would be
21 utilizing administrative records for the NRFU, a
22 non-response follow-up, to assess different data

Page 31

1 sources to help us predict whether that household is
2 occupied. So using data from the Postal Service,
3 using data from the IRS, using data from the Social
4 Security Administration to help us predict whether
5 that household is occupied.
6 Q And we are talking about a household
7 where, that did not respond to the questionnaire;
8 correct?
9 A Yes.
10 MR. SVERDLOV: Objection. Vague.
11 BY MR. DAVIS:
12 Q So you got no response, you use the
13 statistical model to determine the likelihood that
14 that household is occupied. So when you say that,
15 are you looking at records from the Postal Service
16 as an example that suggests that mail isn't being
17 returned as undeliverable that's addressed to that
18 household?
19 A Yes. That's exactly right. That's one of
20 the components into the model. When we have data
21 from the Postal Service, do they have this address
22 marked as undeliverable as addressed. So that's a

Page 32

1 piece of information that goes into helping us
2 determine whether or not we think that household is
3 occupied, for example.
4 Q And you mentioned IRS records if I
5 understood you correctly. What type of information
6 might you receive from the Internal Revenue Service
7 to be a clue as to whether or not that household is
8 occupied?
9 MR. SVERDLOV: Objection. Compound.
10 A Well, definitely the address and just
11 understanding that there has been someone who filed
12 taxes recently from that address again provides more
13 information to help us determine whether or not that
14 household is occupied.
15 Q Okay. Tell me -- look, if you would, Mrs.
16 Battle, at the document that's behind Tab 7 of the
17 notebook.
18 MR. DAVIS: Let's mark that as Exhibit 3,
19 please.
20 (Battle Exhibit Number 3
21 was marked for identification.)
22

Page 33

1 BY MR. DAVIS:
2 Q Are you familiar with the document that's
3 been marked as Exhibit 3, Mrs. Battle?
4 A I believe I have seen this document.
5 Q Does it describe the process that we were
6 just discussing of the steps that the Census Bureau
7 goes through?
8 MR. SVERDLOV: Objection. Vague.
9 A It does talk about the steps that we
10 follow for the 2018 End-to-End Test in terms of
11 non-response follow-up, it talks about different
12 administrative records that could be utilized, it
13 talks about the imputation of the count of the
14 household as well as the characteristics of the
15 household. So, yes, it is similar to what we were
16 just discussing.
17 Q Okay. What did you mean, Mrs. Battle,
18 when you discussed the editing process?
19 A So after the census data has been
20 collected, we know that not everyone answers every
21 question, and so we have a process that we create
22 where we specify how we are to fill in missing data.

Page 34

1 And so that's our edit and imputation process.
 2 And so we begin by taking a look at an
 3 individual record for a particular housing unit and
 4 we assess are there missing responses? And, for
 5 example, if there is a missing race response, the
 6 first thing we would do is then look to the other
 7 questions for that particular individual and see if
 8 responses to those other questions might help us
 9 fill in the race information.
 10 So, for example, if race is blank, but
 11 they reported they are Hispanic origin and wrote in
 12 something like white or along with their Hispanic
 13 ethnicity, we can use that to help us fill in their
 14 race and make their race white, for example.
 15 Q Okay.
 16 A So we look to see if there is other
 17 information provided in that form to help us fill in
 18 missing information.
 19 If there is no other information provided
 20 in that form to help us, then our next effort to try
 21 to fill in missing data is to see are we able to
 22 link up that household with our administrative

Page 35

1 records, which would include the 2010 census
 2 responses. Did this household respond to the 2010
 3 Census? If so, was information provided for this
 4 person and can bring forward and assign for 2020?
 5 We also are going to be checking
 6 administrative records such as the Numident file,
 7 the Social Security Administration file. That file
 8 might be able to provide data on age or date of
 9 birth or sex for that individual.
 10 So but if we are not able to match up with
 11 administrative records, then the next attempt to try
 12 to fill in missing information involves taking a
 13 look at others in that same household.
 14 So if there is a child of the householder
 15 who is missing data, let's say race, and we know
 16 that their parent is in that household and they do
 17 have a race, then we can use that and assign that to
 18 their biological child. So we are looking within
 19 the household to see if there is anywhere else we
 20 can grab information to fill in.
 21 And if that fails, then one of our last
 22 resorts is to use this hot deck methodology where we

Page 36

1 then look for the nearest neighbor and try to match
 2 up the household on certain characteristics and then
 3 the nearest neighbor can donate that missing
 4 information. So there is a series of business tools
 5 and steps we go through.
 6 Q I see. Let's say you get to the point
 7 where you use the hot deck methodology. What does
 8 "hot deck" mean?
 9 A Really it's a statistical procedure where
 10 as we are collecting data through the decennial
 11 census and people are reporting fully their
 12 information, we store that fully-reported
 13 information up in this, it's called a hot deck. And
 14 then as we come across households that are missing
 15 information and we aren't able to be fill it in
 16 anywhere else, we take from that deck and assign
 17 data from the nearest neighbor. So that's the idea
 18 behind this.
 19 Q Why is it called hot deck?
 20 A Well, just that you are using live data on
 21 the spot and you are trying to use as fresh of
 22 information as possible to fill in the missing

Page 37

1 information.
 2 Q Okay. And give me an example of what type
 3 of characteristic might be imputed using the hot
 4 deck methodology.
 5 A Race, ethnicity, and age and sex.
 6 Q Would you use hot deck imputation to
 7 assign a count to a household?
 8 A Earlier on when we were talking about
 9 count imputation, if there is a household where we
 10 really don't have any information available to us
 11 from administrative records to help us determine how
 12 many people are in that household to start, because
 13 we have zero information and we are not able to
 14 utilize any administrative records, so the last
 15 resort, similar to the characteristics, is to use a
 16 hot deck methodology where again you are pulling
 17 information from the nearest neighbors to assign a
 18 count, a population count.
 19 Q Okay. Why does the Census Bureau believe
 20 that that would make the census more accurate; if
 21 you have no information about a household, to impute
 22 characteristics from a neighboring household?

Page 38

1 MR. SVERDLOV: Objection. Vague and
2 compound and assumes facts not in evidence.
3 A This has been a standard methodology that
4 the Census Bureau has relied on for a number of
5 decades and has relied on this methodology. This is
6 the chosen methodology.
7 But, again, as we are experimenting with
8 administrative records, and again that's a huge
9 focus for the 2020 census, we are working to use
10 administrative records as our, kind of one of our
11 first attempts. But if we are not able to do that,
12 then we do need to rely on other statistical methods
13 to fill in characteristics, et cetera.
14 Q I assume that the Census Bureau uses this
15 methodology because it believes that to result in a
16 more accurate census?
17 MR. SVERDLOV: Same objection.
18 BY MR. DAVIS:
19 Q Do you agree?
20 A Yes. We need to provide information and
21 we need to make sure that we have complete
22 information for every housing unit counted in the

Page 39

1 decennial census.
2 Q Okay. And if you get to a household where
3 even using administrative records and questionnaires
4 and enumerators the Bureau just has no information
5 about that household, you will use hot deck
6 imputation and a neighbor will donate
7 characteristics to the household; correct?
8 A There is one other step I need to talk
9 about.
10 Q Please.
11 A For the non-response follow-up operation
12 for those housing units where I mentioned earlier
13 where we determine that those housing units are
14 occupied and that we have administrative records
15 that we can use to assign their characteristics,
16 that's one type of housing unit outcome.
17 However, there are going to be other
18 housing units where again we don't have that
19 information, and so the Census Bureau will continue
20 to visit that housing unit up to six times trying to
21 get the information.
22 For the 2020 census, after the third visit

Page 40

1 if we still are not able to get information, then
2 the Census Bureau will tell the enumerator to
3 attempt to get a proxy interview, which means the
4 enumerator will then try to reach out to a neighbor
5 to see if they have information about how many
6 people are living there and if they have any
7 information on the characteristics. If the proxy
8 interviews are not possible, then we move to the
9 imputation aspect of it.
10 Q Okay. And how does the Census Bureau
11 determine what type of household to donate
12 characteristics to this other hypothetical household
13 about which you have no information?
14 MR. SVERDLOV: Objection. Vague.
15 A I would need to examine the detailed
16 methodology to answer that, but the general approach
17 is that the Census Bureau will rely on the nearest
18 neighbor, information that we have been collecting
19 from the nearest neighbor to try to fill in
20 information for that housing unit.
21 Q I'm thinking of my neighborhood, and you
22 have in our household, my wife and I are empty

Page 41

1 nesters, I have an across the street neighbor who is
2 a single retired man, a next door neighbor who is a
3 very young single man, another next door neighbor
4 who is an African-American woman who is living
5 withing extended family, including both grandparents
6 and young children. It's a very diverse
7 neighborhood.
8 So if you went through all these steps,
9 the Census Bureau went through all these steps and
10 could not get any information about my household,
11 who would donate characteristics to my household?
12 MR. SVERDLOV: Objection. Calls for
13 speculation. Vague.
14 BY MR. DAVIS:
15 Q It may be -- I'm just trying to
16 understand, Mrs. Battle. It may be that it would be
17 easier for you to simply describe the steps that the
18 Bureau would go through under those circumstances.
19 A Well, again I would need to examine the
20 detailed methodology to explain exactly how that
21 would transpire.
22 Q Okay. Where would you go to examine the

Page 42

1 detailed methodology? Is there a particular manual
2 or document in the Census Bureau that you would use
3 to educate yourself on that point?
4 A I would need to first consult with the
5 area that's responsible for developing that
6 operation.
7 Q What would that area be?
8 A That would be the Decennial Statistical
9 Studies Division.
10 Q Is there a particular person in that
11 division that you would speak to to better
12 understand the process?
13 A I would start with the Division Chief,
14 Patrick Cantwell.
15 Q And do you know, Mrs. Battle, why the
16 Census Bureau uses hot deck imputation to assign
17 characteristics to a household instead of just
18 writing down a zero for that household?
19 MR. SVERDLOV: Objection. Vague.
20 A Well, the Census Bureau does determine
21 through the use of staff whether they believe a
22 household to be non-existent, the address is, you

Page 43

1 know, it's not a habitable address, and those, of
2 course, are deleted.
3 But if we can tell that this is a
4 habitable address, the Census Bureau will then want
5 to take further steps to make sure that they are,
6 that household is included in the decennial census.
7 Q Does using imputation then help to ensure
8 that as many inhabitants as possible are counted?
9 MR. SVERDLOV: Objection. Vague.
10 A Imputation helps us to ensure that if
11 there is a housing unit where we believe there are
12 people living there but we do not have information
13 for them, that we are including those units in the
14 decennial census.
15 Q And the goal of the Census Bureau is to
16 have as accurate a census as possible. Would you
17 agree?
18 MR. SVERDLOV: Objection. Form.
19 A The Census Bureau strives to have a
20 complete and accurate count.
21 Q Of course. And in this case the Census
22 Bureau has determined that imputation results in a

Page 44

1 more accurate census than not using imputation.
2 Would you agree with that?
3 MR. SVERDLOV: Objection. Argumentative.
4 A The Census Bureau is continually working
5 to develop statistical approaches and other types of
6 approaches to improve upon our methodology.
7 Q Of course.
8 A And while we are making improvements
9 through the use of administrative records, we still
10 need to rely on traditional methods when we need to
11 assign characteristics, if there is nothing else
12 that we can utilize to help.
13 Q Would you look, please, Mrs. Battle, at
14 the document that is behind Tab 11 of the notebook?
15 MR. DAVIS: And let's mark this as Exhibit
16 4, please.
17 (Battle Exhibit Number 4
18 was marked for identification.)
19 BY MR. DAVIS:
20 Q This is a list of frequently asked
21 questions, Mrs. Battle, from the Bureau's website.
22 And I'll represent to you that it may not be in this

Page 45

1 exact form on the website today, but it serves our
2 purposes to help me understand the process a little
3 better.
4 Have you reviewed this document before
5 today?
6 A Yes.
7 Q A lot of these deal with apportionment,
8 and I want to understand the process of
9 apportionment and the role that the Census Bureau
10 plays in apportionment.
11 First, would you agree with the first
12 question and response there on the first page; that
13 apportionment is the process of dividing the 435
14 memberships or seats in the U.S. House of
15 Representatives among the 50 states?
16 A Yes.
17 Q And who is included in the apportionment
18 counts?
19 A So the apportionment population counts
20 contain two components. First, we include what's
21 called the resident population. This reflects the
22 population that was residing in a particular state

Page 46

1 as of census day. That's their usual residence.

2 The second component of the apportionment

3 population count includes the federally affiliated

4 overseas. These are military and civilian employees

5 of the federal government whose home state of record

6 is that particular state.

7 So for a state you have the resident

8 population and then the federally affiliated

9 population, and together that equals the

10 apportionment population counts.

11 Q Okay. After the 2020 census the Census

12 Bureau will release a total population count for the

13 United States of America; correct?

14 A Yes.

15 Q The count for apportionment purposes will

16 differ from that, will it not?

17 MR. SVERDLOV: Objection. Vague.

18 A The results of the decennial census, the

19 first results from a decennial census include the

20 apportionment population counts, which includes the

21 resident pop, people enumerated as usually residing

22 in these states, plus the federally affiliated. So

Page 47

1 that is the only data product that comes out of a

2 decennial census where you have the federally

3 affiliated population included.

4 Q Okay.

5 A All remaining data products from the

6 redistricting data file, the PL-94171, all the

7 remaining data products only include the resident

8 population, not the federally affiliated.

9 Q And the PL-94 --

10 A 171.

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

12 A That is a data product that the Census

13 Bureau publishes that is for the use of states in

14 their redistricting process.

15 Q And that data product does not include

16 people, this population living overseas that you

17 described; correct?

18 A That is correct.

19 Q Okay. In the apportionment count, and

20 that's -- let me start over. Does the apportionment

21 count, for example, include residents of the

22 District of Columbia or Puerto Rico?

Page 48

1 MR. SVERDLOV: Objection. Compound.

2 A The apportionment population counts do not

3 include data for the District of Columbia or Puerto

4 Rico.

5 Q It's only for the 50 states plus this

6 overseas population?

7 A Correct.

8 Q Okay. And how -- this person who is

9 living overseas, as part of the overseas population,

10 how does the Census Bureau determine which state to

11 count them in?

12 MR. SVERDLOV: Objection.

13 BY MR. DAVIS:

14 Q In the apportionment count?

15 A So the Census Bureau has an operation

16 that's called the Federally Affiliated Americans

17 Operation. And that operation entails the Census

18 Bureau working with different federal agencies, and

19 we first start by working with the U.S. Office of

20 Personnel Management to get a list of those agencies

21 that have employees stationed overseas.

22 And once we have that list, the Census

Page 49

1 Bureau reaches out to those agencies and establishes

2 a contact and informs them of the special federally

3 affiliated overseas operation. The Census Bureau

4 works with these agencies and explains what is

5 needed, and these particular agencies will then go

6 and through their records provide counts for

7 everyone in their agency whose stationed overseas or

8 deployed overseas and they will give us a count by

9 state.

10 And we ask that they provide the

11 information for employees' home state of record. So

12 the agencies find that information and they deliver

13 the state counts to us for the employees.

14 Q Okay. And one of those agencies may be,

15 for example, the State Department?

16 A Yes.

17 Q So somebody whose home state of record is

18 Alabama, is employed by the State Department and is

19 stationed overseas, the State Department would

20 report to the Census Bureau that that person has

21 listed Alabama as the home state of record?

22 MR. SVERDLOV: Objection.

Page 50

1 BY MR. DAVIS:

2 Q Did I understand you correctly?

3 A Yes. The State Department will then

4 provide to us the home state of record, they will

5 take a look at for all of their employees the home

6 state of record and give us a count; for all of

7 their employees who have a home state of record of

8 Alabama, a count for all of their employees that had

9 a home state of record of California, and so on.

10 Q Okay. And so for the state of Alabama you

11 have a count for the residents of the state of

12 Alabama and you add in all of these other overseas

13 people who are reported by the various agencies as

14 having Alabama as their home state of record and you

15 add that to Alabama's total for apportionment

16 purposes; is that right?

17 A That information results in the federally

18 affiliated overseas count for a state, yes, and that

19 is added to the state's resident population and that

20 equals the apportionment population.

21 Q And this apportionment population count is

22 something the Census Bureau provides to the

Page 51

1 President; correct?

2 A Yes.

3 Q And when does that happen?

4 A The Census Bureau is mandated to deliver

5 the apportionment population counts to the President

6 within nine months of the census day, which turns

7 out to be before December 31st of census year.

8 Q So that will be provided no later than

9 December 31st of 2020 to the President?

10 MR. SVERDLOV: Objection.

11 BY MR. DAVIS:

12 Q Is that right?

13 A That is correct.

14 Q Okay. Does the apportionment count

15 provided to the President include non-U.S. citizens?

16 A The apportionment population counts that

17 we develop includes the resident population as

18 enumerated in the decennial census as well as the

19 federally affiliated overseas, and both of those

20 will include citizens and non-citizens.

21 Q Obviously then if it includes both

22 citizens and non-citizens, it includes non-citizens

Page 52

1 who are lawfully present and non-citizens who are

2 not lawfully present?

3 MR. SVERDLOV: Objection. Assumes facts

4 not in evidence.

5 A It includes all types of people who are

6 non-citizens.

7 Q Yes. It includes everyone regardless of

8 citizenship and regardless of lawful presence; is

9 that correct?

10 MR. SVERDLOV: Objection. Vague.

11 A Yes.

12 MR. DAVIS: We haven't been going that

13 long, but this actually might be a good time for a

14 breather.

15 MR. SVERDLOV: Okay.

16 MR. DAVIS: Do you want to take 15

17 minutes? Is that okay with you, Mrs. Battle?

18 THE WITNESS: Yes.

19 (Recessed at 10:03 a.m.)

20 (Reconvened at 10:26 a.m.)

21 BY MR. DAVIS:

22 Q Mrs. Battle, going back to the hot deck

Page 53

1 imputation, do you know what the Census Bureau would

2 do if my household is eligible for hot deck

3 imputation, but I happen to live in the neighborhood

4 where all of the residents of the neighborhood are

5 very different from me, different race and all the

6 other neighbors have kids and I don't; do you know

7 what the Census Bureau would do in that instance?

8 MR. SVERDLOV: Objection. Vague and calls

9 for speculation.

10 A Well, again the premise of the hot deck

11 methodology would be to go to that nearest neighbor

12 and we can use that.

13 Q Okay.

14 A Now, when we do have some information

15 about the household, we do try to match up those

16 characteristics when we do the hot deck imputation.

17 So, for example, if we know that the

18 householder who does not have information, if they

19 have a Spanish surname, then we look for nearest

20 neighbor with a Spanish surname to try to perhaps

21 impute race or ethnicity. So if we do have some

22 information, we try to match up those

Page 54

1 characteristics and then take what we need to have
2 donated.
3 Q And do you have a division that tries to
4 determine which household is the best source of the
5 donated information?
6 MR. SVERDLOV: Objection. Vague.
7 A Again when it comes to the characteristic
8 imputation using a hot deck, there is this standard
9 approach, and I would have to look at the details of
10 the methodology to --
11 Q Okay.
12 A -- address that further.
13 Q Okay. Is the Census Bureau trying to
14 enumerate the total number of people who are
15 physically present within the State of Alabama on
16 April 1, 2020 or residents of the State of Alabama?
17 MR. SVERDLOV: Objection. Compound.
18 A The core concept that the Census Bureau
19 utilizes in doing its enumeration is the concept of
20 usual residence, so we are looking to enumerate
21 individuals where they usually reside, where they
22 live and sleep most of the time.

Page 55

1 Q Okay. So someone simply driving through
2 the state on that date would not be counted if their
3 usual residence is in some other state; correct?
4 A Yes.
5 Q Okay. And a tourist who happens to be
6 within the state on April 1 wouldn't necessarily be
7 included in the population count if their usual
8 residence is some other state; is that correct?
9 A The idea is, yes, we want to count people
10 at their usual residence where they live and sleep
11 most of the time.
12 Now, I need to say that the residence
13 criteria is based on three core principles. So the
14 first one is that of usual residence, where we want
15 to count people where they reside and live and sleep
16 most of the time.
17 Secondly, there are people who are in
18 certain types of facilities on census day that will
19 be counted at that facility, such as prisons, et
20 cetera.
21 And then, thirdly, if we cannot determine
22 the usual residence for an individual or they don't

Page 56

1 know, they don't have one, then we count them where
2 they are on census day. So those are the three
3 principles.
4 Q Okay. Will the Bureau report a count of
5 U.S. citizens as a result of the 2020 census?
6 MR. SVERDLOV: Objection. Vague.
7 A The Census Bureau is working to develop
8 what's called the citizen voting age population by
9 race and ethnicity special tabulation, which would
10 be based on data from the decennial census. And as
11 you can tell by the name, it will include citizen
12 information; citizenship voting age population.
13 Q Okay. So will there be within any of the
14 products that the census releases after the 2020
15 census, will there be a total count of United States
16 citizens?
17 MR. SVERDLOV: Objection. Vague.
18 A The specific data product that I mentioned
19 for citizen voting age population by race and
20 ethnicity will be limited to citizens that are 18
21 years and older. So that would be the extent of the
22 publication of citizens.

Page 57

1 Q Does the Census Bureau have any intention
2 of attempting to count the citizens who are under
3 the age of 18?
4 MR. SVERDLOV: Same objection.
5 A Well, all usual residents are to be
6 counted in a decennial census.
7 Q I see the problem with the question I just
8 asked. Okay. You are certainly going to try to
9 count everyone, all residents who, regardless of
10 age; correct?
11 A Yes.
12 Q Okay. Of those who are under 18, does the
13 Census Bureau intend to attempt to determine how
14 many of those people are U.S. citizens?
15 MR. SVERDLOV: Objection. Vague.
16 A In terms of the publication of statistics,
17 the Census Bureau is finalizing the exact format of
18 the citizen voting age by race and ethnicity special
19 product, but in the efforts to develop that
20 information and using administrative records, I
21 am -- the information on citizenship for those who
22 are under the age of 18 would be involved in the

Page 58

1 process. While we have not finalized the specific
 2 methodology to produce those data, we will be
 3 utilizing information on citizenship status for the
 4 population.
 5 Q Okay. How does the Census Bureau
 6 currently plan to develop the citizen voting age
 7 population data?
 8 MR. SVERDLOV: Objection. Vague.
 9 A Well, the Census Bureau has not finalized
 10 the specific methodology and approach or the final
 11 table share, but of course the Census Bureau does
 12 produce a citizen voting age population special
 13 tabulation annually currently, but it's not based on
 14 the decennial census, it's based on the American
 15 Community Survey. So they are still determining
 16 that final methodology for the citizen voting age
 17 population product based on the decennial census.
 18 Q So in the past the Census Bureau has
 19 released citizen voting age population data that was
 20 based on the American Community Survey; correct?
 21 A Yes.
 22 Q Okay. After the 2020 census do I

Page 59

1 understand you right that the Census Bureau intends
 2 to release citizen voting age population based on
 3 the 2020 census itself?
 4 A For the product that we are planning to
 5 release in year 2021, the citizen voting age
 6 population data product would be based on the
 7 decennial census.
 8 Q And when it comes to how exactly the
 9 Bureau plans to do that, is that what you say is
 10 still under consideration?
 11 A Yes.
 12 Q Okay. Has the Census Bureau determined
 13 that whatever the final method is, that it will use
 14 any particular subsets of data?
 15 MR. SVERDLOV: Objection. Vague. And I
 16 will also say that as you can tell from the witness'
 17 answer, the methods haven't been determined, so we
 18 are sort of veering into areas where we might assert
 19 deliberative process privilege. So instruct the
 20 witness to answer in general terms.
 21 BY MR. DAVIS:
 22 Q The way I phrased the question is although

Page 60

1 final methodology hasn't been determined, have you
 2 at least determined that, for example, yes, we will
 3 use this particular set of administrative data?
 4 MR. SVERDLOV: I'm not convinced that that
 5 cures my objection, but if you can answer in a
 6 general way, please do.
 7 A So the Census Bureau is looking to utilize
 8 administrative records in combination with decennial
 9 census data, so that is the general idea, but in
 10 terms of specifically which administrative records,
 11 that has not been determined yet.
 12 Q Will you attempt for each person that you
 13 count, and let's start first with people who are
 14 voting age and older. Will the Census Bureau
 15 attempt to determine whether or not that individual
 16 is a citizen or a non-citizen?
 17 MR. SVERDLOV: Objection. Vague.
 18 A The Census Bureau is developing
 19 methodologies that would help us determine the
 20 citizenship status for everyone counted in the
 21 decennial census.
 22 Q For everyone regardless of age?

Page 61

1 A For the purposes of developing the data
 2 product in and of itself, the methodology is not
 3 finalized, but the Census Bureau will be collecting
 4 information on, through administrative records and
 5 that information will be utilized to help us produce
 6 the final product which is focused on the population
 7 18 years and older. It's because the methodology is
 8 not determined, I cannot say for sure at this time
 9 exactly to what extent we would be collecting the
 10 data on citizenship.
 11 Q Would you look at the document that is
 12 behind Tab Number 8 in the notebook, please, Mrs.
 13 Battle?
 14 MR. SMITH: Can you repeat the tab number?
 15 MR. DAVIS: Tab Number 8.
 16 MR. SMITH: Thank you.
 17 MR. DAVIS: Can we mark this?
 18 (Battle Exhibit Number 5
 19 was marked for identification.)
 20 MR. SVERDLOV: Can you state for the
 21 record what you've marked?
 22 MR. DAVIS: Yes. We've marked as Exhibit

Page 62

1 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

Page 63

1 response to the request from the Department of
2 Justice, and one of those is Option C, obtaining
3 citizenship status from administrative records for
4 the whole 2020 census population?
5 A Yes.
6 Q Okay. Is that, in fact, the goal of the
7 Census Bureau, to obtain citizenship status from
8 administrative records for the whole 2020 census
9 population?
10 MR. SVERDLOV: Objection. Vague.
11 A Well, the Census Bureau would need to
12 obtain that information. While the CVAP data
13 product is focusing on the 18 and plus older
14 population, we do need the foundational information.
15 So, yes, the Census Bureau is trying to ascertain
16 from administrative records citizenship status for
17 the 2020 enumerated population.
18 Q This is a slightly different topic. There
19 are questions and answers towards the back of the
20 memorandum, Mrs. Battle. On the page that's Bates
21 numbered P-11, there is a Q and A about the response
22 rates for the 2000 census long form and short form,

Page 64

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

Page 65

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

<p style="text-align: right;">Page 66</p> <p>1 about. And let's mark that as Exhibit 6, please.</p> <p>2 (Battle Exhibit Number 6</p> <p>3 was marked for identification.)</p> <p>4 BY MR. DAVIS:</p> <p>5 Q And what is this document that's been</p> <p>6 marked as Exhibit 6, Mrs. Battle?</p> <p>7 A Well, the first page of the document lays</p> <p>8 out the members of the Interagency Working Group</p> <p>9 that the Census Bureau created per Executive Order</p> <p>10 13880 and lists the departments who are participants</p> <p>11 as well as the representatives.</p> <p>12 The second page begins the listing of the</p> <p>13 administrative records that the Census Bureau has</p> <p>14 received from a number of agencies, and it actually</p> <p>15 provides some information on the status.</p> <p>16 Your question was about data from the</p> <p>17 Citizen and Immigration Services?</p> <p>18 Q Correct.</p> <p>19 A And so if you look on page 2, what you</p> <p>20 will see is a listing of the types of data that we</p> <p>21 have requested from the, received from the</p> <p>22 Department of Homeland Security, and you will see it</p>	<p style="text-align: right;">Page 68</p> <p>1 citizenship status. All variables will potentially</p> <p>2 be used for the citizenship project."</p> <p>3 So do I understand this to mean that what</p> <p>4 you received is a database, and so for each person</p> <p>5 there are 46 fields in that database?</p> <p>6 MR. SVERDLOV: Objection. Vague. Assumes</p> <p>7 facts not in evidence.</p> <p>8 A We requested a data file from the</p> <p>9 Department of Homeland Security, and so the</p> <p>10 expectation is that each of the records for</p> <p>11 individuals will contain data in each of those 46</p> <p>12 variables.</p> <p>13 Q Okay.</p> <p>14 A Yeah.</p> <p>15 Q And under Status it says: "Fitness for</p> <p>16 use determination." What does that mean?</p> <p>17 A So the Census Bureau is acquiring new</p> <p>18 sources of administrative records, and once those</p> <p>19 new sources arrive, the first thing we have to do is</p> <p>20 evaluate those data to help us determine if we can</p> <p>21 use the data, and if we can use the data, then we</p> <p>22 begin to think through how best can we use the data</p>
<p style="text-align: right;">Page 67</p> <p>1 mentions that the lawful permanent resident file and</p> <p>2 naturalization data have been obtained from the</p> <p>3 Citizen and Immigration Services.</p> <p>4 Q Okay. Okay. So I see in that row of the</p> <p>5 document, page 2 of Exhibit 6?</p> <p>6 A Yes.</p> <p>7 Q The source agency is the Department of</p> <p>8 Homeland Security, and you finalized an agreement</p> <p>9 with the Department of Homeland Security on December</p> <p>10 23, 2019. Am I reading that correctly?</p> <p>11 A Yes.</p> <p>12 Q You began negotiations with the Department</p> <p>13 of Homeland Security on January 2018?</p> <p>14 A Yes.</p> <p>15 Q And data type I see, there the rows begins</p> <p>16 to be broken down into two different rows. So you</p> <p>17 have the lawful permanent resident file and</p> <p>18 naturalization data, paren, Citizen and Immigration</p> <p>19 Services; correct?</p> <p>20 A Yes.</p> <p>21 Q Okay. And under Variables it says: "46</p> <p>22 variables consisting of person identifiers and</p>	<p style="text-align: right;">Page 69</p> <p>1 to comply with the executive order.</p> <p>2 So the first thing that has to happen is</p> <p>3 when we acquire these data sets, we need to make</p> <p>4 sure we can read the files that have been given to</p> <p>5 us and we need to make sure that all 46 of those</p> <p>6 variables are present in the data, just to make sure</p> <p>7 nothing went awry in the agency developing the data</p> <p>8 for us.</p> <p>9 But once we have that covered, we then</p> <p>10 need to dig deeper and start taking a look at the</p> <p>11 variables that we have requested. We want to take</p> <p>12 stock of how complete are those data. If we have</p> <p>13 one of those variables that says address, well, is</p> <p>14 address missing for 60 percent of the records in the</p> <p>15 file? And for addresses that are reported, are they</p> <p>16 complete addresses, are they partial? So we need to</p> <p>17 evaluate the kind of data that we have in each of</p> <p>18 those variables.</p> <p>19 And that's really important because we</p> <p>20 need to be able to assess if we can make record</p> <p>21 linkages, and so we need identifiers like name, age,</p> <p>22 date of birth, sex, address. And, of course, the</p>

Page 70

1 citizenship variable itself, we need to assess how
 2 complete are those data, et cetera.

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

9 MR. SVERDLOV: Objection. Vague and
 10 misleading.

11 A Yes.

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

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

19 That's a huge database that has all of
 20 these data, data on all Social Security numbers ever
 21 issued. In addition to that we have a file that
 22 contains what's called ITI, income tax

Page 71

1 identification numbers. These are unique
 2 identifiers that are assigned by the Internal
 3 Revenue Service to individuals who are not eligible
 4 for a Social Security Number.

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

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

19 So we are really looking to see how we can
 20 make linkages, not only with our internal reference
 21 files, but across the newly acquired data sets as
 22 well.

Page 72

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

6 MR. SVERDLOV: Objection.

7 BY MR. DAVIS:

8 Q Or that it has not made a determination
 9 yet?

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

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

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

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

Page 73

1 A The Research and Methodology Directorate.

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

4 A It is an organizational unit that contains
 5 multiple divisions.

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

8 A Yes.

9 Q Okay. And who heads the Research and
 10 Methodology?

11 A John Abowd. Dr. John Abowd.

12 Q Now, back at Exhibit 6, and I see under
 13 Department of Homeland Security that there is a
 14 second data set, which is under Data Type it says
 15 Arrival Departure Information System and Visa Data.

16 And there under Status it says, "Awaiting
 17 Data Transfer from DHS." I take it that just means
 18 you haven't received the data yet from Homeland
 19 Security?

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

22 Q Yeah. Is there any data where the fitness

Page 74

1 for use determination process has been completed?

2 MR. SVERDLOV: Objection. Vague.

3 A For the administrative records that we've

4 acquired we are still in the process, either we are

5 waiting for the data or we are beginning to do that

6 evaluation.

7 Q Okay. Is there any administrative data

8 that you are aware of that the Census Bureau has

9 requested for these purposes that is not listed on

10 this chart that's been marked as Exhibit 6?

11 MR. SVERDLOV: Objection. Vague.

12 A One thing I call your attention to is on

13 page 5. At the bottom you'll see the source agency

14 is Nebraska.

15 Q Yes.

16 A So what I would say is that we have put

17 out requests to all 50 states to obtain driver's

18 license data, but the only one listed here is

19 Nebraska as we have received those data. So I will

20 mention that.

21 MR. SVERDLOV: Counsel, can I pause for

22 one second?

Page 75

1 MR. DAVIS: Yes.

2 MR. SVERDLOV: I want to go back to my

3 prior objection. The reason I objected is because

4 it was unclear whether the question asked for the

5 witness to testify on behalf of the Census Bureau or

6 in her personal capacity when you said whether she

7 is aware.

8 MR. DAVIS: Fair. But let me clear that

9 up. I could and almost certainly will get sloppy

10 with some of the language I use. That's not

11 intentional. I recognize Mrs. Battle is produced as

12 a representative of the department. Unless I very

13 clearly state otherwise, I'm intending to seek the

14 department's knowledge and information.

15 MR. SVERDLOV: Thank you.

16 BY MR. DAVIS:

17 Q So there is data, Mrs. Battle, that the

18 Census Bureau has requested that is not on the

19 chart. At least we know that it's requested

20 driver's license data from all other states;

21 correct?

22 A Correct.

Page 76

1 Q Are you aware of any other data that the

2 Census Bureau has requested that is not listed on

3 this chart?

4 A The Census Bureau has also reached out to

5 states to request data on WIC, and TANF, and SNAP.

6 So that would be SNAP would be the Supplemental

7 Nutrition Assistance Program data. WIC is the

8 Women, Infants and Children's Program. And TANF is

9 the Temporary Assistance for Needy Families Program.

10 So we are working to obtain those data from states

11 as well.

12 Q Do you know if any states have declined to

13 provide driver's license information, if they have

14 responded to the Census Bureau's request and said we

15 are not going to provide that?

16 A My understanding is that there have been a

17 number of states who have said no.

18 Q Do you know how many?

19 A Rough approximation, about a third.

20 Q Okay. Are you aware of any administrative

21 data that the Census Bureau has requested from

22 federal agencies and those federal agencies have

Page 77

1 refused to provide the administrative data?

2 MR. SVERDLOV: Counsel, I'm going to

3 object here once again because we are verging very

4 close to ongoing negotiations, and we would view

5 materials that this question potentially calls for

6 as subject to the deliberative process privilege.

7 So I think if the witness can answer in a

8 general way, that would be fine. But specific

9 details about agencies which have and have not

10 responded we would view as falling within the

11 privilege.

12 MR. DAVIS: Okay. Tell me this. And I

13 will direct this to counsel. Just -- if -- would

14 the witness be allowed to tell me whether, that if a

15 hypothetical federal agency had said no, whether the

16 Census Bureau would consider the matter closed or

17 whether that issue would still be under negotiation?

18 MR. SVERDLOV: I think we would view that

19 issue as still under negotiations potentially.

20 BY MR. DAVIS:

21 Q Okay. Let me try to ask it this way, and

22 be sure to allow your counsel time to lodge an

Page 78

1 objection. Mrs. Battle, if the Census Bureau has
 2 requested administrative data from another federal
 3 agency and that federal agency initially said no, is
 4 it the intention of the Department of Census to
 5 continue to seek that information through
 6 negotiations?
 7 MR. SVERDLOV: I'm going to raise the same
 8 objection and instruct the witness not to answer.
 9 BY MR. DAVIS:
 10 Q Let me ask it this way. Has the Census
 11 Bureau requested information from any federal
 12 agency, and by information I mean administrative
 13 data that it intends to use to impute citizenship
 14 status, and that other federal agency has responded
 15 with a refusal to provide the information?
 16 MR. SVERDLOV: Counsel, I'm not sure how
 17 that question is materially different.
 18 MR. DAVIS: How is -- this is a fact of
 19 something that happened in the past, whether an
 20 agency has responded with a yes or a no. That's not
 21 a deliberation.
 22 MR. SVERDLOV: I think if we can answer it

Page 79

1 in a general way, the witness can try to do so. But
 2 I think we are very close, as I've indicated, we are
 3 very close to the line of those, the negotiations
 4 that the Department of Commerce and the Census
 5 Bureau is having with other agencies, and we would
 6 view that as subject to privilege. So if you can
 7 answer in a general way, perhaps it would be helpful
 8 to, for you to restate your question.
 9 BY MR. DAVIS:
 10 Q I'm not waiving this issue, but tell me
 11 what you can.
 12 MR. SVERDLOV: Objection. Vague.
 13 A I would say that the Census Bureau has
 14 established an interagency working group and we do
 15 have members from the, across the federal
 16 government. And the purpose of that working group
 17 is to facilitate the Census Bureau acquiring
 18 administrative records to help us comply with the
 19 executive order.
 20 Q Thank you. That doesn't really help with
 21 what I'm looking for, but I appreciate that.
 22 Now, this working group, that is what is

Page 80

1 listed on the first page of Exhibit 6; correct?
 2 A Yes.
 3 Q Okay. And they have had one meeting to
 4 date?
 5 A Yes.
 6 Q Are any further meetings planned?
 7 MR. SVERDLOV: Objection. Vague.
 8 A At this point the work that's happening is
 9 really involving the points of contact. So the
 10 Census Bureau has a point of contact who is working
 11 with points of contacts at all of the member
 12 agencies to work through any issues with interagency
 13 agreements, to talk through the data and the
 14 variables that we are requesting to acquire.
 15 So there is a lot of back and fourth, and
 16 not in formal meetings with full membership, but
 17 there is a lot of back and forth between the Census
 18 and individual agencies to continue working through
 19 issues to make sure we can acquire the data that we
 20 have requested.
 21 Q Is there any administrative data that the
 22 Census Bureau has determined that it will request

Page 81

1 but it simply has not made that request yet?
 2 MR. SVERDLOV: Objection. Vague.
 3 A At this time I am not aware that the
 4 Census Bureau has any other remaining requests
 5 outstanding.
 6 Q Let's look back at Exhibit 5, and that's
 7 the document that's behind Tab 8 in your notebook,
 8 Mrs. Battle. We are still in the back with the Q
 9 and As.
 10 A All right.
 11 Q Q&A 20, which is on page P-17, as I read
 12 it, you tell me if I'm wrong, please, the question
 13 posed is whether the Alternative C approach, the use
 14 of administrative data, has been used before on
 15 other data collection projects. And the response
 16 says the approach in Alternative C has been
 17 routinely used in processing the economic censuses
 18 for several decades.
 19 First off, I read at that correctly;
 20 right?
 21 A I'm sorry. Which number are you on?
 22 Q It's Q&A 20 on page P-17.

Page 82

1 A Okay. Okay.

2 Q Okay. First tell me what it means by

3 economic censuses.

4 A So the Census Bureau not only conducts a

5 census of the population, but it also conducts a

6 census of organizations, businesses, et cetera. And

7 so they are referring to those economic censuses.

8 Q Okay. Administrative data has been used,

9 was used in the 2010 census, was it not, to impute

10 characteristics and for other purposes?

11 A There were administrative records used to

12 impute characteristics used in the 2010 census.

13 Q Okay. So the use of administrative

14 records is not limited in the past to economic

15 censuses. Am I right about that?

16 A Correct.

17 Q Okay. And if you turn to the page of that

18 same exhibit where the Bates Number at the bottom is

19 P-30, please? Do you see the chart there that's

20 labeled Figure 1, Mrs. Battle?

21 A Yes.

22 Q Can you explain this to me, what the terms

Page 83

1 are; Linked, Adrec, A-D-R-E-C, and then on the other

2 side Not Linked and Model?

3 MR. SVERDLOV: Counsel, really quick, I'm

4 also going to raise an objection because I think

5 this line of questioning is starting to veer

6 somewhat outside of the topics that we have

7 negotiated.

8 MR. DAVIS: I believe this Figure 1 refers

9 to the use of administrative data in general and the

10 memo is about citizenship. That seems to fall under

11 the umbrella.

12 MR. SVERDLOV: Yes. And as you will

13 recall -- my yes was not me acceding to your

14 premise.

15 As you recall, we narrowed those topics in

16 our December 27th, 2019 letter, which stated that we

17 will produce a witness who can testify about these

18 topics to the extent they concern the feasibility

19 and utility of collecting and using administrative

20 records in the manner directed by Executive Order

21 13880, and I believe the document you are referring

22 to is part of Topic 5.

Page 84

1 MR. DAVIS: Okay. Well, is the witness

2 allowed to explain to me, for example, what modeling

3 is?

4 MR. SVERDLOV: I think we can pursue some

5 general questions along those lines, but I do want

6 to flag that, you know, questions about like the

7 general background of this document and it's

8 preparation was one of the things that we

9 specifically limited.

10 MR. DAVIS: I'm not asking about that. I

11 want to explain the terms. I asked her to explain

12 the terms.

13 BY MR. DAVIS:

14 Q First, Mrs. Battle, what is A-D-R-E-C? Do

15 you know?

16 A Yes. That refers to administrative

17 records.

18 Q Okay. And what is model?

19 A Model refers to developing a statistical

20 model.

21 Q Okay. So after the 2020 census if you are

22 able to link records, you will use the

Page 85

1 administrative records to impute citizenship for a

2 person; is that correct?

3 MR. SVERDLOV: Objection. Vague. Calls

4 for speculation.

5 A The basic idea is that the Census Bureau

6 will combine multiple sources of citizenship from

7 different sources of administrative records and use

8 that information to determine citizenship status.

9 Q Okay.

10 A Linked records can then, we can then

11 utilize those administrative records to determine

12 citizenship.

13 Q Okay. And in the 2020 census if you are

14 not able to link administrative records, does the

15 Census Bureau intend to use statistical modeling to

16 impute citizenship?

17 MR. SVERDLOV: Objection. Vague.

18 A This diagram shows that initial thinking

19 is that if we are not able to link administrative

20 records to respondents or individuals counted in the

21 census and we need to determine their citizenship

22 status, that a statistical model would be utilized

Page 86

1 to determine that.

2 Q Okay. And how will that be performed?

3 MR. SVERDLOV: Objection. As you might

4 have surmised from the nature of that question, the

5 work in this area is still ongoing, so we view the

6 specifics of that work to be covered by the

7 deliberative process privilege. I will instruct the

8 witness to answer in general terms if she can, but

9 not the specifics.

10 MR. DAVIS: But it's a fair question and

11 if the answer is that they don't know yet, then

12 that's the answer.

13 MR. SVERDLOV: Sure.

14 BY MR. DAVIS:

15 Q So if the Census Bureau is not able to

16 link administrative data and you will use

17 statistical modeling, the question is how will that

18 happen?

19 A So at this point in time the Census Bureau

20 has not finalized its methodology about exactly how

21 that will take place.

22 Q Okay. Who is working on making the final

Page 87

1 determination of how that will work?

2 MR. SVERDLOV: Objection. Assumes facts

3 not in evidence.

4 BY MR. DAVIS:

5 Q Well, did I understand you correctly? You

6 said no final determination had been made. Is

7 anyone in the Census Bureau thinking about that and

8 working on making a final solution?

9 MR. SVERDLOV: Objection. Vague and

10 compound.

11 A The Census Bureau staff who are evaluating

12 the administrative records that the Census Bureau

13 acquires are going to be involved in the process of

14 working with Dr. John Abowd to determine the

15 statistical modeling. So -- so the first step is

16 really to evaluate the incoming data, and then we

17 can turn to specifically how to develop the

18 modeling.

19 Q Okay. And to the best of your knowledge,

20 is that going -- will these decisions be made by Dr.

21 Abowd and his group?

22 MR. SVERDLOV: Objection. Vague.

Page 88

1 A I believe recommendations will come from

2 those involved in this research and those

3 recommendations will be presented to executive

4 leadership at the Census Bureau and the department.

5 Q Okay. We touched on this, but I'm not

6 sure it's clear in one spot, Mrs. Battle. Can you

7 describe for me the difference between statistical

8 modeling and imputation?

9 MR. SVERDLOV: Objection. Vague.

10 A Well, I would say that statistical

11 modeling is a form of imputation, whereas imputation

12 might involve imputing data from someone else in the

13 same household or using a hot deck or using a

14 statistical model. So to me statistical modeling

15 for this purpose is a form of imputation.

16 Q Okay. Let's say for the 2020 census

17 through linking databases you learn from the

18 administrative records you receive from the Social

19 Security records that a particular person is a

20 United States citizen. That's imputation because

21 you are taking, is it not, when you are taking

22 information you received directly from other

Page 89

1 administrative records that says that this person

2 with this Social Security Number is a citizen?

3 MR. SVERDLOV: Objection. Vague, compound

4 and calls for speculation.

5 A So information on citizenship status from

6 these administrative records will be used in

7 combination to help us determine the citizenship

8 status, so we are going to take multiple sources

9 into account to help us determine the citizenship

10 status. It may not necessarily be taking one

11 specific source and then imputing it. We are going

12 to take all of that into account and then determine.

13 Q Okay. You wouldn't look then at a single

14 agency's administrative records, but at the universe

15 of the administrative records you receive in this

16 process in order to impute citizenship? Did I hear

17 you correctly?

18 MR. SVERDLOV: Objection. Vague.

19 A The general idea at this point is to pool

20 as many different sources on citizenship for an

21 individual as possible and to utilize those multiple

22 sources to help us determine what the citizenship

<p style="text-align: right;">Page 90</p> <p>1 status is.</p> <p>2 Q Does the Census Bureau have a goal for a</p> <p>3 deadline for determining, number one, what of this</p> <p>4 data is usable? And by this data I mean the</p> <p>5 administrative records that are listed on Exhibit 6?</p> <p>6 MR. SVERDLOV: Objection. Vague and</p> <p>7 compound.</p> <p>8 A The Census Bureau has set a goal of the</p> <p>9 spring of 2020 to complete or at least complete</p> <p>10 initial evaluations of the data to try to determine</p> <p>11 specifically which sources could be utilized in</p> <p>12 continuing to develop a CVAP file.</p> <p>13 Q Is there any plan that you are aware of,</p> <p>14 Mrs. Battle, to report publicly that the Census</p> <p>15 Bureau has determined that, for example, the records</p> <p>16 from Department of Homeland Security are usable and</p> <p>17 will be part of this imputation process?</p> <p>18 MR. SVERDLOV: Objection. Vague and once</p> <p>19 again verges into deliberative process. So to the</p> <p>20 extent -- to the extent the witness can answer in</p> <p>21 general terms about whether there are plans, that</p> <p>22 would be acceptable.</p>	<p style="text-align: right;">Page 92</p> <p>1 there is conflicting information about citizenship</p> <p>2 among different administrative records?</p> <p>3 MR. SVERDLOV: I think that this very much</p> <p>4 verges into the ongoing deliberations of the agency.</p> <p>5 To the extent that the witness can answer in general</p> <p>6 terms about whether there is or is not a plan, that</p> <p>7 would be fine. But otherwise I will instruct the</p> <p>8 witness not to answer.</p> <p>9 MR. DAVIS: That's what I asked, Aleks. I</p> <p>10 asked has a determination been made on what to do.</p> <p>11 I didn't ask what that determination is. I don't</p> <p>12 want to know. I asked if a decision has been made.</p> <p>13 BY MR. DAVIS:</p> <p>14 Q So has a decision been made about what to</p> <p>15 do if there is conflicting information about</p> <p>16 citizenship among the different administrative</p> <p>17 records?</p> <p>18 A The methodology to be used to address that</p> <p>19 issue has not been determined as of yet.</p> <p>20 Q Thank you.</p> <p>21 MR. SVERDLOV: Are you okay? Do you need</p> <p>22 a break.</p>
<p style="text-align: right;">Page 91</p> <p>1 BY MR. DAVIS:</p> <p>2 Q That's what I asked. Are there plans to</p> <p>3 publicly report the decisions as to the</p> <p>4 determinations as to whether the data is usable?</p> <p>5 A I know the Census Bureau does plan to</p> <p>6 share publicly the approach, the statistical</p> <p>7 modeling approach and the data sources to be</p> <p>8 utilized.</p> <p>9 Q Okay. And you said that there is a goal</p> <p>10 of making the decision by, making the determination</p> <p>11 by spring of 2020 as to whether the data is usable</p> <p>12 or to release the statistical modeling process?</p> <p>13 MR. SVERDLOV: Objection. Compound.</p> <p>14 A The goal for spring of 2020 is to be able</p> <p>15 to determine specifically which sources of</p> <p>16 administrative records could be used and the</p> <p>17 methodology.</p> <p>18 Q Both?</p> <p>19 A Yes.</p> <p>20 Q Okay. While I understand there is no</p> <p>21 final determination of the specific processes to be</p> <p>22 used, has a decision been made on what to do if</p>	<p style="text-align: right;">Page 93</p> <p>1 THE WITNESS: I'm good.</p> <p>2 BY MR. DAVIS:</p> <p>3 Q You tell me at any time if you need a</p> <p>4 break.</p> <p>5 A Okay.</p> <p>6 Q Would you please turn, Mrs. Battle, to the</p> <p>7 document behind Tab 6 of the notebook? Are you</p> <p>8 familiar with this document, Mrs. Battle?</p> <p>9 A I do not believe I have specifically seen</p> <p>10 this document, but I understand the general</p> <p>11 information.</p> <p>12 Q Okay. I have some very general questions,</p> <p>13 so I don't think a lack of familiarity with the</p> <p>14 specifics of this individual document will matter.</p> <p>15 MR. DAVIS: Let's go ahead and mark this</p> <p>16 for the record.</p> <p>17 (Battle Exhibit Number 7</p> <p>18 was marked for identification.)</p> <p>19 MR. SVERDLOV: Just to be clear on the</p> <p>20 record, this is a document that was not one of the</p> <p>21 ones identified in your list of topics. So to the</p> <p>22 extent that it falls within some other category, or</p>

Page 94

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. DAVIS: 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. DAVIS:

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

Page 95

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.

19 Q Okay. And -- no. Never mind.

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

Page 96

1 system."

2 I'm not sure I understood what, what the

3 difference is between editing and imputation.

4 MR. SVERDLOV: 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

Page 97

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. SVERDLOV: Objection. Assumes facts

Page 98

1 not in evidence.

2 A So --

3 Q Are they reported?

4 A The business rules for how to conduct the

5 editing and imputation procedures, they are

6 contained in a specification.

7 Q Okay. Where are the specifications? Are

8 those something that's publicly reported?

9 A Those specifications typically are not put

10 out to the public.

11 Q Okay. Is there a particular group or

12 department or division in the Census Bureau that's

13 responsible for developing and maintaining those

14 business rules?

15 MR. SVERDLOV: Objection. Vague and

16 compound.

17 A Yes. For the characteristics related to

18 age, sex, race and Hispanic origin, my division, the

19 Population Division, is responsible for those

20 specifications.

21 For editing and imputation rules, business

22 rules related to relationship and tenure, our sister

Page 99

1 division, the Social, Economic and Household

2 Statistics Division produces those specifications.

3 Q Okay. And related to the methods that the

4 Bureau is developing for citizenship, does the

5 Census Bureau intend to develop business rules that

6 will address those issues?

7 MR. SVERDLOV: Objection to vague and

8 compound.

9 A I think that the methodology that will be

10 determined and developed to allow the Bureau to

11 determine citizenship will have to include the

12 information on statistical modeling and any other

13 procedures that are done with the data.

14 Q I've seen references, Mrs. Battle, to

15 developing or imputing the best citizenship status?

16 A Yes.

17 Q What is best citizenship as opposed to

18 just citizenship?

19 MR. SVERDLOV: Objection. Vague, and

20 misleading, assumes facts not in evidence.

21 A So this is part of what the Census Bureau

22 needs to do in terms of evaluating the

Page 100

1 administrative records that have been acquired.

2 Q Okay.

3 A There will potentially be different

4 citizenship values reported across different

5 administrative records, so the Census Bureau needs

6 to develop a methodology that will help them take

7 those multiple sources of information into account

8 and then determine what the best citizenship status

9 is for an individual.

10 Q Okay. So let's say hypothetically for

11 this one person one set of administrative records

12 suggests that this person is a citizen and another

13 set of administrative records suggests that this

14 person is a non-citizen. When you say best

15 citizenship, do you mean that the Census Bureau will

16 try to determine which of the various pieces of

17 information is more likely to be reliable?

18 MR. SVERDLOV: Objection. Misleading and

19 calls for information that we view as protected by

20 the deliberative process privilege.

21 MR. DAVIS: I'm asking about what she just

22 told me, trying to understand her previous response.

Page 101

1 BY MR. DAVIS:

2 Q So this was directly related to her past

3 response. Did I understand you correctly, Mrs.

4 Battle, that when the Bureau is referring to best

5 citizenship variable, that you are trying to

6 reconcile which conflicting pieces of information is

7 correct?

8 MR. SVERDLOV: Objection. Vague. And I

9 think we are still in that category of information

10 where the Census Bureau has not reached the final

11 decision and so it's trying to deliberate. But if

12 you can answer in a general way, go ahead.

13 A One example that might help that is

14 mentioned in a number of the memos is that, for

15 instance, our primary source of citizenship data

16 comes from the Social Security Administration, and

17 we know that if the sources of data from the Social

18 Security Administration, for example, may list that

19 an individual is not a citizen, but we don't know if

20 that individual's citizenship status has changed

21 over time and they just didn't update the Social

22 Security Administration, and so, again as listed in

Page 102

1 some of the memos, that's one of the reasons for
 2 trying to acquire administrative records on
 3 naturalizations, for example, that may have more
 4 current information or updated information that may
 5 not be reflected in our reference file. So we are
 6 trying to gather multiple sources and look at them
 7 together to help us determine the best
 8 citizenship --
 9 Q Okay.
 10 A -- value.
 11 Q Mrs. Battle, have we discussed all of the
 12 records that have been requested for state
 13 governments? As I recall, we have discussed
 14 driver's license data, SNAP, WIC and TANF, four
 15 categories. Are there any other pieces of data or
 16 administrative records that have been requested from
 17 state governments by the Census Bureau?
 18 MR. SVERDLOV: Objection. Vague and
 19 compound.
 20 A I'm not aware of any additional
 21 state-level records that have been requested at this
 22 time.

Page 103

1 Q Let's say for a request for driver's
 2 license data, how would that request be made?
 3 MR. SVERDLOV: Objection. Vague.
 4 A The Census Bureau staff reached out to the
 5 heads of the states Department of Motor Vehicles to
 6 request, have a discussion about obtaining those
 7 data.
 8 Q Okay. So somebody from the Census Bureau
 9 would call, like in Alabama there is the Alabama Law
 10 Enforcement Agency which is part of, is the agency
 11 which issues driver's licenses. They would likely
 12 reach out to the head of that department in the
 13 State of Alabama?
 14 MR. SVERDLOV: Objection. Vague and
 15 compound.
 16 BY MR. DAVIS:
 17 Q Is that right?
 18 MR. SVERDLOV: Object.
 19 A Yes.
 20 Q Is there any particular person in the
 21 Census Bureau who is responsible for making the
 22 request for administrative records to the state

Page 104

1 governments?
 2 A There is, but I do not recall the name off
 3 the top of my head.
 4 Q Okay. Do you know what that person's
 5 title or what division that person likely works in?
 6 A That person likely works in the section of
 7 the Census Bureau that is responsible for acquiring
 8 administrative records and ingesting those
 9 administrative records.
 10 Q And what would that be?
 11 MR. SVERDLOV: Objection. Vague.
 12 A That -- it's the -- within the Economic
 13 Directorate there is a division called I believe
 14 Economic Reimbursable Surveys Division, and that
 15 houses the staff that are responsible for acquiring
 16 and ingesting the administrative records.
 17 Q I'm sorry, Mrs. Battle. Did you say
 18 Economic Reimbursable Survey?
 19 A That is my -- I would need to double check
 20 on the specific name, but I believe that's correct.
 21 Q I understand you are not sure. But I did
 22 understand you correctly? The word was

Page 105

1 "reimbursable," if you are remembering correctly?
 2 A Yes.
 3 Q Would you look, please, Mrs. Battle, at
 4 the document behind Tab 3 of the notebook?
 5 MR. DAVIS: And for the record, I have no
 6 doubt we have the original of this in what you
 7 produced. There simply wasn't time to get that in
 8 every case. So the format of this particular memo
 9 was as it was reformatted for purposes of the United
 10 States Supreme Court record. So let's mark that.
 11 (Battle Exhibit Number 8
 12 was marked for identification.)
 13 BY MR. DAVIS:
 14 Q Are you familiar with this memorandum,
 15 Mrs. Battle?
 16 A Yes.
 17 Q Okay. And this is a reproduction of a
 18 memorandum dated December 22, 2017 prepared for John
 19 M. Abowd prepared by Michael Berning and others?
 20 A Uh-huh.
 21 Q So look at page, it will say 304 at the
 22 top. This has been marked as Exhibit 8.

Page 106

1 A Uh-huh.

2 Q This was a couple years ago, but it talks

3 about, under Table 2, data that is currently in

4 census inventory and lists Social Security

5 Administration Numident, Temporary Assistance to

6 Needy Families, and Bureau of Prisons; correct?

7 A Yes.

8 Q Then is says Potential New Acquisitions.

9 A Uh-huh.

10 Q Now the USCIS Citizen Data, we talked

11 about that because it was listed on one of the other

12 documents we reviewed; right?

13 A Yes.

14 Q Okay. And Real ID Act Data, is that data,

15 Mrs. Battle, that states would have?

16 MR. SVERDLOV: Objection. Vague. Calls

17 for speculation.

18 BY MR. DAVIS:

19 Q Driver's license data, for example?

20 A I think we would need to turn to a

21 memorandum of understanding regarding exactly what

22 the Census Bureau is requesting from the states

Page 107

1 regarding the driver's license data.

2 Q Okay. And another document listed under

3 Potential New Acquisitions is FHA Loan Applications.

4 Do you know if those have been requested?

5 MR. SVERDLOV: Objection. Assumes facts

6 not in evidence.

7 BY MR. DAVIS:

8 Q Do you know if those have been requested?

9 A I am not aware of this being requested.

10 Q Okay. Do you know if there is any

11 intention that the Census Bureau has to request FHA

12 loan application data?

13 A I cannot say at this time --

14 Q Okay.

15 A -- if there is an intention to collect

16 that.

17 Q Who would know?

18 A I think we would turn to the organization

19 within the Economic Directorate who is responsible

20 for acquiring administrative records to make that

21 final determination.

22 Q And that's a person who you can't remember

Page 108

1 their name at this moment; right?

2 A Well, actually the supervisor, I know his

3 name, but I'm sure his staff -- the supervisor's

4 name is Michael Berning.

5 Q Okay.

6 A So...

7 Q But there might be someone on his staff

8 who is better able to answer that question; is that

9 right?

10 MR. SVERDLOV: Objection. Vague.

11 A Well, Michael would know the answer,

12 because his staff would be involved in this.

13 Q Okay. And back to this Exhibit 8, under

14 FHA Loan Applications, still under the part of the

15 table that lists Potential New Acquisitions, the

16 next item is State Department Expatriates. Do you

17 know of any requests for that information?

18 A I am not aware of the request, but we

19 would need to talk to Michael Berning's staff to

20 confirm that.

21 Q All right. And what about the next item

22 listed, Medicare/Medicaid Loan Applications?

Page 109

1 A Well, we do have on our first reference

2 sheet that the Census Bureau has both Medicare

3 enrollment data and Medicaid enrollment data. I

4 know this says specifically "loan applications," so

5 we would need to talk with Michael Berning to ensure

6 that there is a distinction there or not.

7 Q Okay. I'm sorry, Mrs. Battle. Let's go

8 back. You said the reference sheet -- would you

9 refer to that by Exhibit Number, please?

10 A Exhibit Number 2.

11 Q Would you point to me where there is

12 information about Medicare and Medicaid?

13 A The third row down says CMS MEDB. That's

14 the Medicare enrollment database. And then where,

15 towards the bottom where it says Best Race and

16 Ethnicity, the first sub-bullet, CMS MSIS is the

17 Medicaid enrollment.

18 Q Okay. Does this suggest to you that this

19 is data on people who are in fact enrolled in

20 Medicare or Medicaid?

21 A The information in Exhibit 2 reflects data

22 on those who are enrolled. Whereas, I know on 304

Page 110

1 it mentions loan application, so if these are the
2 same things or different things, I need to --
3 Q I understand. When you said 304, you are
4 referring to page 304 of Exhibit 8?
5 A Yes.
6 Q Okay. And it's Mr. Berning or his group
7 who could tell us to the best of your knowledge?
8 A Yes.
9 Q Okay. Would you look now at Tab 4, the
10 document behind Tab 4, the Executive Order 13880?
11 And let's mark that as the next exhibit, please.
12 (Battle Exhibit Number 9
13 was marked for identification.)
14 BY MR. DAVIS:
15 Q Okay. Do you see this is Exhibit 9;
16 right? And it's a copy of the Executive Order
17 13880. Have you reviewed this Executive Order
18 before, Mrs. Battle?
19 A Yes.
20 MR. SVERDLOV: Objection. Vague.
21 MR. DAVIS: Have you reviewed this
22 Executive Order before?

Page 111

1 MR. SVERDLOV: Vague as to time. Go
2 ahead.
3 BY MR. DAVIS:
4 Q Would you look at the page -- it's Bates
5 Number P-169 at the bottom. Do you see that?
6 A Yes.
7 Q Page? Under Section 3, the Executive
8 Order says that -- that section is titled Assistance
9 to the Department of Commerce and Maximizing
10 Citizenship Data. Do you understand this to be a
11 list of data that agencies, quote, "shall examine
12 relevant legal authorities and, to the maximum
13 extent consistent with law, provide access to the
14 following records"? These are documents the
15 President wants the agencies to review and study and
16 see if they can provide to the Department of
17 Commerce; correct?
18 MR. SVERDLOV: Objection. Compound.
19 A Yes.
20 Q Okay. Walk me through this, Mrs. Battle.
21 Has the department requested all of this information
22 listed? And we can refer to the different documents

Page 112

1 we've been reviewing. I just want to be able to
2 match them up.
3 A So if we go back to Exhibit Number 6 --
4 Q Yes.
5 A So back in Exhibit Number 9 on page 169,
6 the first item under Section 3 calls for Department
7 of Homeland Security, United States Citizenship and
8 Immigration Services - National-level file of Lawful
9 Permanent Residents, and Naturalizations. And so if
10 we refer back to Exhibit 6 on page 2, you will see
11 that that request was made for Lawful Permanent
12 Resident file and Naturalization data.
13 Q Yes. That's data that in fact we
14 discussed earlier?
15 A Yes.
16 Q Okay.
17 A And back in Exhibit 9, the second bullet
18 under Section 3 calls for Department of Homeland
19 Security, Immigration and Customs Enforcement,
20 Non-immigrant Visas, and that is reflected on page 2
21 back in Exhibit 6, the last row where it talks about
22 Arrival Departure Information System and Visa data,

Page 113

1 Customs and Border Protection. That is the data on
2 temporary lawful residents.
3 Q And for that data, according to Exhibit 6,
4 it's been requested, you are awaiting transfer from
5 DHS; right?
6 A Yes. Yes.
7 Q Got it.
8 A Okay.
9 Q And going back to the Executive Order,
10 bullet 3 says Department of Homeland Security,
11 National-level file of Customs and Border
12 Arrival/Departure transaction data?
13 A And that will be fulfilled through the
14 same role we just talked about.
15 Q Okay. Arrival/departure information?
16 A Yes.
17 Q And on the Executive Order bullet 4,
18 Department of Homeland Security and Department of
19 State, Worldwide Refugee and Asylum Processing
20 System, Refugee and Asylum visas?
21 A In Exhibit 6 on page 3, at the very top
22 you'll see the Department of State and the request

Page 114

1 was for Worldwide Refugee Admission Processing
2 System data.
3 Q Okay. And according to Exhibit 6, that's
4 been requested and you are awaiting data transfer?
5 A Yes.
6 Q All right. So item 5 on the Executive
7 Record lists Department of State, National-level
8 passport application data.
9 A Uh-huh. I need to -- I would need to
10 check on the passport application data from the
11 State Department. I do not see it in the Exhibit
12 Number 6.
13 Q Okay. Back to the Executive Order, Mrs.
14 Battle, item 6 is Social Security Administration -
15 Master Beneficiary Records. Is that what I see on
16 page 3 of Exhibit 6?
17 A On page 3 of Exhibit 6, yes. The Master
18 Beneficiary Record, yes. That has been requested
19 and received.
20 Q Great. And the last item on that
21 particular list on the Executive Order is the, the
22 Department of Health and Human Services - CMS

Page 115

1 Medicaid and CHIP Information System. Is that on
2 Exhibit 6?
3 A Yes. Exhibit 6, page 4. They reference
4 the Medicaid Children's Health Insurance Program
5 there, and that we are awaiting transfer.
6 Q Okay. Then with your and your counsel's
7 permission, I would like to take just a couple
8 minutes for you to tell me in very general terms
9 what some of these other documents are that you
10 brought today, and then we will break for lunch, and
11 that will give us a chance to look at them and
12 decide what we need to ask about them. Does that
13 work?
14 A Yes.
15 MR. DAVIS: Let's mark these as exhibits.
16 We have got three more it seems.
17 (Battle Exhibit Number 10
18 was marked for identification.)
19 BY MR. DAVIS:
20 Q So, Mrs. Battle, first I'm marking one of
21 these as Exhibit 10. Would you tell me what this
22 document is?

Page 116

1 A This document is a Memorandum of
2 Understanding between the Census Bureau and the
3 Department of State.
4 Q Okay.
5 A And it is requesting passport data.
6 Q And is this a memorandum that has been
7 executed? Is it in place?
8 A This memorandum was signed earlier this
9 week, January 13th --
10 Q Great.
11 A -- when it was executed. This is new.
12 Q Okay.
13 (Battle Exhibit Number 11
14 was marked for identification.)
15 BY MR. DAVIS:
16 Q And what about the one I'm marking as
17 Exhibit 11?
18 A Exhibit 11 is another Memorandum of
19 Agreement between the Census Bureau and the
20 Department of Homeland Security regarding data on
21 immigration and citizenship.
22 (Battle Exhibit Number 12

Page 117

1 was marked for identification.)
2 BY MR. DAVIS:
3 Q And the last one I'll mark as Exhibit 12.
4 This appears to be a chart. Would you tell me what
5 this indicates, please?
6 A Exhibit --
7 MR. SVERDLOV: Objection. Vague.
8 A Exhibit 12 is a chart that shows you the
9 existing administrative records that the Census
10 Bureau has and has obtained over the years, long
11 history of obtaining these data from the Social
12 Security Administration, the Internal Revenue
13 Service, and the Department of Housing and Urban
14 Development.
15 Q Okay. So some of this stuff like from DHS
16 that we've been talking about just a couple minutes
17 ago, those are kind of new requests. This is data
18 that you've had for a while? Is that right?
19 A Yes.
20 Q Okay.
21 MR. DAVIS: Very good. I think this is a
22 good stopping point. What time would you like to

<p style="text-align: right;">Page 118</p> <p>1 come back?</p> <p>2 MR. SVERDLOV: We are at noon now. Let's</p> <p>3 take about an hour.</p> <p>4 MR. DAVIS: Sounds good. See you then.</p> <p>5 (Recessed at 11:54 a.m.)</p> <p>6 (Reconvened at 1:23 p.m.)</p> <p>7 MR. SVERDLOV: Can folks on the phone hear</p> <p>8 us okay?</p> <p>9 PHONE PARTICIPANT: Yes.</p> <p>10 BY MR. DAVIS:</p> <p>11 Q Mrs. Battle, early in the deposition we</p> <p>12 talked about some populations that tended to be</p> <p>13 subject to under-counts in the census. Would you</p> <p>14 remind me what some of those are?</p> <p>15 A Yes. So we know that in the decennial</p> <p>16 census there tends to be an under-count for young</p> <p>17 children. Those are children under the age of five.</p> <p>18 And we also know from research that there are</p> <p>19 certain racial and ethnic population groups that may</p> <p>20 be under-counted, such as young black males or</p> <p>21 American Indians and Alaskan Natives, for example.</p> <p>22 Q Okay. Taking the Alaskan Natives as an</p>	<p style="text-align: right;">Page 120</p> <p>1 A Yes.</p> <p>2 Q Would you give me an example of efforts</p> <p>3 that the Census Bureau has planned to reach a</p> <p>4 population that it believes to be more difficult to</p> <p>5 count than other populations?</p> <p>6 A So the Census Bureau has an advertising</p> <p>7 campaign and the Census Bureau develops advertising</p> <p>8 directed towards particular hard to count</p> <p>9 populations in order to help make awareness more</p> <p>10 broad of the decennial census and to encourage</p> <p>11 participation.</p> <p>12 The Census Bureau also has a network of</p> <p>13 partner -- it's called the National Partnership</p> <p>14 Program, and the idea there is to partner with</p> <p>15 particular organizations, local areas, to try to</p> <p>16 develop ways and approaches to reach the hard to</p> <p>17 count to get participation improved in the decennial</p> <p>18 census.</p> <p>19 Q Okay. Are there any efforts by the Census</p> <p>20 Bureau or any planned efforts to reach as many</p> <p>21 undocumented immigrants as possible for the count?</p> <p>22 MR. SVERDLOV: Objection. Vague. Calls</p>
<p style="text-align: right;">Page 119</p> <p>1 example, if I understand you correctly, research</p> <p>2 after the census suggests to the Census Bureau that</p> <p>3 there is likely an under-count of Alaskan Natives in</p> <p>4 the census; correct?</p> <p>5 A For the 2010 census in recent history</p> <p>6 there was an under-count, yes.</p> <p>7 Q Yes. Okay. Do you know whether that's</p> <p>8 true for other censuses as well?</p> <p>9 A The Census Bureau does publish after the</p> <p>10 decennial census their assessment of coverage of the</p> <p>11 decennial census and those reports would have that</p> <p>12 information.</p> <p>13 Q Okay. And the Census Bureau wants to</p> <p>14 count everyone it can, that are supposed to be</p> <p>15 counted; correct?</p> <p>16 MR. SVERDLOV: Objection. Vague. Calls</p> <p>17 for a legal conclusion.</p> <p>18 A Yes.</p> <p>19 Q Okay. Does the Census Bureau have any</p> <p>20 efforts planned to reach harder to count</p> <p>21 populations?</p> <p>22 MR. SVERDLOV: Objection. Vague.</p>	<p style="text-align: right;">Page 121</p> <p>1 for a legal conclusion.</p> <p>2 A I am not aware of any activities or</p> <p>3 programs or advertising that would be focused on</p> <p>4 that population.</p> <p>5 Q Would you turn, please, Mrs. Battle, to</p> <p>6 the document behind Tab 5 of the notebook?</p> <p>7 A Uh-huh.</p> <p>8 MR. SVERDLOV: Counsel, for the record,</p> <p>9 I'm just going to note here this is also not a</p> <p>10 document that was identified in the topics, and</p> <p>11 given its date as noted on the first page of</p> <p>12 September 18, 1985, we have concerns that questions</p> <p>13 about this document would venture far outside the</p> <p>14 scope of the topics negotiated.</p> <p>15 MR. DAVIS: Well, it could, but you might</p> <p>16 listen to my question first and then you could</p> <p>17 decide whether or not it's within the topics. It</p> <p>18 would save us a little bit of time.</p> <p>19 MR. SVERDLOV: I'm flagging a concern.</p> <p>20 I'm happy to give you an opportunity to prove me</p> <p>21 wrong.</p> <p>22 MR. DAVIS: Let's mark this as Exhibit 13,</p>

Page 122

1 please.

2 (Battle Exhibit Number 13

3 was marked for identification.)

4 BY MR. DAVIS:

5 Q Mrs. Battle, this is a statement of the

6 Director of the Bureau of the Census before the

7 Subcommittee on Energy, Nuclear Proliferation, et

8 cetera, dated September 18, 1985. I'm going to turn

9 to the page -- the first page is Bates Numbered

10 1820, produced by the Department of Commerce, and

11 I'm looking at the page that's Bates Numbered 1827.

12 And here I'm going to represent to you

13 that if you see a paragraph towards the bottom that

14 begins, "because undocumented aliens," et cetera?

15 On that page and the following page, as I read this,

16 and you can tell me if you disagree, the former

17 director is talking about efforts addressed to count

18 as many undocumented aliens as possible.

19 And I just want to see if this refreshes

20 your recollection if you review the steps that he

21 says were taken in the past, I ask you to look at

22 those and see if this refreshes your recollection,

Page 123

1 if you are aware of any such effort that the Census

2 Bureau intends to make as part of the 2020 census?

3 MR. SVERDLOV: I'm going to object to that

4 question on the basis of foundation and on the basis

5 of scope.

6 A On page 1828 --

7 Q Yes, ma'am.

8 A -- it mentions enumerating migrant farm

9 camps.

10 Q Yes.

11 A And I will say that in the course of the

12 decennial census the Census Bureau does have a group

13 quarters enumeration operation that would include

14 workers dormitories which may be similar to this

15 type of facility.

16 Q Okay.

17 A I would need to check on any conversations

18 that the Census Bureau has had with law enforcement

19 agencies.

20 Q Okay. Yes. Because this statement, the

21 former director said that they discussed with law

22 enforcement agencies about curtailing law

Page 124

1 enforcement on census days to ensure maximum

2 participation. Do you read it the same way?

3 MR. SVERDLOV: Objection. Lack of

4 personal knowledge and foundation and scope. The

5 document says what the document says and the witness

6 was neither prepared on this document, nor was this

7 document something that you indicated you were

8 interested in pursuing testimony on.

9 BY MR. DAVIS:

10 Q Are you aware of any conversations the

11 Census Bureau has had with law enforcement agencies

12 seeking perhaps a curtailment of law enforcement

13 with related to immigration on census day to ensure,

14 to help ensure maximum participation by undocumented

15 immigrants?

16 MR. SVERDLOV: I'm going to object based

17 on scope and also based on potentially deliberative

18 process privilege. I will direct the witness not to

19 answer because at the very least we are far outside

20 the scope of the topics noticed in this deposition.

21 BY MR. DAVIS:

22 Q Has the Census Bureau made any decision of

Page 125

1 whether or not to work with law enforcement agencies

2 to curtail enforcement of immigration laws around

3 census days in order to ensure greater participation

4 by undocumented immigrants in the census?

5 MR. SVERDLOV: To protect the deliberative

6 process I will direct the witness to answer in a

7 general way.

8 A I do not have knowledge regarding that. I

9 would need to check.

10 Q Okay. Who would you check with if you

11 wanted to find out the answer to that question?

12 A I would talk with the Deputy Director of

13 the Census Bureau.

14 Q And who would that be?

15 A Ron Jarmin.

16 Q Okay. Has the Census Bureau made any

17 decision of whether or not to reach out to clergy,

18 for example, the Conference of Catholic Bishops, to

19 solicit their support in spreading the word about

20 the census and the importance of participating in

21 the census?

22 MR. SVERDLOV: I will raise the same

<p style="text-align: right;">Page 126</p> <p>1 objection as before and give a similar instruction</p> <p>2 to the witness.</p> <p>3 A Well, in the National Partnership Program</p> <p>4 that I mentioned earlier there is a faith-based</p> <p>5 component there, so I do know that the Census Bureau</p> <p>6 has partnered with members of the different</p> <p>7 religious communities to help get the word out about</p> <p>8 the decennial census.</p> <p>9 Q The date of the census is April 1, did you</p> <p>10 say, 2020? That's the date that you are targeting</p> <p>11 trying to measure the population on that date?</p> <p>12 MR. SVERDLOV: Objection. Compound and</p> <p>13 not I'm not clear the witness has testified on that,</p> <p>14 so misstates prior testimony.</p> <p>15 A Yes.</p> <p>16 Q Okay. That doesn't mean though that</p> <p>17 everyone who fills out a form fills it out on April</p> <p>18 1 though, does it?</p> <p>19 A No.</p> <p>20 Q Okay. What if I fill out my form on March</p> <p>21 the 1st and move on the 15th; on March the 1st I</p> <p>22 report that I live in Prattville, Alabama, but I</p>	<p style="text-align: right;">Page 128</p> <p>1 instructions that you put on my form to reflect my</p> <p>2 status as of April 1, I fill out my form early, I</p> <p>3 fill it out on March 1 and say I live in Prattville,</p> <p>4 which was true on March 1, but on the 15th I moved</p> <p>5 to Nebraska. Is the Census Bureau going to count me</p> <p>6 as a resident of Alabama or Nebraska?</p> <p>7 MR. SVERDLOV: Same objection.</p> <p>8 A I think what would happen is that the data</p> <p>9 would be collected from that original form and if</p> <p>10 that individual did not fill out another form in</p> <p>11 Nebraska, that that information would be held -- in</p> <p>12 the sense -- I don't know that the Census Bureau</p> <p>13 would know that this person has moved if they never</p> <p>14 engaged with the Census Bureau an additional time.</p> <p>15 Q Unless it's self-reported, is it possible</p> <p>16 or even likely that the Census Bureau would not be</p> <p>17 aware of my move to another state?</p> <p>18 MR. SVERDLOV: Objection. Compound and</p> <p>19 misleading.</p> <p>20 A If the only information we have for that</p> <p>21 household has come in on a census form and we have</p> <p>22 no need to follow up with that individual, then that</p>
<p style="text-align: right;">Page 127</p> <p>1 move to Nebraska on the 15th. Where does the Census</p> <p>2 Bureau count me for the purposes of the 2020 census</p> <p>3 if those things were to happen?</p> <p>4 A Well --</p> <p>5 MR. SVERDLOV: Objection. Vague.</p> <p>6 A We do ask people to report as of census</p> <p>7 day.</p> <p>8 Q Okay.</p> <p>9 A It could be we collect their data early,</p> <p>10 earlier than that or even after that, but we always</p> <p>11 reference it back to we need your information as of</p> <p>12 census day, the reference date.</p> <p>13 Q Okay. Well, let's say that maybe I didn't</p> <p>14 see that part or I misunderstood, but I nonetheless</p> <p>15 report my address in Prattville, but I move to</p> <p>16 Nebraska on the 15th. Does the Census Bureau count</p> <p>17 me at the state that's on my form?</p> <p>18 MR. SVERDLOV: Objection. Vague and</p> <p>19 misleading.</p> <p>20 A The -- could you repeat that question,</p> <p>21 please?</p> <p>22 Q Sure. Let's say in spite of the</p>	<p style="text-align: right;">Page 129</p> <p>1 would be the information that we have.</p> <p>2 Q Okay.</p> <p>3 A If we never needed to interact with that</p> <p>4 person again.</p> <p>5 Q Okay. What if just any random person</p> <p>6 fills out their census form on March 15th, mails it</p> <p>7 in and the next day passes away; does the Census</p> <p>8 Bureau have any way that you are aware of to know</p> <p>9 that someone who filled out a census form in fact</p> <p>10 was deceased before census day?</p> <p>11 MR. SVERDLOV: Objection. Compound.</p> <p>12 A Once that census form has been submitted</p> <p>13 and the individual passes away, the Census Bureau</p> <p>14 would not have knowledge of that.</p> <p>15 Q Okay. I suppose it could also work the</p> <p>16 other way, a couple could fill out a census form and</p> <p>17 report two people live in a household and before</p> <p>18 census day they have a child. In that case that</p> <p>19 house would likely be under-counted, would it not?</p> <p>20 MR. SVERDLOV: Objection. Calls for a</p> <p>21 legal conclusion.</p> <p>22 A The Census Bureau would have access to the</p>

Page 130

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

Page 131

1 citizenship for all persons, e.g., not all citizens
2 have Social Security Numbers."
3 And the response given is: "We are
4 confident that Alternative C," use of administrative
5 data, "is viable and that we have already ingested
6 enough high-quality citizenship administrative data
7 from SSA and IRS."
8 Does the -- is the Census Bureau still
9 confident that the use of administrative data to
10 impute citizenship is viable and that you have
11 enough high-quality citizenship data to perform
12 those functions?
13 MR. SVERDLOV: Objection. One second.
14 Objection. I think this is verging into the
15 deliberative process privilege. The question by its
16 terms calls upon the witness to testify about
17 efforts that are ongoing, so I will direct the
18 witness not to answer that question.
19 MR. DAVIS: Okay.
20 BY MR. DAVIS:
21 Q This memo is dated January 19, 2018. Was
22 it true on January 19, 2018 that the Census Bureau

Page 132

1 was confident that Alternative C in this memo,
2 quote, is viable and that we, meaning the Census
3 Bureau, have already ingested enough high-quality
4 citizenship administrative data from SSA and IRS?
5 A The Census Bureau knows that, yes, the
6 Social Security Administration data and the Internal
7 Revenue Service data are of high quality but there
8 are still some gaps.
9 Q Okay. The next sentence of the response
10 says: "The USCIS data are not required. They
11 would, however, make the citizenship voting age
12 tabulations better." Was that true in 2018?
13 MR. SVERDLOV: Objection. Vague.
14 A What I can tell you is that there are gaps
15 in the Social Security Administration data, and
16 acquiring information from the Citizenship and
17 Immigration Services Agency may be helpful in
18 filling in those gaps.
19 Q Okay. Then I apologize for this, but I
20 want to make sure I've asked what I need to ask,
21 Mrs. Battle. I want to try this another way.
22 The statement that Alternative C is

Page 133

1 viable, was that statement true when it was made?
2 MR. SVERDLOV: Objection. Vague.
3 A Alternative C was put forward as an option
4 that the Census Bureau thought should be pursued,
5 additional research would need to be done,
6 additional data would need to be collected to see
7 how that alternative could be then developed to
8 produce information on citizenship status.
9 Q Well, on this day does the Census Bureau
10 know whether the use of administrative data will
11 allow it to produce citizen voting age population
12 after the 2020 census?
13 MR. SVERDLOV: Objection. Vague as to
14 time. To the extent that this question concerns a
15 date other than the date on the memorandum or dates
16 subsequent to it, I will direct the witness not to
17 answer based on deliberative process privilege.
18 BY MR. DAVIS:
19 Q The question is as of today's date does
20 the Census Bureau know whether it will be able to
21 use the 2020 census to produce citizen voting age
22 population data using administrative data? I'm not

Page 134

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

Page 135

1 data to produce citizen voting age population data?

2 A The Census Bureau is pursuing that, but we

3 need to continue to evaluate all of the data that we

4 have requested and then make sure we have developed

5 the appropriate methodology that will allow us to do

6 that. So we are still evaluating the data.

7 Q Okay. Are you aware of any memorandum or

8 reports from the Census Bureau or perhaps testimony

9 from prior litigation where the Census Bureau or a

10 representative said in effect we don't know whether

11 we can use administrative to do this, but we are

12 going to look at it and see?

13 MR. SVERDLOV: Objection. Vague and

14 misleading. To the extent that -- strike that last

15 part.

16 A I am aware of memos that instruct the

17 Census Bureau to acquire additional administrative

18 records and with the purpose of developing

19 methodology to determine citizenship status with the

20 CVAP data product.

21 Q Does the Census Bureau expect to know the

22 answer to that question by spring of 2020?

Page 136

1 MR. SVERDLOV: Objection. Vague.

2 A The Census Bureau has stated that in the

3 spring of 2020 its goal is to have identified

4 specific administrative record data sources and

5 methodology that will permit it to develop the CVAP

6 data product.

7 Q When this report or memo dated January 19,

8 2018 contains the statement that we are confident

9 that Alternative C is viable, has anything happened

10 since that date to make the Census Bureau less

11 confident that Alternative C is viable?

12 MR. SVERDLOV: Objection on the basis of

13 deliberative process privilege. To the extent the

14 witness can answer in general terms, she may try to

15 do so. But I will direct the witness not to answer

16 the question to the extent it calls for the internal

17 deliberations and the substance of those

18 deliberations of the Census Bureau.

19 A I am not aware of any conversations that

20 concluded that administrative records are not viable

21 to help us with those efforts.

22 Q Has the Census Bureau made a decision as

Page 137

1 to whether any sampling will be involved to measure

2 or impute citizenship as part of the 2020 census?

3 MR. SVERDLOV: Objection. Vague and

4 compound.

5 A The Census Bureau has not determined its

6 final methodology for producing the CVAP yet.

7 Q Has the Census Bureau determined whether

8 CVAP data will be released as part of the P-4 --

9 what was the data file? Dash 171?

10 MR. SVERDLOV: Objection. Vague and

11 compound.

12 A You are asking me if CVAP is intended to

13 be a part of the redistricting data file, the PL.

14 Q Right. PL dash --

15 A PL-94171.

16 Q That's it. Thank you.

17 A The Census Bureau intends for the CVAP

18 data product to be a separate special tabulation.

19 Q Okay. What form will it be released in?

20 MR. SVERDLOV: Objection. Vague.

21 A The Census Bureau is working to finalize

22 the format of the CVAP. I expect that information

Page 138

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?

Page 139

1 A So one of the key issues with the Numident

2 is whether or not there, the information regarding

3 individuals who are not citizen 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 Numident 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. SVERDLOV: I'm sorry. Hold on one

21 second. I want to read the question. Objection.

22 Vague.

Page 140

1 A So with the key issue regarding

2 individuals who are not citizens at the time that

3 they obtained the Social Security Number, that

4 information may not be updated in that particular

5 source of data, but the idea is to search other

6 administrative records to use in conjunction to then

7 have more updated information.

8 Q Okay. So it's a population who may not be

9 included in the citizenship information in a

10 particular set of administrative records? Did I

11 understand you correctly?

12 A Yes.

13 Q Okay. But there could be other

14 administrative records that do contain citizenship

15 information about that individual?

16 A Yes.

17 MR. SVERDLOV: Objection. Calls for

18 speculation.

19 Q And it lists one, two, three, four, five,

20 six, seven people starting on -- not people --

21 groups starting on page P-39. One is U.S. citizens

22 from birth with no Social Security Number or U.S.

Page 141

1 passport. The second is U.S. citizens from birth

2 born outside the U.S. who do not have a U.S.

3 passport, et cetera, and I'm not reading the whole

4 description, but you see where I'm talking about?

5 A Yes.

6 Q Is the Census Bureau making any efforts to

7 seek particular data to fill the so-called

8 citizenship data gaps?

9 MR. SVERDLOV: Objection. This question

10 calls for information that is protected by the

11 deliberative process privilege. So to the extent

12 the witness can answer it in a general way, she may

13 do so. But I will direct her not to go into the

14 details regarding any efforts that may or may not be

15 taking place.

16 A So the Census Bureau has recently acquired

17 and will acquire additional administrative records,

18 and in the course of evaluating this data the Census

19 Bureau can assess how many of these gaps we might be

20 able to fill.

21 Q And was it in seeking this information,

22 was it one of the goals of the Census Department to

Page 142

1 fill as many of these gaps as possible?

2 MR. SVERDLOV: Objection. That question

3 calls for information protected by the deliberative

4 process privilege.

5 MR. DAVIS: Was it a goal of the Census

6 Department to fill as many gaps as possible? That

7 doesn't call for deliberations.

8 MR. SVERDLOV: It precisely does. It

9 calls for revealing the rationale by which the

10 Census Bureau has been acting on a matter in which

11 the Census Bureau has not yet completed

12 deliberations. So our view is that it is protected

13 by the deliberative process privilege.

14 MR. DAVIS: Are you instructing the

15 witness not to answer?

16 MR. SVERDLOV: Let me review the question.

17 I will direct the witness not to answer that

18 particular question. However, there may be general

19 questions that she can answer.

20 BY MR. DAVIS:

21 Q Is it the goal of the Census Department to

22 refrain from asking for data that it believes would

Page 143

1 be helpful?

2 MR. SVERDLOV: Objection. Argumentative.

3 A Can you please restate that?

4 Q Sure. Is it a goal of the Census

5 Department to purposefully refuse to ask for

6 administrative data from another agency that it

7 believes would be helpful in producing a more

8 accurate citizen voting age population count in the

9 2020 census?

10 MR. SVERDLOV: In addition to being

11 argumentative, that question seeks to discover the

12 deliberations of the Census Bureau. I will direct

13 the witness not to answer that question.

14 BY MR. DAVIS:

15 Q You can refer to this document if you

16 wish. It's the executive order, Mrs. Battle. What

17 do you understand the executive order behind Tab 4,

18 what do you understand this executive order to

19 direct the census department to do?

20 A My understanding is that the Census Bureau

21 is directed to establish an interagency working

22 group with the purpose of meeting with federal

Page 144

1 departments to discuss acquiring their

2 administrative records that may be helpful in

3 helping the Census Bureau meet and comply with the

4 executive order.

5 Q And does the Census Bureau intend to do

6 that?

7 A Yes.

8 Q Is there in any respect that the Census

9 Bureau does not intend to comply with Executive

10 Order 13880?

11 A The Census Bureau is working to comply

12 with Executive Order 13880.

13 Q And you are not aware of any area or any

14 requirement of the Executive Order that the Census

15 Bureau intends to refuse?

16 MR. SVERDLOV: Objection. Vague, calls

17 for a legal conclusion, calls for speculation.

18 A I am not aware of any part of the

19 Executive Order that the Census Bureau intends to

20 refuse.

21 Q Referring, Mrs. Battle, to the efforts of

22 the Census Bureau to obtain administrative data from

Page 145

1 the various states, let's say there is a case where

2 a particular state has declined to provide requested

3 data. Has the Census Bureau made any decision yet

4 as to what the next steps might or might not be?

5 MR. SVERDLOV: Objection. Calls for

6 speculation.

7 A I'm not aware of any next steps that the

8 Census Bureau plans to take regarding states that

9 have refused to share their administrative records.

10 Q Okay. Well, I have to be clear because of

11 the objections. Has there been a decision made that

12 the Census Bureau is going to take no further steps

13 if a state has declined to provide requested data?

14 MR. SVERDLOV: Objection to the extent it

15 calls for deliberative information. To the extent

16 that the witness can answer whether or not there has

17 been a decision made, she may answer.

18 MR. DAVIS: Which is the question that I

19 asked.

20 A I am not aware of the Census Bureau making

21 any decisions about whether or not next steps need

22 to be taken.

Page 146

1 Q Okay. Look back, please, Mrs. Battle, at
2 the document behind Tab 9. And remind me for the
3 record what Exhibit Number is.
4 A 14.
5 Q 14. Thank you. And look back at the list
6 of one through seven.
7 MR. SVERDLOV: For the record, this is the
8 page that's Bates Numbered P-39.
9 THE WITNESS: Yes.
10 BY MR. DAVIS:
11 Q Does the Census Bureau know how many
12 individuals are in any of these categories one
13 through seven?
14 MR. SVERDLOV: Objection. Vague.
15 A I am not aware of the Census Bureau having
16 quantified how many people are in each of these
17 categories.
18 Q To make sure I'm clear, are you aware of
19 any estimates of the number of people in any of
20 these categories?
21 MR. SVERDLOV: Objection. Vague.
22 A I'm not aware of any specific estimates

Page 147

1 for any of these categories that may have been
2 utilized in the development of this memo.
3 Q Would you turn now, please, Mrs. Battle,
4 to the document that is behind Tab 14 of the
5 notebook? And let's mark the first page as Exhibit
6 15, please.
7 And I'll represent to you that these are
8 excerpts of a deposition in other litigation. These
9 are excerpts of a deposition taken in other
10 litigation, the deposition of Dr. John Abowd, on
11 Wednesday, August 29th in the lawsuit New York
12 Immigration Collision, et al., versus U.S.
13 Department of Commerce.
14 (Battle Exhibit Number 15
15 was marked for identification.)
16 MR. SVERDLOV: Just for the record, I will
17 note that this is another document that has not been
18 identified for purposes of the topics that the
19 parties negotiated. So to the extent that the
20 witness can answer in general terms, she may do so.
21 MR. DAVIS: That's not helpful, because I
22 don't have to tell you what the exhibits are going

Page 148

1 to be when we negotiate topics. And it --
2 MR. SVERDLOV: I'm laying groundwork for
3 an objection. I don't know where you are going to
4 go.
5 MR. DAVIS: Exactly. You don't know. So
6 in my view it's a waste of time. You can still
7 raise the objection after a question if in fact the
8 question is objectionable, instead of taking up our
9 time flagging potential objections.
10 BY MR. DAVIS:
11 Q I will tell you, Mrs. Battle, I find some
12 of the coloring hard to read. This is the form we
13 were able to receive it in. I think it is because
14 different parties designated different portions of
15 the deposition in other litigation.
16 I'm going to refer you to page 67 of the
17 deposition. Do you see the page I mean? The top
18 line one begins, "in 2000 and 2010 that was
19 accomplished."
20 A Yes.
21 Q Okay. There is testimony here I'll
22 represent to you, Mrs. Battle, concerning

Page 149

1 introducing randomness to see that data to ensure
2 protection of privacy, at least that's the way I
3 interpret the testimony.
4 I would like you to review that and help
5 me understand, if you know and if any decision has
6 been made about this, whether randomness is going to
7 be injected into CVAP data to protect the privacy of
8 individuals?
9 A Yes. The Census Bureau has determined
10 that it will use a procedure or methodology called
11 differential privacy that will be used to infuse
12 noise into all estimates that come out from the CVAP
13 as well as all census counts that come out from the
14 decennial census. So all data products from the
15 decennial census will have this noise infusion to
16 protect the privacy of those who are included.
17 Q Okay. How does that work? What does it
18 mean to inject -- what I mean by that question is
19 what does it mean to inject noise into the data?
20 A The Census Bureau will be using a
21 mathematical approach to determine how to -- a
22 mathematical approach in terms of how to take census

Page 150

1 responses and then be able to inject noise is the
2 best way I can describe it, to protect an
3 individual's information. So it's a way of
4 preventing an individual from being identified based
5 on their characteristics that they provided in
6 response to the decennial census.

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

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

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

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

Page 151

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

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

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

11 MR. SVERDLOV: Objection. Vague.
12 Compound.

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

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

Page 152

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

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

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

18 MR. SVERDLOV: Is that a question?

19 MR. DAVIS: Yes.

20 BY MR. DAVIS:

21 Q What does injecting noise have to do with
22 accuracy? How does it effect it?

Page 153

1 MR. SVERDLOV: Objection. Compound.

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

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

16 MR. SVERDLOV: Objection. Calls for
17 speculation.

18 A You are referring to a statement on page
19 67 about randomness?

20 Q Right.

21 A Let's see.

22 Q And that's in Exhibit 15. I'm trying to

Page 154

1 understand if you and this witness are describing
2 the same procedure.
3 A Because on the top of page 67 the
4 testimony talks about differential privacy, then we
5 are talking about the same thing.
6 Q Okay.
7 MR. SVERDLOV: Counsel, I think we would
8 benefit from a little bit of clarification. The
9 document in Tab 14, you've designated the excerpt of
10 testimony from Dr. John Abowd, do you know whether
11 that was a 30(b)(6) deposition? It does not appear
12 to be one on its face.
13 MR. DAVIS: I do not know the answer to
14 that question. And if I intended -- if I
15 represented this as being the testimony of the
16 department itself, that was not intentional.
17 MR. SVERDLOV: Okay.
18 MR. DAVIS: With your permission, counsel,
19 and, Mrs. Battle, this would be a good time for a 10
20 or 15-minute break to get organized. I think the
21 rest of the time would proceed more efficiently if
22 you allow me to do that.

Page 155

1 MR. SVERDLOV: That makes sense.
2 MR. DAVIS: Thank you, Mrs. Battle.
3 (Recessed at 2:15 p.m.)
4 (Reconvened at 2:40 p.m.)
5 BY MR. DAVIS:
6 Q Mrs. Battle, the Executive Order -- you
7 are free to turn to it if you want -- but it is
8 behind Tab 4. In Executive Order 13880 it says on
9 the page that's been marked, that's Bates Numbered
10 P-169, it says, before it lists the different
11 categories of administrative records it says: "The
12 following agencies shall examine relevant legal
13 authorities and, to the maximum extent consistent
14 with law, provide access to the following records."
15 MR. SVERDLOV: I'm sorry, counsel. Can
16 you direct me?
17 MR. DAVIS: It's under Section 3 just
18 before the list of documents, small little Roman
19 one.
20 MR. SVERDLOV: Okay.
21 BY MR. DAVIS:
22 Q My question to you, Mrs. Battle, is this:

Page 156

1 Are you aware of any federal agencies that have said
2 we cannot provided requested information because the
3 law doesn't permit us to share it with you?
4 A I am not aware of any agencies stating
5 that they cannot share or send to us their data
6 because of a law.
7 Q Okay. And for the data that you received
8 or that they've agreed to share, are you aware of
9 any circumstance where the law would not permit you
10 to use the data in order to impute citizenship?
11 MR. SVERDLOV: Objection. Calls for a
12 legal conclusion, and to the extent it pertains to
13 the ongoing deliberations about the use of data,
14 that this information we would view as protected
15 under the deliberative process privilege, so I will
16 instruct the witness not to answer that portion.
17 BY MR. DAVIS:
18 Q Let's start over. Are you aware of any
19 circumstance where the Census Bureau has determined
20 that it is unable to use a set of administrative
21 data because of some impediment of the law?
22 MR. SVERDLOV: Objection. Vague.

Page 157

1 BY MR. DAVIS:
2 Q Or some legal requirement?
3 MR. SVERDLOV: Objection. Compound.
4 A I am not aware of that.
5 Q Would you look at the document, one of the
6 ones that you brought with you today, that's marked
7 as Exhibit 11? And this, for the record, is a
8 Memorandum of Agreement between the United States
9 Department of Commerce and the United States
10 Department of Homeland Security. And I will refer
11 you to page 17 of that document, Mrs. Battle.
12 Do you see that page with the heading
13 Attachment 1: Description of Approved Research
14 Project?
15 A Yes. Yes.
16 Q In the first paragraph, Mrs. Battle, it
17 says: "The Census Bureau plans to use several
18 administrative data sources of citizenship status in
19 a statistical model that will produce a probability
20 of being a U.S. citizen on April 1, 2020 for each
21 person in the 2020 census."
22 First, is that in fact the Census Bureau's

Page 158

1 plans?

2 A The Census Bureau is acquiring

3 administrative records that it will evaluate and the

4 Census Bureau will then finalize their plans about

5 how they specifically will determine citizenship for

6 those enumerated in the census.

7 Q Okay. What does it mean you'll produce a

8 probability of being a U.S. citizen?

9 A In this general approach the probability

10 would be a value between zero and one.

11 Q Okay. Well, what if the probability is

12 .5; is that person counted as a citizen or a

13 non-citizen?

14 MR. SVERDLOV: Objection. Vague and

15 misleading, assumes facts not in evidence.

16 A The final methodology for how the Census

17 Bureau will use administrative records and to

18 actually develop the citizenship status for

19 individuals in the census has not been finalized yet

20 to be able to tell you that information.

21 Q Okay. Let me make sure I understand you

22 by asking you a different way. Has the Census

Page 159

1 Bureau yet decided how high the probability must be

2 of citizenship before a person is counted as a U.S.

3 citizen?

4 A I am not aware of the Census Bureau making

5 that decision yet.

6 Q Okay. And who would be making that

7 decision?

8 MR. SVERDLOV: Objection. Vague. And,

9 okay.

10 A The final methodology that the Census

11 Bureau will use to create the CVAP file will need to

12 be vetted and approved by executive leadership at

13 the Census Bureau as well as at the Department of

14 Commerce.

15 Q Okay. So executive leadership has to

16 approve it. I assume that there are employees of

17 the Census Bureau who will be working on answers to

18 these questions to recommend to executive

19 leadership. Is that true?

20 MR. SVERDLOV: Objection. Vague.

21 A Yes.

22 Q Okay. And do you know who within the

Page 160

1 Census Bureau will be working on recommendations to

2 make to executive leadership?

3 MR. SVERDLOV: Objection. Vague and

4 assumes facts not in evidence.

5 A The Census Bureau will look to an internal

6 expert team that includes leadership from John Abowd

7 and the development of the recommendation about how

8 to develop the statistical models, how to use

9 probability data if that indeed will be part of the

10 final methodology.

11 Q Mrs. Battle, when you talk about in terms

12 of probability of citizenship and the value between

13 zero and one, what does zero mean?

14 MR. SVERDLOV: Objection. Vague.

15 A The methodology that needs to be finalized

16 will determine what the values of the range of the

17 probabilities actually means.

18 Q Okay. I guess you would give me the same

19 answer if I asked what one means in that scenario?

20 A Yes. All of that has to be finalized in

21 the methodology.

22 Q Okay. Let's say, Mrs. Battle, that after

Page 161

1 the 2020 census the Census Bureau counts in a

2 particular census block 100 voting age white

3 citizens, 40 voting age African-American citizens,

4 and ten non-citizens. Are those numbers going to be

5 reported for that census block?

6 MR. SVERDLOV: Objection. Vague and

7 compound. To the extent it concerns ongoing

8 deliberations, that question would -- the answer to

9 that question would be protected by the deliberative

10 process privilege.

11 I think more pertinent right now is that

12 this question is verging outside the scope of the

13 negotiated topics and I think we would benefit from

14 you explaining how you view the, that type of count

15 you described as falling within one of the topics we

16 negotiated.

17 BY MR. DAVIS:

18 Q I'm making the numbers up. I don't care

19 what the numbers are. I just want to know if you

20 count particular numbers in the census block. This

21 is going back, Mrs. Battle, to the injecting noise

22 and I just want to understand that as well as I can

Page 162

1 while I have the opportunity to speak with you.
2 So the first step is if you measure X
3 number of, let's just stick with X number of
4 Caucasian voting age citizens in a census block, is
5 that X in fact going to be released for that census
6 block, or because of noise, will it be changed to
7 some other number?
8 MR. SVERDLOV: Objection. Vague.
9 A The Census Bureau will take enumerated
10 counts for a block and those data, along with all
11 the other census data collected in the decennial
12 census, will go through the disclosure avoidance
13 process and noise will be injected.
14 Q Okay. And after -- how will the numbers
15 for a block look different after noise is injected?
16 MR. SVERDLOV: Objection. Calls for
17 speculation.
18 BY MR. DAVIS:
19 Q I'm going to break that down with
20 different questions to see if maybe I can make it
21 make sense a little more for me.
22 After you inject noise, would the total

Page 163

1 population of the block change?
2 MR. SVERDLOV: Objection. Vague.
3 A The current plans for using disclosure
4 avoidance in the decennial census holds that only
5 the state's population totals will be as enumerated
6 in the census and other population totals may change
7 because of noise that's been injected.
8 Q Okay. So the numbers reported for a
9 particular census block may not be accurate then if
10 I understand you correctly?
11 MR. SVERDLOV: I'm going to object based
12 on scope once again and this time I'm going to
13 direct the witness not to answer. I do not see how
14 this bears on the question of state apportionments,
15 which is the nature of your claims in this lawsuit
16 and therefore the predicate for --
17 MR. DAVIS: We will come back to that. We
18 will just skip that for now.
19 BY MR. DAVIS:
20 Q But from what you described, Mrs. Battle,
21 voting age population at the state level will be
22 correct?

Page 164

1 MR. SVERDLOV: Objection. Vague.
2 A The state population totals will be as
3 enumerated in the decennial census.
4 Q Okay. Will you be releasing citizen
5 voting age population at the state level?
6 A That level of geography traditionally has
7 been published with the CVAP data file. The final
8 specifications for the 2020 CVAP are not finalized
9 yet.
10 Q Is there any doubt that the Census Bureau
11 will in fact release CVAP data after the 2020
12 census?
13 MR. SVERDLOV: Objection. Vague.
14 A The Census Bureau plans to release the
15 CVAP data after the census. The goal is to produce
16 that by March 31st of 2021.
17 Q Does the Census Bureau have any intention
18 that you are aware of to seek information concerning
19 deferred action for childhood arrivals program?
20 MR. SVERDLOV: Objection. I will direct
21 the witness not to answer both on the basis of scope
22 and deliberative process privilege.

Page 165

1 BY MR. DAVIS:
2 Q Have you made a decision as to whether or
3 not to seek that data?
4 MR. SVERDLOV: Objection. Assumes facts
5 not in evidence. And outside the scope. But if --
6 BY MR. DAVIS:
7 Q I feel like the administrative data that
8 may be available to address citizenship is well
9 within the scope of the topics. So I will ask
10 again. Has the Census Bureau made any decision as
11 to whether it will seek information related to the
12 deferred action for childhood arrivals program?
13 MR. SVERDLOV: Objection. Assumes facts
14 not in evidence.
15 A I am not aware of any decision that's been
16 made regarding that topic.
17 Q Okay. I am almost positive that at times
18 today I have referred to the census department when
19 it's really the Census Bureau. If I have done that,
20 we understood each other? You knew who I was
21 talking about, that I meant the Census Bureau, did
22 you not?

Page 166

1 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,

8 please, Mrs. Battle?

9 MR. SVERDLOV: I'm sorry? What tab?

10 MR. DAVIS: Tab 17.

11 BY MR. DAVIS:

12 Q And, Mrs. Battle, take all the time you

13 want. I really just want to know if you can

14 identify that document for me just so I can get on

15 the record if you know what that document is.

16 Let's mark it as Exhibit 18. For the

17 record, I made a mistake. This document will be

18 marked as Exhibit 16 to Mrs. Battle's deposition.

19 (Battle Exhibit Number 16

20 was marked for identification.)

21 BY MR. DAVIS:

22 Q Can you identify the document that's been

Page 167

1 marked as Exhibit 16, Mrs. Battle?

2 A This is the Department of Homeland

3 Security Immigration-Related Information Sharing

4 with U.S. Census Bureau, December 20th, 2019.

5 Q And how is that different from the

6 document we marked as Exhibit 11, the Memorandum of

7 Agreement between the Department of Commerce and the

8 U.S. Department of Homeland Security?

9 MR. SVERDLOV: Objection. Vague and

10 misleading and assumes facts not in evidence. And

11 to the extent you are asking the witness to testify

12 about a Department of Homeland Security document

13 that you have marked as Exhibit 16, it is outside

14 the scope of this deposition because the witness is

15 testifying on behalf of the U.S. Census Bureau, not

16 the Department of Homeland Security.

17 BY MR. DAVIS:

18 Q Have you reviewed the document that's been

19 marked Exhibit 16 before?

20 A I am not familiar with this particular

21 document.

22 Q That's all. That's fine. Then I will

Page 168

1 have no other questions about it.

2 Mrs. Battle, does the Census Bureau know

3 yet whether it is feasible to produce high-quality

4 citizen voting age population data using

5 administrative records?

6 MR. SVERDLOV: Objection. Vague and

7 misleading, assumes facts not in evidence.

8 A The Census Bureau will need to continue

9 evaluating the administrative records that we have

10 recently acquired before being able to make that

11 statement.

12 Q So the answer is the Bureau just doesn't

13 know yet? Is that true?

14 A Yes.

15 Q Okay. If it didn't know now, then it

16 didn't know the answer to that question in 2019 or

17 2018 or 2017, did it?

18 MR. SVERDLOV: Objection. Argumentative.

19 A The Census Bureau needs to get access to

20 the data and be able to evaluate that to make that

21 final decision.

22 Q So if someone said in 2019 that, yes, the

Page 169

1 Census Bureau can use administrative data and use

2 that to produce high-quality citizen voting age

3 population data, that would have been incorrect?

4 MR. SVERDLOV: Objection. Vague and

5 misleading.

6 A The goal of the Census Bureau is to use

7 administrative records to produce high-quality data

8 on citizenship for the population. But we need to

9 access the data that we believe may be helpful to us

10 and just make sure that it will be of the quality

11 that we need for the purposes that we need.

12 Q After the 2020 census, Mrs. Battle, does

13 the Census Bureau intend to release a total

14 population count for each state?

15 A After the decennial census the Census

16 Bureau intends to publish a, an apportionment

17 population count for the state, which would include

18 a resident population count for the state as well as

19 the federal affiliated overseas population for the

20 state.

21 Q Okay. Will it produce as a part of any

22 product a count of the number of U.S. citizens

Page 170

1 residing in each state?

2 MR. SVERDLOV: Objection. Vague.

3 A The Census Bureau in the development of

4 the citizen voting age population file would include

5 data on the number of citizens of voting age. The

6 final format of other information that would be in

7 that CVAP file has to be finalized.

8 Q The numbers released for citizenship, if I

9 understood you correctly, will be the number of

10 citizens of voting age; is that correct?

11 A Yes. That would be in the citizen voting

12 age population data product.

13 Q But does the Census Bureau also intend to

14 count each person, even those not of voting age, as

15 a citizen or a non-citizen?

16 MR. SVERDLOV: Objection. Vague and

17 misleading.

18 A The Census Bureau through the use of

19 administrative records will be determining a

20 citizenship value for all those counted in the

21 decennial census.

22 Q Does the Census Bureau plan to count the

Page 171

1 number of non-citizens who are lawfully present in

2 each state?

3 MR. SVERDLOV: Objection. Vague and

4 misleading.

5 A The Census Bureau plans to count in the

6 decennial enumeration all of those who are usual

7 residents of the state regardless of citizenship

8 status.

9 Q Do you know and does the Census Bureau

10 know whether any of the administrative data that it

11 has sought or obtained would contain administrative

12 data on lawful residents?

13 Let me say by that I mean do you know

14 whether any of the data from any of these other

15 agencies will contain information to let you impute

16 whether or not a person counted is, a non-citizen

17 counted is a lawful resident of the United States?

18 MR. SVERDLOV: Objection. Vague and

19 misleading.

20 A I can't speak to whether the Census Bureau

21 will impute a particular legal status to someone in

22 a decennial census. The Census Bureau is acquiring

Page 172

1 administrative records that will have some of that

2 information.

3 Q Okay. What are some of those? And I will

4 refer you, Mrs. Battle, to the document that's been

5 marked as Exhibit 6. I'm not limiting you to that

6 exhibit, but it may be a place to start. And again

7 what I'm asking you is to tell me which of these

8 records either have or may have information related

9 to the lawful status of a non-citizen.

10 A So in Exhibit 6 on page 2, in the bottom

11 part of the table we see data that either has been

12 acquired or we are waiting to acquire from the

13 Department of Homeland Security, which would include

14 information on lawful permanent residents and

15 naturalized citizens, as well as temporary lawful

16 migrants, people with student visas or temporary

17 work visas, et cetera.

18 And page 3, at the top the Department of

19 State, we are waiting to acquire those records on

20 data regarding the refugee population.

21 Q Any other sources of data listed on

22 Exhibit 6 that may have information about lawful

Page 173

1 residency?

2 A I would need to defer back to the

3 Memorandum of Understanding with all of these

4 agencies which lists the variables specifically that

5 are being requested to determine that.

6 Q If a state agrees to release information

7 to the Census Bureau, and by information I mean

8 administrative data requested as part of the effort

9 to comply with the Executive Order, is the Census

10 Bureau entering into agreements with those states or

11 memorandums of understanding?

12 MR. SVERDLOV: Objection. Vague.

13 A The Census Bureau will need to have a

14 memorandum of understanding or enter transfer

15 agreements to document exactly what the Census

16 Bureau is requesting, yes.

17 Q Look. Nebraska is listed on here and

18 providing you some information; correct?

19 A Yes.

20 Q Does that mean that Nebraska has entered

21 into a memorandum of understanding with the Census


22 Bureau?

<p style="text-align: right;">Page 174</p> <p>1 A In order for the Census Bureau to acquire</p> <p>2 those data there needs to be a memorandum of</p> <p>3 understanding.</p> <p>4 Q Gotcha.</p> <p>5 MR. DAVIS: This is off the record.</p> <p>6 - - -</p> <p>7 (Discussion off the Record.)</p> <p>8 - - -</p> <p>9 BY MR. DAVIS:</p> <p>10 Q Back on. Mrs. Battle, if the Census</p> <p>11 Bureau determined that it was going to make a count</p> <p>12 of non-citizens who were lawfully present in each</p> <p>13 state, is there additional administrative data that</p> <p>14 the Census Bureau would need in order to accomplish</p> <p>15 that?</p> <p>16 MR. SVERDLOV: Objection. I will skip the</p> <p>17 form objection and just object on the basis of</p> <p>18 deliberative process privilege and instruct the</p> <p>19 witness not to answer.</p> <p>20 BY MR. DAVIS:</p> <p>21 Q Mrs. Battle, has the Census Bureau made</p> <p>22 any decision that should it determine to make a</p>	<p style="text-align: right;">Page 176</p> <p>1 accurate and as complete a count as possible and</p> <p>2 utilizes many different operations and techniques to</p> <p>3 help us meet that goal.</p> <p>4 Q Certainly. And imputation, for example,</p> <p>5 is it true that at least one of the reasons why the</p> <p>6 Census Bureau uses characteristic imputation for the</p> <p>7 use of administrative records is that because it</p> <p>8 results in a more accurate census?</p> <p>9 MR. SVERDLOV: Objection. Vague.</p> <p>10 A Yes.</p> <p>11 MR. DAVIS: Can we go off the record so I</p> <p>12 can talk to my colleagues? We can take a break, let</p> <p>13 us chat and we will be right back.</p> <p>14 MR. SVERDLOV: Why don't you chat and then</p> <p>15 we will figure out next.</p> <p>16 (Recessed at 3:13 p.m.)</p> <p>17 (Reconvened at 3:31 p.m.)</p> <p>18 MR. DAVIS: I think I'm up and I can say</p> <p>19 we have no further questions. We really appreciate</p> <p>20 counsel hosting Mrs. Battle. We thank you for</p> <p>21 taking time to speak to us and helping with these</p> <p>22 issues. Before I close I would say that there is</p>
<p style="text-align: right;">Page 175</p> <p>1 count of persons who were unlawfully present</p> <p>2 non-citizens in each state, that it would need</p> <p>3 additional administrative data to do that?</p> <p>4 MR. SVERDLOV: Objection. Vague and</p> <p>5 compound, assumes facts not in evidence.</p> <p>6 A The Census Bureau has not made any</p> <p>7 determination at this point as to additional</p> <p>8 information that could be produced or published</p> <p>9 regarding lawful immigrants.</p> <p>10 Q We discussed earlier, Mrs. Battle, the</p> <p>11 different steps that the Census Bureau goes through</p> <p>12 when it's attempting to make an enumeration. You</p> <p>13 send out the form, sometimes enumerator, sometimes</p> <p>14 in certain cases you might ask a neighbor, sometimes</p> <p>15 these hot deck imputations.</p> <p>16 My question is this: Are each of these</p> <p>17 steps, each of these efforts, are they part of the</p> <p>18 Census Bureau's efforts to make the census as</p> <p>19 accurate as possible?</p> <p>20 MR. SVERDLOV: Objection. Vague, calls</p> <p>21 for a legal conclusion.</p> <p>22 A The Census Bureau strives to conduct as</p>	<p style="text-align: right;">Page 177</p> <p>1 still documents to be produced or documents that</p> <p>2 through unavoidable technical difficulties we just</p> <p>3 received a new copy of today.</p> <p>4 If in the course of reviewing those</p> <p>5 documents there is something that we need additional</p> <p>6 testimony about, I reserve the right to speak with</p> <p>7 counsel and seek additional testimony. Although, we</p> <p>8 would in those circumstances most certainly try to</p> <p>9 exhaust other ways of getting the information that</p> <p>10 we need.</p> <p>11 MR. SVERDLOV: We understand your position</p> <p>12 and we certainly do not consent to anything at this</p> <p>13 time, but we are happy to work with you to resolve</p> <p>14 any issues that may arise.</p> <p>15 MR. DAVIS: Thank you.</p> <p>16 MR. SVERDLOV: We don't have -- I don't</p> <p>17 have any questions for Mrs. Battle. We will reserve</p> <p>18 the right to read and sign the transcript.</p> <p>19 MR. DAVIS: Certainly.</p> <p>20 MR. SVERDLOV: And otherwise we have</p> <p>21 nothing further.</p> <p>22 MR. DAVIS: Thank you all.</p>

Page 178

1 (Whereupon, at 3:33 p.m., the
2 deposition of KAREN R. BATTLE
3 was concluded.)
4 * * * * *
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Page 179

1 UNITED STATES OF AMERICA)
2 ss:
3 DISTRICT OF COLUMBIA)
4 I, ROBERT M. JAKUPCIAK, an RPR and Notary
5 Public within and for the District of Columbia do
6 hereby certify:
7 That the witness whose deposition is
8 hereinbefore set forth, was duly sworn and that the
9 within transcript is a true record of the testimony
10 given by such witness.
11 I further certify that I am not related to
12 any of these parties to this action by blood or
13 marriage and that I am in no way interested in the
14 outcome of this matter.
15 IN WITNESS WHEREOF, I have hereunto set my
16 hand this 21st 
17
18
19
20
21 My Commission Expires:
22 February 29, 2024

Page 180

1 To: ALEXANDER V. SVERDLOV, ESQ.
2 Re: Signature of Deponent 30(b)(6) Karen R. Battle
3 Date Errata due back at our offices: 2/20/2020
4
5 Greetings:
6 This deposition has been requested for read and sign by
7 the deponent. It is the deponent's responsibility to
8 review the transcript, noting any changes or corrections
9 on the attached PDF Errata. The deponent may fill
10 out the Errata electronically or print and fill out
11 manually.
12 Once the Errata is signed by the deponent and notarized,
13 please mail it to the offices of Veritext (below).
14
15 When the signed Errata is returned to us, we will seal
16 and forward to the taking attorney to file with the
17 original transcript. We will also send copies of the
18 Errata to all ordering parties.
19 If the signed Errata is not returned within the time
20 above, the original transcript may be filed with the
21 court without the signature of the deponent.
22 Please Email the completed errata/witness cert page
23 to readandsign@veritext.com
or mail to
Veritext Production Facility
2031 Shady Crest Drive
Hoover, AL 35216
205-397-2397

Page 181

1 ERRATA for ASSIGNMENT #3846101
2 I, the undersigned, do hereby certify that I have read the
3 transcript of my testimony, and that
4 ____ There are no changes noted.
5 ____ The following changes are noted:
6
7 Pursuant to Civil Procedure, Rule 30. ALA. CODE § 5-30(e)
(2017). Rule 30(e) states any changes in form or
substance which you desire to make to your testimony shall
be entered upon the deposition with a statement of the
reasons given for making them. To assist you in making any
such corrections, please use the form below. If additional
pages are necessary, please furnish same and attach.
10
11 Page ____ Line ____ Change ____
12
13 Reason for change ____
14 Page ____ Line ____ Change ____
15
16 Reason for change ____
17 Page ____ Line ____ Change ____
18
19 Reason for change ____
20 Page ____ Line ____ Change ____
21
22 Reason for change ____
23 Page ____ Line ____ Change ____

1 Page _____ Line _____ Change _____
 2 _____
 3 Reason for change _____
 4 Page _____ Line _____ Change _____
 5 _____
 6 Reason for change _____
 7 Page _____ Line _____ Change _____
 8 _____
 9 Reason for change _____
 10 Page _____ Line _____ Change _____
 11 _____
 12 Reason for change _____
 13 Page _____ Line _____ Change _____
 14 _____
 15 Reason for change _____
 16 _____
 17 _____
 18 _____
 DEPONENT'S SIGNATURE
 19 _____
 Sworn to and subscribed before me this ____ day of
 20 _____, _____.
 21 _____
 22 _____
 23 NOTARY PUBLIC / My Commission Expires: _____

0	138 10:3	2	143:9 157:20,21
001 62:3	13880 9:10 66:10	2 8:11 9:3 24:1 25:3	161:1 164:8,11
00772 1:11	83:21 110:10,17	28:6 65:18,19	169:12 179:16
0324 9:12	144:10,12 155:8	66:19 67:5 106:3	2021 59:5 164:16
0335 9:14	13th 116:9	109:10,21 112:10	20230 2:6 5:8
1	14 8:10 10:3 138:11	112:20 172:10	2024 179:22
1 1:21 8:10 14:20	138:12 146:4,5	2/20/2020 180:3	20250 179:18
14:21 15:3 19:21	147:4 154:9	20 81:11,22	2031 180:21
54:16 55:6 82:20	1401 2:5 5:7 6:7	2000 13:13 63:22	205-397-2397
83:8 126:9,18	147 10:5	64:1 148:18	180:23
128:2,3,4 138:8	15 10:5 52:16 65:1	20005 4:19	2064 9:12,14
157:13,20	130:17 147:6,14	20019 6:8	20th 167:4
1/19/18 8:22	153:22 154:20	20036 4:7	2101 3:16
10 9:11 115:17,21	15th 126:21 127:1	2004 13:10,13,13	212 5:19
154:19	127:16 128:4 129:6	2007 13:7,10	21st 179:16
100 4:6 150:10	16 1:18 10:7 166:18	2010 19:4,21 35:1,2	22 105:18
152:1 161:2	166:19 167:1,13,19	64:5,7,15 82:9,12	23 67:10
10005 5:18	166 10:7	94:15,19 119:5	24 8:11
1016 4:6	169 111:5 112:5	148:18	242-7300 3:9
1040 25:7	155:10	2014 13:7	250 6:18
105 9:6	16th 4:6	2017 105:18 168:17	256 3:18
1099 25:7	17 81:11,22 157:11	181:7	27th 83:16
10:03 52:19	166:7,10	2018 33:10 62:1	28 5:17
10:26 52:20	171 47:10,11 137:9	67:13 131:21,22	29 179:22
11 8:4 9:13 44:14	179 1:21	132:12 136:8 138:8	293-2828 4:8
63:21 116:13,17,18	18 14:17 56:20 57:3	168:17	29th 147:11
157:7 167:6	57:12,22 61:7	2018.08.i 8:16	2:15 155:3
110 9:9	63:13 121:12 122:8	2019 67:10 83:16	2:18 1:11
1100 4:18	166:16	167:4 168:16,22	2:40 155:4
115 9:11	1820 122:10	202 4:8,20 6:9	3
116 9:13	1827 122:11	2020 1:18 8:13,15	3 8:15 32:18,20
117 9:15	1828 123:6	9:8 22:17 35:4 38:9	33:3 95:20 105:4
11:54 118:5	19 62:1 131:21,22	39:22 46:11 51:9	111:7 112:6,18
12 9:15 65:1 116:22	136:7	54:16 56:5,14	113:10,21 114:16
117:3,8	1985 121:12 122:8	58:22 59:3 63:4,8	114:17 155:17
12/22/17 9:8	1998 13:16,18	63:17 64:11 84:21	172:18
122 9:19	1:23 118:6	85:13 88:16 90:9	3/1/18 10:4
12th 6:18	1st 19:10 126:21,21	91:11,14 123:2	3/26/18 8:17
13 9:19 121:22		126:10 127:2	30 1:15 82:19
122:2 130:18		133:12,21 135:22	154:11 180:2 181:6
		136:3 137:2 138:1	181:7

300152 3:7	5-30 181:6	90 150:11	163:9 175:19 176:1
302 3:16	5/22/12 9:4	93 9:4	176:8
304 105:21 109:22 110:3,4	50 45:15 48:5 74:17	94 47:9	accurately 151:10
31st 51:7,9 164:16	501 3:6	94171 47:6 137:15	achieved 139:7
32 8:15	510 6:20	94607 6:19	acquire 65:6,9 69:3
334 3:9	514-3374 4:20	95 21:1	80:14,19 102:2
35216 180:22	53.9 64:2	9:00 1:19	135:17 141:17
355-9400 3:18	5th 1:8	a	172:12,19 174:1
35805 3:17	6	a.m. 1:19 52:19,20	acquired 71:7,21
36130-0152 3:8	6 1:15 9:3 66:1,2,6	118:5	74:4 100:1 141:16
38 138:19	67:5 72:1 73:12	able 21:11 26:12	168:10 172:12
3846101 1:20 181:1	74:10 80:1 90:5	28:12,13 30:6	acquires 87:13
39 140:21 146:8	93:7 112:3,10,21	34:21 35:8,10	acquiring 68:17
3:13 176:16	113:3,21 114:3,12	36:15 37:13 38:11	71:15 79:17 104:7
3:31 176:17	114:14,16,17 115:2	40:1 69:20 84:22	104:15 107:20
3:33 178:1	115:3 154:11 172:5	85:14,19 86:15	132:16 144:1 158:2
4	172:10,22 180:2	91:14 108:8 112:1	171:22
4 8:18 44:16,17	60 69:14	130:22 133:20	acquisitions 106:8
110:9,10 113:17	61 8:21	141:20 148:13	107:3 108:15
115:3 137:8 143:17	6315 94:12	150:1 158:20	act 106:14
155:8	66 9:3	168:10,20	acting 142:10
4,779,000 19:19	66.4 64:1	abowd 8:21 10:6	action 1:10 164:19
4,779,736 19:6	663-8324 6:9	62:2 73:11,11	165:12 179:12
40 97:7 161:3	67 148:16 153:19	87:14,21 105:19	activities 121:2
400 6:7	154:3	138:9 147:10	actual 28:20
41 97:7	7	154:10 160:6	add 50:12,15
410 6:18	7 9:4 32:16 93:17	acceding 83:13	151:22
416-6225 5:19	8	acceptable 90:22	added 50:19
42 152:2	8 9:6 61:12,15 81:7	access 111:13	adding 152:1
435 45:13	105:11,22 108:13	129:22 155:14	addition 17:20
44 8:18	110:4 130:12	168:19 169:9	70:21 71:12 143:10
46 67:21 68:5,11	8/29/18 10:6	accomplish 174:14	additional 65:6,11
69:5	836-4200 6:20	accomplished	102:20 128:14
5	9	148:19	130:3 133:5,6
5 8:21 61:18 62:1	9 9:9 110:12,15	account 89:9,12	134:10 135:17
74:13 81:6 83:22	112:5,17 138:6	100:7	141:17 152:1,2
114:6 121:6 130:16	146:2	accuracy 152:14,17	174:13 175:3,7
158:12	9/18/85 9:21	152:22 153:10	177:5,7 181:9
		accurate 37:20	address 20:16
		38:16 43:16,20	31:21 32:10,12
		44:1 143:8 153:4	42:22 43:1,4 54:12

69:13,14,22 92:18 99:6 127:15 165:8 addressed 25:22 31:17,22 122:17 addresses 20:16,20 25:21 69:15,16 71:17 administration 25:11 31:4 35:7 70:18 71:9 101:16 101:18,22 106:5 114:14 117:12 132:6,15 134:12 139:8,11,15 administrative 8:11 9:15 23:2,8,10 24:7,13,15,22 25:1 25:6 26:16 27:7,13 28:9,14,21 29:3,13 29:15 30:3,21 33:12 34:22 35:6 35:11 37:11,14 38:8,10 39:3,14 44:9 57:20 60:3,8 60:10 61:4 63:3,8 63:16 65:2,9 66:13 68:18 71:7,14 74:3 74:7 76:20 77:1 78:2,12 79:18 80:21 81:14 82:8 82:11,13 83:9,19 84:16 85:1,7,11,14 85:19 86:16 87:12 88:18 89:1,6,14,15 90:5 91:16 92:2,16 96:15 100:1,5,11 100:13 102:2,16 103:22 104:8,9,16 107:20 117:9 130:21 131:4,6,9 132:4 133:10,22	134:10,22 135:11 135:17 136:4,20 139:19 140:6,10,14 141:17 143:6 144:2 144:22 145:9 155:11 156:20 157:18 158:3,17 165:7 168:5,9 169:1,7 170:19 171:10,11 172:1 173:8 174:13 175:3 176:7 administrator 27:21 28:1 admission 114:1 adrec 83:1 advertising 120:6,7 121:3 affiliated 46:3,8,22 47:3,8 48:16 49:3 50:18 51:19 169:19 african 41:4 152:3 161:3 ag.ny.gov 5:20 age 13:9 17:19 26:16 28:4 29:16 35:8 37:5 56:8,12 56:19 57:3,10,18 57:22 58:6,12,16 58:19 59:2,5 60:14 60:22 69:21 94:18 96:12,12 97:4,5,6 97:15 98:18 118:17 132:11 133:11,21 135:1 143:8 151:3 152:2,3 161:2,3 162:4 163:21 164:5 168:4 169:2 170:4 170:5,10,12,14 agencies 48:18,20 49:1,4,5,12,14	50:13 66:14 76:22 76:22 77:9 79:5 80:12,18 111:11,15 123:19,22 124:11 125:1 155:12 156:1 156:4 171:15 173:4 agency 49:7 67:7 69:7 74:13 77:15 78:3,3,12,14,20 92:4 103:10,10 132:17 143:6 agency's 89:14 aggregate 153:5,10 ago 12:5,6 106:2 117:17 agree 20:2 38:19 43:17 44:2 45:11 agreed 152:10 156:8 agreement 9:12,13 9:14 67:8 116:19 157:8 167:7 agreements 80:13 173:10,15 agrees 173:6 ahead 65:21 93:15 101:12 111:2 al 1:12,20 147:12 180:22 ala 181:6 alabama 1:2,5 3:2 3:8,17 11:15 18:20 19:5,19,21 49:18 49:21 50:8,10,12 50:14 54:15,16 103:9,9,13 126:22 128:6 alabama's 1:7 50:15 alabamaag.gov 3:10,11	alaskan 18:2 118:21,22 119:3 aleks 92:9 alexander 4:15 180:1 alexander.v.sver... 4:21 aliens 122:14,18 allow 28:20 77:22 99:10 133:11 135:5 154:22 allowed 77:14 84:2 altered 150:21 151:2 alternative 9:6 81:13,16 131:4 132:1,22 133:3,7 136:9,11 138:20 alternatives 62:22 amanda 5:14 amanda.meyer 5:20 america 46:13 179:1 american 18:2 41:4 58:14,20 118:21 152:3 161:3 americans 48:16 analyses 17:18 18:9 analyst 13:14 ancestry 13:15 andrea 4:4 annually 58:13 answer 40:16 59:17 59:20 60:5 77:7 78:8,22 79:7 86:8 86:11,12 90:20 92:5,8 101:12 108:8,11 124:19 125:6,11 130:19 131:18 133:17
--	--	---	--

134:7,8 135:22 136:14,15 141:12 142:15,17,19 143:13 145:16,17 147:20 154:13 156:16 160:19 161:8 163:13 164:21 168:12,16 174:19 answered 134:5,6 answers 33:20 63:19 95:15 159:17 apologize 132:19 appear 139:13 154:11 appears 117:4 application 107:12 110:1 114:8,10 applications 107:3 108:14,22 109:4 applied 139:5 151:18 apportionment 8:19 45:7,9,10,13 45:17,19 46:2,10 46:15,20 47:19,20 48:2,14 50:15,20 50:21 51:5,14,16 169:16 apportionments 163:14 appreciate 79:21 176:19 approach 30:17 40:16 54:9 58:10 81:13,16 91:6,7 95:18 149:21,22 150:19 158:9 approaches 20:22 44:5,6 120:16	appropriate 135:5 approve 159:16 approved 157:13 159:12 approximately 13:2,12 approximation 76:19 april 19:10,21 54:16 55:6 126:9 126:17 128:2 157:20 ar 28:17 area 42:5,7 86:5 144:13 150:20 areas 20:22 21:6,9 59:18 120:15 153:11 argumentative 20:4 44:3 143:2,11 168:18 arrival 73:15 112:22 113:12,15 arrivals 164:19 165:12 arrive 68:19 ascertain 63:15 asenteno 4:9 asked 8:19 24:21 44:20 57:8 65:1 75:4 84:11 91:2 92:9,10,12 132:20 145:19 160:19 asking 84:10 100:21 134:1,1 137:12 142:22 158:22 167:11 172:7 aspect 40:9 assert 59:18	assess 17:10 30:18 30:22 34:4 69:20 70:1 94:22 95:2 141:19 assessing 95:10 assessment 10:7 64:17 119:10 assessments 19:11 assign 8:14 29:7 35:4,17 36:16 37:7 37:17 39:15 42:16 44:11 assigned 71:2 assignment 181:1 assist 181:8 assistance 25:16 26:7 76:7,9 106:5 111:8 assistant 13:5,12 associated 23:3 assume 21:16 38:14 159:16 assumes 19:8 38:2 52:3 68:6 87:2 96:4 97:22 99:20 107:5 158:15 160:4 165:4 165:13 167:10 168:7 175:5 assuming 19:19 asylum 113:19,20 atlanta 6:4 attach 181:9 attached 10:17 180:7 attachment 157:13 attempt 21:13 23:5 24:18 25:21 30:3 35:11 40:3 57:13 60:12,15 attempting 57:2 62:12 175:12	attempts 22:3 38:11 attention 74:12 attorney 3:5 5:16 180:12 august 147:11 author 62:11 author's 138:21 authorities 111:12 155:13 available 9:16 23:3 37:10 65:2,3 165:8 avenue 2:5 3:6,16 5:7 6:7 avoidance 162:12 163:4 awaiting 73:16 113:4 114:4 115:5 aware 74:8 75:7 76:1,20 81:3 90:13 102:20 107:9 108:18 121:2 123:1 124:10 128:17 129:8 135:7,16 136:19 144:13,18 145:7,20 146:15,18 146:22 156:1,4,8 156:18 157:4 159:4 164:18 165:15 awareness 120:9 awry 69:7
		b	
		b 1:15 6:18 8:8 9:1 10:1 154:11 180:2 back 24:19 30:11 52:22 63:19 73:12 75:2 80:15,17 81:6 81:8 108:13 109:8 112:3,5,10,17,21 113:9 114:13 118:1 127:11 130:11,16	

130:17 146:1,5 161:21 163:17 173:2 174:10 176:13 180:3 background 9:3 13:20 65:18,18 84:7 based 55:13 56:10 58:13,14,17,20 59:2,6 96:12 124:16,17 126:4 133:17 150:4 152:5 163:11 basic 85:5 basically 30:8,16 basis 123:4,4 136:12 152:8 164:21 174:17 bates 62:2 63:20 64:22 82:18 94:12 111:4 122:9,11 130:17 138:19 146:8 155:9 battle 2:2 8:2,9 9:2 10:2 11:3,11,12 14:11,21 15:4 16:13 20:9 24:1,4 30:11 32:16,20 33:3,17 41:16 42:15 44:13,17,21 52:17,22 61:13,18 62:6 63:20 66:2,6 72:20 75:11,17 78:1 81:8 82:20 84:14 88:6 90:14 93:6,8,17 99:14 101:4 102:11 104:17 105:3,11,15 106:15 109:7 110:12,18 111:20 114:14 115:17,20	116:13,22 118:11 121:5 122:2,5 130:11 132:21 138:6,11,12,16 143:16 144:21 146:1 147:3,14 148:11,22 154:19 155:2,6,22 157:11 157:16 160:11,22 161:21 163:20 166:8,12,19 167:1 168:2 169:12 172:4 174:10,21 175:10 176:20 177:17 178:2 180:2 battle's 166:18 bears 163:14 becoming 13:4 bed 27:10 began 67:12 beginning 74:5 begins 66:12 67:15 95:20 122:14 138:18 148:18 behalf 2:10 3:2,14 4:2,12 5:13 6:2,13 15:15 16:7 75:5 167:15 believe 33:4 37:19 42:21 43:11 83:8 83:21 88:1 93:9 94:1 104:13,20 169:9 believes 38:15 120:4 142:22 143:7 beneficiary 114:15 114:18 benefit 154:8 161:13 berning 105:19 108:4 109:5 110:6	berning's 108:19 best 26:5 54:4 68:22 87:19 99:15 99:17 100:8,14 101:4 102:7 109:15 110:7 150:2 better 42:11 45:3 62:16 108:8 132:12 biological 35:18 birth 28:4 35:9 69:22 96:11,13 97:4,5,15 140:22 141:1 bishops 125:18 bit 121:18 154:8 black 18:1 26:9 118:20 blank 34:10 block 150:10 151:7 151:9,21,22 153:5 153:7,8 161:2,5,20 162:4,6,10,15 163:1,9 blocks 153:7 blood 179:12 border 113:1,11 born 141:2 bottom 74:13 82:18 109:15 111:5 122:13 130:19 172:10 box 3:7 brad 4:16 brad.rosenberg 4:22 branch 13:8,9,14 13:15 break 12:11 92:22 93:4 115:10 154:20 162:19 166:3 176:12	breather 52:14 brebbia 7:17 brenton 3:4 brenton.smith 3:11 bring 35:4 96:16 97:12 broad 120:10 broken 67:16 brooks 1:6 3:14,15 18:13 brought 65:14 115:10 157:6 bryan 7:13 build 153:9,11 bullet 109:16 112:17 113:10,17 bureau 1:16 4:13 9:20 10:9 12:14 13:18 14:3 15:21 16:4,7,16,21 17:10 17:12 18:18 20:10 20:15 21:5,15,22 22:2,6,9,18 24:11 25:2 27:20 30:20 33:6 37:19 38:4,14 39:4,19 40:2,10,17 41:9,18 42:2,16,20 43:4,15,19,22 44:4 45:9 46:12 47:13 48:10,15,18 49:1,3 49:20 50:22 51:4 53:1,7 54:13,18 56:4,7 57:1,13,17 58:5,9,11,18 59:1,9 59:12 60:7,14,18 61:3 63:7,11,15 65:4 66:9,13 68:17 70:14 72:4,13 73:3 73:7 74:8 75:5,18 76:2,4,21 77:16 78:1,11 79:5,13,17
---	---	--	---

80:10,22 81:4 82:4 85:5,15 86:15,19 87:7,11,12 88:4 90:2,8,15 91:5 95:2 97:16 98:12 99:4,5 99:10,21 100:5,15 101:4,10 102:17 103:4,8,21 104:7 106:6,22 107:11 109:2 116:2,19 117:10 119:2,9,13 119:19 120:3,6,7 120:12,20 122:6 123:2,12,18 124:11 124:22 125:13,16 126:5 127:2,16 128:5,12,14,16 129:8,13,22 130:4 131:8,22 132:3,5 133:4,9,20 134:9 134:21 135:2,8,9 135:17,21 136:2,10 136:18,22 137:5,7 137:17,21 141:6,16 141:19 142:10,11 143:12,20 144:3,5 144:9,11,15,19,22 145:3,8,12,20 146:11,15 149:9,20 150:9,17 151:13 152:11 153:2 156:19 157:17 158:2,4,17 159:1,4 159:11,13,17 160:1 160:5 161:1 162:9 164:10,14,17 165:10,19,21 167:4 167:15 168:2,8,12 168:19 169:1,6,13 169:16 170:3,13,18 170:22 171:5,9,20	171:22 173:7,10,13 173:16,22 174:1,11 174:14,21 175:6,11 175:22 176:6 bureau's 44:21 76:14 151:19 157:22 175:18 business 36:4 97:19 98:4,14,21 99:5 businesses 82:6 c c 3:1 4:1 5:1 6:1 7:1 8:1 11:1 63:2 81:13 81:16 83:1 84:14 131:4 132:1,22 133:3 136:9,11 138:20 calculate 96:12 97:5 california 6:3,14,19 50:9 call 74:12 103:9 142:7 called 11:4 20:15 22:7 29:22 30:7 36:13,19 45:21 48:16 56:8 70:22 104:13 120:13 141:7 149:10 calls 41:12 53:8 77:5 85:3 89:4 100:19 106:16 112:6,18 119:16 120:22 129:20 131:16 136:16 140:17 141:10 142:3,9 144:16,17 145:5,15 150:15 153:16 156:11 162:16 175:20	campaign 120:7 camps 123:9 cannon 5:4 cantwell 9:5 42:14 capacity 75:6 care 161:18 case 12:7,8 29:12 30:20 43:21 105:8 129:18 130:3 139:4 145:1 cases 175:14 categories 102:15 146:12,17,20 147:1 155:11 category 93:22 94:1 101:9 catholic 125:18 caucasian 162:4 cell 27:9 census 1:16 4:13 8:13,15 9:8,16,20 10:9 12:14 13:17 14:4 15:21 16:3,7 16:14,16,16,20 17:4,10,11,12,20 17:22 18:4,18 19:2 19:4,9,10,11 20:6,7 20:11,15 21:3,5,12 21:21 22:2,6,8,17 22:17 24:11 25:2,9 25:13 27:8,20 30:20 33:6,19 35:1 35:3 36:11 37:19 37:20 38:4,9,14,16 39:1,19,22 40:2,10 40:17 41:9 42:2,16 42:20 43:4,6,14,15 43:16,19,21 44:1,4 45:9 46:1,11,11,18 46:19 47:2,12 48:10,15,17,22	49:3,20 50:22 51:4 51:6,7,18 53:1,7 54:13,18 55:18 56:2,5,7,10,14,15 57:1,6,13,17 58:5,9 58:11,14,17,18,22 59:1,3,7,12 60:7,9 60:14,18,21 61:3 63:4,7,8,11,15,22 64:5,7,12,15 65:4 66:9,13 68:17 70:14 72:3,13 73:3 73:6 74:8 75:5,18 76:2,4,14,21 77:16 78:1,4,10 79:4,13 79:17 80:10,17,22 81:4 82:4,5,6,9,12 84:21 85:5,13,15 85:21 86:15,19 87:7,11,12 88:4,16 90:2,8,14 91:5 94:15,20,22 95:2,3 95:10,11,15,22 97:16 98:12 99:5 99:21 100:5,15 101:10 102:17 103:4,8,21 104:7 106:4,22 107:11 109:2 116:2,19 117:9 118:13,16 119:2,2,4,5,9,10,11 119:13,19 120:3,6 120:7,10,12,18,19 122:6 123:1,2,12 123:12,18 124:1,11 124:13,22 125:3,4 125:13,16,20,21 126:5,8,9 127:1,2,6 127:12,16 128:5,12 128:14,16,21 129:6 129:7,9,10,12,13
--	---	--	--

129:16,18,22 130:4 130:8,10,21 131:8 131:22 132:2,5 133:4,9,12,20,21 134:9,21 135:2,8,9 135:17,21 136:2,10 136:18,22 137:2,5 137:7,17,21 141:6 141:16,18,22 142:5 142:10,11,21 143:4 143:9,12,19,20 144:3,5,8,11,14,19 144:22 145:3,8,12 145:20 146:11,15 149:9,13,14,15,20 149:22 150:6,9,10 150:17 151:7,9,13 151:15,19,21,22 152:11 153:2,8,9 156:19 157:17,21 157:22 158:2,4,6 158:16,19,22 159:4 159:10,13,17 160:1 160:5 161:1,1,2,5 161:20 162:4,5,9 162:11,12 163:4,6 163:9 164:3,10,12 164:14,15,17 165:10,18,19,21 167:4,15 168:2,8 168:19 169:1,6,12 169:13,15,15 170:3 170:13,18,21,22 171:5,9,20,22,22 173:7,9,13,15,21 174:1,10,14,21 175:6,11,18,18,22 176:6,8 censuses 81:17 82:3,7,15 119:8	center 72:19,21 cert 180:18 certain 17:13 36:2 55:18 118:19 175:14 certainly 57:8 75:9 176:4 177:8,12,19 certify 179:6,11 181:2 cetera 38:13 55:20 70:2 82:6 122:8,14 141:3 172:17 chance 115:11 change 19:19 163:1 163:6 181:11,13,14 181:16,17,19,20,22 181:23 182:1,3,4,6 182:7,9,10,12,13 182:15 changed 101:20 150:22 151:2 162:6 changes 180:7 181:4,5,7 characteristic 37:3 54:7 94:15 95:6,22 176:6 characteristics 8:14 24:16 28:4,16 29:1,7,10 30:1,5,9 33:14 36:2 37:15 37:22 38:13 39:7 39:15 40:7,12 41:11 42:17 44:11 53:16 54:1 82:10 82:12 98:17 150:5 characterized 18:21 chart 8:11 25:4 72:1 74:10 75:19 76:3 82:19 117:4,8	chat 176:13,14 check 104:19 114:10 123:17 125:9,10 checking 35:5 chief 12:16,16,19 12:22 13:4,5,8,12 42:13 child 35:14,18 129:18 childhood 164:19 165:12 children 17:19,19 41:6 118:17,17 children's 76:8 115:4 chip 115:1 chosen 38:6 circumstance 156:9,19 circumstances 41:18 177:8 citizen 56:8,11,19 57:18 58:6,12,16 58:19 59:2,5 60:16 60:16 65:5,8 66:17 67:3,18 88:20 89:2 100:12,14 101:19 106:10 133:11,21 135:1 139:3,6 143:8 151:8 157:20 158:8,12,13 159:3 164:4 168:4 169:2 170:4,11,15,15 171:16 172:9 citizens 51:15,20 51:20,22,22,22 52:1,6 56:5,16,20 56:22 57:2,14 131:1 140:2,21 141:1 150:11,12	152:2,3 161:3,3,4 162:4 169:22 170:5 170:10 171:1 172:15 174:12 175:2 citizenship 9:7,18 52:8 56:12 57:21 58:3 60:20 61:10 62:13,13 63:3,7,16 65:3,7 68:1,2 70:1 71:10 78:13 83:10 85:1,6,8,12,16,21 89:5,7,9,16,20,22 92:1,16 99:4,11,15 99:17,18 100:4,8 100:15 101:5,15,20 102:8 111:10 112:7 116:21 131:1,6,10 131:11 132:4,11,16 133:8 134:14,19 135:19 137:2 139:18 140:9,14 141:8 156:10 157:18 158:5,18 159:2 160:12 165:8 169:8 170:8,20 171:7 city 6:3 civil 1:10 6:6 181:6 civilian 46:4 claims 163:15 clara 6:14 clarification 154:8 clear 75:8 88:6 93:19 126:13 145:10 146:18 clearly 75:13 clergy 125:17 clinton 3:16 close 77:4 79:2,3 166:5 176:22
--	---	--	---

closed 77:16 clue 32:7 cms 109:13,16 114:22 code 181:6 cognitively 27:10 colleagues 176:12 collect 21:11,13 22:10,14 23:6 27:6 107:15 127:9 collected 33:20 95:14 128:9 133:6 162:11 collecting 36:10 40:18 61:3,9 83:19 95:13 collection 81:15 college 27:3 collision 147:12 coloring 148:12 columbia 2:10 47:22 48:3 179:3,5 column 25:5 columns 28:7,8,17 combination 60:8 89:7 combine 85:6 come 20:5 24:19 27:7 36:14 88:1 118:1 128:21 149:12,13 163:17 comes 47:1 54:7 59:8 101:16 coming 151:14 commerce 1:12 2:4 4:12 5:5 11:16,20 15:16,22 16:4 79:4 111:9,17 122:10 147:13 157:9 159:14 167:7	commission 179:21 182:23 committee 6:6 communities 126:7 community 58:15 58:20 compare 70:7 71:15 complete 38:21 43:20 69:12,16 70:2 90:9,9 176:1 completed 74:1 130:9 142:11 180:18 comply 69:1 79:18 144:3,9,11 173:9 component 46:2 126:5 components 18:16 31:20 45:20 composition 25:14 compound 16:11 18:8,22 20:3 21:19 27:19 32:9 38:2 48:1 54:17 62:18 87:10 89:3 90:7 91:13 98:16 99:8 102:19 103:15 111:18 126:12 128:18 129:11 137:4,11 151:12 153:1 157:3 161:7 175:5 concept 54:18,19 concern 83:18 121:19 concerning 148:22 164:18 concerns 121:12 133:14 161:7	concluded 136:20 178:3 conclusion 119:17 121:1 129:21 144:17 156:12 175:21 conduct 95:12 98:4 175:22 conducted 94:22 conducts 82:4,5 conference 18:12 125:18 confident 130:21 131:4,9 132:1 136:8,11 confirm 108:20 conflicting 92:1,15 101:6 congressional 1:8 8:18 congressman 3:15 18:13 conjunction 134:12 140:6 connect 70:7 consent 177:12 consider 62:22 77:16 consideration 59:10 consistent 111:13 155:13 consisting 67:22 constitution 2:5 5:7 consult 42:4 cont'd 4:1 5:1 6:1 7:1 contact 22:2,3 49:2 80:9,10 contacts 22:4 80:11	contain 45:20 68:11 140:14 171:11,15 contained 98:6 contains 20:16 25:11 70:22 73:4 136:8 continually 44:4 continue 39:19 65:20 78:5 80:18 134:17 135:3 139:16 168:8 continuing 90:12 conversations 123:17 124:10 136:19 convinced 60:4 copies 180:13 copy 110:16 177:3 core 54:18 55:13 corelogic 26:9 correct 11:17,21 16:1,14,22 19:13 19:16 20:11 21:18 21:20 24:10 31:8 39:7 46:13 47:17 47:18 48:7 51:1,13 52:9 55:3,8 57:10 58:20 64:9,10 66:18 67:19 73:20 75:21,22 80:1 82:16 85:2 101:7 104:20 106:6 111:17 119:4,15 130:5 138:3 139:19 163:22 170:10 173:18 corrections 180:7 181:9 correctly 29:17 32:5 50:2 62:20
---	--	--	---

67:10 81:19 87:5 89:17 95:6 101:3 104:22 105:1 119:1 140:11 163:10 170:9 correspondence 14:15 counsel 5:6 11:6 15:13,18 16:10 23:13 65:14 74:21 77:2,13,22 78:16 83:3 121:8 154:7 154:18 155:15 176:20 177:7 counsel's 115:6 count 18:19,20 28:18 29:2,4,8,11 33:13 37:7,9,18,18 43:20 46:3,12,15 47:19,21 48:11,14 49:8 50:6,8,11,18 50:21 51:14 55:7,9 55:15 56:1,4,15 57:2,9 60:13 62:14 95:3,4 118:16 119:3,6,14,20 120:5,8,17,21 122:17 127:2,16 128:5 143:8 161:14 161:20 169:14,17 169:18,22 170:14 170:22 171:5 174:11 175:1 176:1 counted 17:14,16 17:20,22 18:6,11 18:15 19:12 38:22 43:8 55:2,19 57:6 60:20 85:20 118:20 119:15 129:19 158:12 159:2 170:20 171:16,17	counties 153:9 counting 130:5 country 17:9 21:5 counts 17:3,8 18:4 19:3,15 20:5 45:18 45:19 46:10,20 48:2 49:6,13 51:5 51:16 118:13 149:13 161:1 162:10 county 6:3,13 couple 96:19 106:2 115:7 117:16 129:16 course 43:2,21 44:7 58:11 69:22 123:11 141:18 177:4 court 1:1 105:10 180:16 coverage 17:10 94:16,20 95:1,2,10 95:11 119:10 covered 69:9 86:6 create 33:21 153:8 159:11 created 66:9 crest 180:21 criteria 55:13 cures 60:5 current 102:4 163:3 currently 58:6,13 106:3 curtail 125:2 curtailing 123:22 curtailment 124:12 customs 112:19 113:1,11 cv 1:11 cvap 63:12 90:12 134:15 135:20	136:5 137:6,8,12 137:17,22 149:7,12 151:6,20 152:14 159:11 164:7,8,11 164:15 170:7 d d 11:1 83:1 84:14 d.c. 1:17 2:6 4:7,19 5:8 6:8 dash 137:9,14 data 9:7,16 13:14 16:20 21:13 22:11 22:14 24:12 25:5,8 25:8,11,15,18,19 26:4,5,6,15 27:5 28:14 30:22 31:2,3 31:3,20 33:19,22 34:21 35:8,15 36:10,17,20 47:1,5 47:6,7,12,15 48:3 56:10,18 58:2,7,19 59:6,14 60:3,9 61:1 61:10 63:12 65:1,2 65:7,9 66:16,20 67:2,15,18 68:8,11 68:20,21,21,22 69:3,6,7,12,17 70:2 70:20,20 71:14,21 72:4 73:14,14,15 73:17,18,20,22 74:5,7,18,19 75:17 75:20 76:1,5,7,10 76:21 77:1 78:2,13 80:13,19,21 81:14 81:15 82:8 83:9 86:16 87:16 88:12 90:4,4,10 91:4,7,11 95:18 96:8,8,20 97:1,9,11 99:13 101:15,17 102:14 102:15 103:2,7	106:3,10,14,14,19 107:1,12 109:3,3 109:19,21 111:10 111:11 112:12,13 112:22 113:1,3,12 114:2,4,8,10 116:5 116:20 117:11,17 127:9 128:8 130:22 131:5,6,9,11 132:4 132:6,7,10,15 133:6,10,22,22 134:11,13,13,16,17 134:19 135:1,1,3,6 135:20 136:4,6 137:8,9,13,18 139:14,19 140:5 141:7,8,18 142:22 143:6 144:22 145:3 145:13 149:1,7,14 149:19 150:19,20 151:7,14,20 152:15 153:4,5,10 156:5,7 156:10,13,21 157:18 160:9 162:10,11 164:7,11 164:15 165:3,7 168:4,20 169:1,3,7 169:9 170:5,12 171:10,12,14 172:11,20,21 173:8 174:2,13 175:3 database 68:4,5 70:4,6,12,13,19 71:5 72:14 109:14 databases 70:8 88:17 date 19:6,9 20:8 28:4 35:8 55:2 69:22 80:4 96:11 96:13 97:4,5,15 121:11 126:9,10,11
--	--	--	---

127:12 133:15,15 133:19 134:2 136:10 139:3 180:3 dated 8:17,22 9:4,8 9:20 10:3,6 105:18 122:8 131:21 136:7 dates 133:15 davis 3:3 8:4 11:7 11:12 14:19 15:1,6 16:1,2 20:1 23:21 24:3 31:11 32:18 33:1 38:18 41:14 44:15,19 48:13 50:1 51:11 52:12 52:16,21 59:21 61:15,17,22 62:4 65:20 66:4 72:7 75:1,8,16 77:12,20 78:9,18 79:9 83:8 84:1,10,13 86:10 86:14 87:4 91:1 92:9,13 93:2,15 94:6,10 100:21 101:1 103:16 105:5 105:13 106:18 107:7 110:14,21 111:3 115:15,19 116:15 117:2,21 118:4,10 121:15,22 122:4 124:9,21 131:19,20 133:18 134:3 138:14 142:5 142:14,20 143:14 145:18 146:10 147:21 148:5,10 152:13,19,20 154:13,18 155:2,5 155:17,21 156:17 157:1 161:17 162:18 163:17,19 165:1,6 166:3,5,6	166:10,11,21 167:17 174:5,9,20 176:11,18 177:15 177:19,22 day 46:1 51:6 55:18 56:2 124:13 127:7 127:12 129:7,10,18 133:9 179:16 182:19 days 124:1 125:3 deadline 90:3 deal 24:20 45:7 decades 38:5 81:18 deceased 129:10 december 51:7,9 67:9 83:16 105:18 167:4 decennial 17:11,20 17:22 19:2,9 20:6 20:10 21:3,12 36:10 39:1 42:8 43:6,14 46:18,19 47:2 51:18 56:10 57:6 58:14,17 59:7 60:8,21 94:22 95:3 95:15 118:15 119:10,11 120:10 120:17 123:12 126:8 130:8 149:14 149:15 150:6 151:14 162:11 163:4 164:3 169:15 170:21 171:6,22 decide 115:12 121:17 decided 159:1 decision 91:10,22 92:12,14 101:11 124:22 125:17 136:22 145:3,11,17 149:5 159:5,7	165:2,10,15 168:21 174:22 decisions 87:20 91:3 145:21 deck 30:7 35:22 36:7,8,13,16,19 37:4,6,16 39:5 42:16 52:22 53:2 53:10,16 54:8 88:13 175:15 declined 76:12 145:2,13 deeds 26:11 deeper 69:10 defendant 4:2 5:13 6:2,13 defendants 1:13 4:12 defer 173:2 deferred 164:19 165:12 definitely 32:10 degree 13:22 deleted 43:2 deliberate 101:11 deliberation 78:21 deliberations 92:4 134:1,6 136:17,18 142:7,12 143:12 156:13 161:8 deliberative 59:19 77:6 86:7 90:19 100:20 124:17 125:5 131:15 133:17 136:13 141:11 142:3,13 145:15 156:15 161:9 164:22 174:18 deliver 25:21 49:12 51:4	demographic 28:3 department 1:11 2:4 4:12,17 5:5 11:16,20 15:15,21 49:15,18,19 50:3 63:1 66:22 67:7,9 67:12 68:9 73:13 75:12 78:4 79:4 88:4 90:16 98:12 103:5,12 108:16 111:9,16,21 112:6 112:18 113:10,18 113:18,22 114:7,11 114:22 116:3,20 117:13 122:10 141:22 142:6,21 143:5,19 147:13 154:16 157:9,10 159:13 165:18 167:2,7,8,12,16 172:13,18 department's 75:14 departments 66:10 144:1 departure 73:15 112:22 113:12,15 deployed 49:8 deponent 180:2,6,7 180:10,16 deponent's 180:6 182:18 deposition 1:15 2:2 8:10 10:5 11:21 12:1 14:13 15:3,13 15:16,20 16:8 23:14 118:11 124:20 147:8,9,10 148:15,17 154:11 166:18 167:14 178:2 179:7 180:6
---	---	---	--

181:8 deputy 125:12 describe 28:8 33:5 41:17 88:7 150:2 described 47:17 139:17 153:13 161:15 163:20 describing 154:1 description 141:4 157:13 designated 148:14 154:9 desire 181:7 detailed 40:15 41:20 42:1 details 54:9 77:9 141:14 150:21 151:1 determination 68:16 72:3,8,10,15 74:1 87:1,6 91:10 91:21 92:10,11 107:21 134:18 175:7 determinations 91:4 determine 22:20 26:13,16 28:11,15 29:3,19 31:13 32:2 32:13 37:11 39:13 40:11 42:20 48:10 54:4 55:21 57:13 60:15,19 62:13 68:20 85:8,11,21 86:1 87:14 89:7,9 89:12,22 90:10 91:15 96:9 99:11 100:8,16 102:7 130:22 135:19 149:21 158:5 160:16 173:5	174:22 determined 43:22 59:12,17 60:1,2,11 61:8 72:4 80:22 90:15 92:19 99:10 137:5,7 149:9 151:13 156:19 174:11 determining 58:15 72:13 90:3 170:19 develop 44:5 51:17 56:7 57:19 58:6 87:17 90:12 99:5 100:6 120:16 134:14,19 136:5 158:18 160:8 developed 99:10 133:7 135:4 developing 30:17 42:5 60:18 61:1 69:7 84:19 98:13 99:4,15 135:18 development 117:14 147:2 160:7 170:3 develops 120:7 device 21:11 dhs 10:7 73:17 113:5 117:15 diagram 85:18 diana 4:2 differ 46:16 difference 88:7 96:3,6 153:12 different 18:16 20:21,22 30:22 33:11 48:18 53:5,5 62:12 63:18 67:16 71:13 78:17 85:7 89:20 92:2,16 97:10,14 100:3,4	110:2 111:22 126:6 148:14,14 150:13 155:10 158:22 162:15,20 167:5 175:11 176:2 differential 149:11 151:15,18 153:3 154:4 differing 71:16 difficult 120:4 difficulties 177:2 dig 69:10 direct 77:13 124:18 125:6 131:17 133:16 134:7 136:15 141:13 142:17 143:12,19 155:16 163:13 164:20 directed 83:20 120:8 143:21 directly 88:22 101:2 director 9:19 122:6 122:17 123:21 125:12 directorate 72:18 73:1,3 104:13 107:19 disagree 122:16 disclosure 162:12 163:3 discover 143:11 discuss 144:1 discussed 33:18 102:11,13 112:14 123:21 175:10 discussing 14:12 33:6,16 62:12 discussion 65:5 103:6 174:7	discussions 15:12 15:17 16:9 65:8 distinction 109:6 district 1:1,2,8 2:10 47:22 48:3 151:22 179:3,5 districts 151:21 diverse 41:6 dividing 45:13 division 1:3 12:13 12:16,17,19,21 13:4,5,12 42:9,11 42:13 54:3 72:12 73:3 98:12,18,19 99:1,2 104:5,13,14 divisions 73:5 doc.gov 5:9,10 doctor 11:13 document 8:18 9:6 32:16 33:2,4 42:2 44:14 45:4 61:11 65:16,22 66:5,7 67:5 81:7 83:21 84:7 93:7,8,10,14 93:20 94:4 105:4 107:2 110:10 115:22 116:1 121:6 121:10,13 124:5,5 124:6,7 130:12 138:6,15 143:15 146:2 147:4,17 154:9 157:5,11 166:14,15,17,22 167:6,12,18,21 172:4 173:15 documents 9:9 14:12 23:13,14 65:14 106:12 111:14,22 115:9 155:18 177:1,1,5
---	--	---	---

doing 22:20 54:19 71:11 95:13 don 7:15 donate 36:3 39:6 40:11 41:11 donated 54:2,5 donating 30:9 door 23:6 41:2,3 doors 22:10 dorian 6:5 dormitories 27:4 123:14 double 104:19 doubt 105:6 164:10 dr 10:5 73:11 87:14 87:20 147:10 154:10 draw 151:21 drive 180:21 driver's 74:17 75:20 76:13 102:14 103:1,11 106:19 107:1 driving 55:1 dspence 6:10 due 180:3 duly 11:4 179:8	economic 72:19,21 81:17 82:3,7,14 99:1 104:12,14,18 107:19 edit 30:1,1 34:1 editing 33:18 95:21 96:3,6,13,17 97:9 98:5,21 edmund 7:11 educate 42:3 education 13:20 effect 135:10 152:22 efficiently 154:21 effort 34:20 123:1 173:8 efforts 57:19 119:20 120:2,19,20 122:17 131:17 136:21 141:6,14 144:21 175:17,18 either 21:2 74:4 172:8,11 electronically 180:8 element 71:18 eligible 53:2 71:3 email 180:18 employed 13:17 14:3 49:18 employees 46:4 48:21 49:11,13 50:5,7,8 159:16 employing 22:18 employment 14:3 empty 40:22 encourage 120:10 energy 122:7 enforcement 103:10 112:19 123:18,22 124:1,11	124:12 125:1,2 engaged 128:14 enrolled 109:19,22 enrollment 25:8 26:6 109:3,3,14,17 ensure 43:7,10 109:5 124:1,13,14 125:3 149:1 entails 48:17 enter 173:14 entered 173:20 181:8 entering 173:10 enumerate 21:6,7,9 23:9,11 24:17,22 27:2,16 54:14,20 enumerated 19:2 20:7 46:21 51:18 63:17 150:18 158:6 162:9 163:5 164:3 enumerating 123:8 enumeration 20:21 26:19 28:10,17,21 54:19 123:13 171:6 175:12 enumerator 21:10 24:9 28:13 40:2,4 175:13 enumerators 22:9 22:13 39:4 equals 46:9 50:20 equation 30:17 errata 180:3,7,8,10 180:12,13,15,18 181:1 esq 180:1 esquire 3:3,4 4:4 4:15,16 5:3,4,14 6:5,16,16 7:5,6,7 establish 143:21	established 79:14 establishes 49:1 estimate 18:21 estimates 19:3 146:19,22 149:12 et 1:12 38:13 55:19 70:2 82:6 122:7,14 141:3 147:12 172:17 ethnic 17:21 118:19 ethnicity 13:15 26:5,17 28:5 34:13 37:5 53:21 56:9,20 57:18 109:16 evaluate 68:20 69:17 87:16 135:3 158:3 168:20 evaluated 134:11 evaluating 87:11 99:22 134:17 135:6 141:18 168:9 evaluation 9:17 74:6 134:18 evaluations 90:10 evidence 19:8 38:2 52:4 68:7 87:3 96:5 98:1 99:20 107:6 158:15 160:4 165:5 165:14 167:10 168:7 175:5 exact 45:1 57:17 exactly 19:20 31:19 41:20 59:8 61:9 86:20 106:21 148:5 173:15 examination 8:3 11:6 examine 40:15 41:19,22 111:11 155:12
e			
e 3:1,1 4:1,1,4 5:1,1 6:1,1 7:1,1 8:1,8 9:1 10:1 11:1,1 83:1 84:14 181:6,7 e.g. 131:1 earlier 37:8 39:12 112:14 116:8 126:4 127:10 175:10 early 9:17 118:11 127:9 128:2 easier 41:17 easily 14:14			

examined 11:5	109:9,10,21 110:4	147:19 155:13	february 179:22
example 18:1,15	110:11,12,15 112:3	156:12 161:7	federal 46:5 48:18
21:7 27:18 31:16	112:5,10,17,21	167:11	76:22,22 77:15
32:3 34:5,10,14	113:3,21 114:3,11	f	78:2,3,11,14 79:15
37:2 47:21 49:15	114:16,17 115:2,3	face 154:12	143:22 156:1
53:17 60:2 70:5	115:17,21 116:13	facilitate 79:17	169:19
84:2 90:15 96:10	116:17,18,22 117:3	facilities 20:18	federally 46:3,8,22
96:17 97:3 101:13	117:6,8 121:22	55:18	47:2,8 48:16 49:2
101:18 102:3	122:2 130:13,14,16	facility 55:19	50:17 51:19
106:19 118:21	138:11,12 146:3	123:15 180:20	feel 165:7
119:1 120:2 125:18	147:5,14 153:22	fact 63:6 65:22	fha 107:3,11
150:8 151:1,5	157:7 166:16,18,19	78:18 109:19	108:14
176:4	167:1,6,13,19	112:13 129:9 148:7	fields 68:5
excerpt 154:9	172:5,6,10,22	153:4 157:22 162:5	figure 82:20 83:8
excerpts 10:5 147:8	exhibits 10:17	164:11	96:21 176:15
147:9	115:15 147:22	facts 19:8 38:2 52:3	file 20:16 25:10
executed 116:7,11	exist 96:8	68:7 87:2 96:4	35:6,7,7 47:6,11
executive 9:10 66:9	existent 42:22	97:22 99:20 107:5	67:1,17 68:8 69:15
69:1 79:19 83:20	existing 9:15 117:9	158:15 160:4 165:4	70:16,17,21 90:12
88:3 94:11 110:10	expatriates 108:16	165:13 167:10	102:5 112:8,12
110:16,17,22 111:7	expect 135:21	168:7 175:5	113:11 137:9,13
113:9,17 114:6,13	137:22	fails 35:21	159:11 164:7 170:4
114:21 143:16,17	expectation 68:10	fair 75:8 86:10	170:7 180:12
143:18 144:4,9,12	expected 8:12	faith 126:4	filed 32:11 180:15
144:14,19 155:6,8	experimenting	fall 83:10	files 69:4 70:15,16
159:12,15,18 160:2	38:7	falling 77:10	71:21
173:9	expert 160:6	161:15	fill 21:4 28:16 30:4
exhaust 177:9	expires 179:21	falls 93:22 94:1	33:22 34:9,13,17
exhibit 8:9,10,11	182:23	familiar 11:17 15:9	34:21 35:12,20
8:15,18,21 9:2,3,4	explain 41:20	33:2 93:8 105:14	36:15,22 38:13
9:6,9,11,13,15,19	82:22 84:2,11,11	138:15 167:20	40:19 95:18 96:16
10:2,3,5,7 14:15,20	explaining 161:14	familiarity 93:13	97:13 126:20 128:2
14:21 15:3 23:22	explains 49:4	families 26:8 76:9	128:3,10 129:16
24:1 25:3 28:6	explicitly 152:9	106:6	141:7,20 142:1,6
32:18,20 33:3	extended 41:5	family 41:5 130:1	180:7,8
44:15,17 61:18,22	extent 56:21 61:9	far 121:13 124:19	filled 129:9
65:21 66:1,2,6 67:5	83:18 90:20,20	139:17	filling 132:18
72:1 73:12 74:10	92:5 93:22 111:13	farm 123:8	fills 126:17,17
80:1 81:6 82:18	133:14 134:4	feasibility 83:18	129:6
90:5 93:17 105:11	135:14 136:13,16	feasible 168:3	final 58:10,16
105:22 108:13	141:11 145:14,15		59:13 60:1 61:6

86:22 87:6,8 91:21 101:10 107:21 134:18 137:6 158:16 159:10 160:10 164:7 168:21 170:6 finalize 137:21 158:4 finalized 58:1,9 61:3 67:8 86:20 158:19 160:15,20 164:8 170:7 finalizing 57:17 find 14:14 49:12 97:12 125:11 148:11 fine 77:8 92:7 167:22 first 11:4,12 24:20 28:8,22 29:9 34:6 38:11 42:4 45:11 45:11,12,20 46:19 48:19 55:14 60:13 66:7 68:19 69:2 80:1 81:19 82:2 84:14 87:15 94:14 95:20 109:1,16 112:6 115:20 121:11,16 122:9 138:10 147:5 152:6 157:16,22 162:2 fitness 68:15 72:2 72:14 73:22 five 12:3,19 17:19 118:17 130:15 140:19 fives 97:7 flag 84:6 flagging 121:19 148:9	focus 26:3 38:9 focused 61:6 121:3 focusing 63:13 folks 118:7 follow 22:8,15,19 22:21 24:14 26:3 27:1 28:9 30:22 33:10,11 39:11 128:22 following 15:12 19:11 111:14 122:15 155:12,14 181:5 follows 11:5 95:21 130:20 form 21:12 34:17 34:20 43:18 45:1 63:22,22 64:2,8,8 88:11,15 126:17,20 127:17 128:1,2,9 128:10,21 129:6,9 129:12,16 137:19 138:2 148:12 174:17 175:13 181:7,9 formal 80:16 format 57:17 105:8 137:22 138:4 170:6 former 122:16 123:21 forms 64:3 forth 80:17 179:8 forward 35:4 133:3 180:12 foundation 123:4 124:4 foundational 63:14 four 29:14 102:14 140:19 fourth 80:15	free 155:7 frequently 8:19 44:20 fresh 36:21 fulfilled 113:13 full 80:16 95:20 fully 36:11,12 functioning 27:11 functions 131:12 fundamental 95:21 furnish 181:9 further 15:17 29:18,20 43:5 54:12 80:6 145:12 176:19 177:21 179:11 fy20 9:12,14	give 23:17 37:2 49:8 50:6 115:11 120:2 121:20 126:1 150:8 160:18 given 12:1 69:4 121:11 131:3 179:10 181:8 glance 29:1 go 21:2,6,8,12 22:7 22:9,13,14 30:11 36:5 41:18,22 49:5 53:11 64:14 65:21 75:2 93:15 95:12 97:18 101:12 109:7 111:1 112:3 141:13 148:4 162:12 176:11 goal 43:15 63:6 71:6 90:2,8 91:9,14 136:3 142:5,21 143:4 164:15 169:6 176:3 goals 141:22 goes 32:1 33:7 175:11 going 14:12 23:17 27:8 35:5 39:17 52:12,22 57:8 64:11 72:16 76:15 77:2 78:7 83:4 87:13,20 89:8,11 113:9 121:9 122:8 122:12 123:3 124:16 128:5 130:16,18 134:5 135:12 145:12 147:22 148:3,16 149:6 150:12,17 152:4,5,6,7 161:4 161:21 162:5,19 163:11,12 174:11
		g	
		g 11:1 gap 139:9 gaps 97:13 132:8 132:14,18 141:8,19 142:1,6 gather 102:6 gender 29:16 general 3:5 5:6,16 40:16 59:20 60:6,9 77:8 79:1,7 83:9 84:5,7 86:8 89:19 90:21 92:5 93:10 93:12 101:12 115:8 125:7 134:6 136:14 141:12 142:18 147:20 158:9 geographic 153:11 geography 153:5 164:6 georgia 6:4 gerard 7:11 getting 177:9	

gomez 7:16 good 11:8,9 52:13 65:10 93:1 117:21 117:22 118:4 154:19 gotcha 174:4 government 46:5 79:16 governments 102:13,17 104:1 grab 35:20 grandparents 41:5 great 114:20 116:10 greater 125:3 greetings 180:5 groundwork 148:2 group 20:17 26:20 26:22 27:3,6,17 30:18 66:8 72:12 79:14,16,22 87:21 98:11 110:6 123:12 143:22 153:7 groups 118:19 139:17 140:21 153:7,8 guess 160:18	happy 121:20 177:13 hard 21:7 120:8,16 148:12 harder 119:20 head 64:6 103:12 104:3 heading 138:20 157:12 heads 73:9 103:5 health 25:18 114:22 115:4 hear 89:16 118:7 held 2:2 12:18 14:5 128:11 help 23:15 26:13,18 29:3 30:19 31:1,4 32:13 34:8,13,17 34:20 37:11 43:7 44:12 45:2 60:19 61:5 65:16 68:20 79:18,20 89:7,9,22 96:9 100:6 101:13 102:7 120:9 124:14 126:7 134:13,19 136:21 149:4 176:3 helpful 23:18 79:7 132:17 143:1,7 144:2 147:21 169:9 helping 32:1 144:3 176:21 helps 43:10 hereinbefore 179:8 hereunto 179:15 high 131:6,11 132:3,7 159:1 168:3 169:2,7 hispanic 18:1 34:11 34:12 94:18 98:18 151:4	history 117:11 119:5 hold 139:20 holds 163:4 home 27:10,16,18 27:21 46:5 49:11 49:17,21 50:4,5,7,9 50:14 homeland 66:22 67:8,9,13 68:9 70:4 73:13,18 90:16 112:7,18 113:10,18 116:20 157:10 167:2,8,12,16 172:13 homes 27:4 hoover 180:22 hosting 176:20 hot 30:7 35:22 36:7 36:8,13,19 37:3,6 37:16 39:5 42:16 52:22 53:2,10,16 54:8 88:13 175:15 hour 118:3 house 45:14 129:19 household 22:1,4 22:13 23:9,11 24:5 24:8,8,18 25:1,14 26:13 28:15 29:4 29:10,13,15 30:10 31:1,5,6,14,18 32:2 32:7,14 33:14,15 34:22 35:2,13,16 35:19 36:2 37:7,9 37:12,21,22 39:2,5 39:7 40:11,12,22 41:10,11 42:17,18 42:22 43:6 53:2,15 54:4 88:13 96:18 96:19 99:1 128:21 129:17 130:4,7	householder 35:14 53:18 households 24:13 36:14 houses 104:15 housing 20:17 21:1 21:12 22:6,21 23:1 23:4 25:16 28:11 34:3 38:22 39:12 39:13,16,18,20 40:20 43:11 117:13 hud 25:15 huge 38:8 70:19 huh 65:15 95:11 105:20 106:1,9 114:9 121:7 138:7 human 12:8 114:22 hundred 21:16 huntsville 3:17 hypothetical 40:12 77:15 hypothetically 100:10
i			
h 8:8 9:1 10:1 habitable 43:1,4 hand 179:16 handle 96:22 happen 51:3 53:3 69:2 86:18 127:3 128:8 happened 78:19 136:9 happening 80:8 happens 21:21 55:5 97:17			idea 36:17 55:9 60:9 85:5 89:19 120:14 140:5 identifiable 71:6 identification 14:22 24:2 25:10 32:21 44:18 61:19 66:3 70:17 71:1 93:18 105:12 110:13 115:18 116:14 117:1 122:3 138:13 147:15 166:20 identified 11:19 17:13 93:21 94:2 121:10 136:3 147:18 150:4

identifiers 67:22 69:21 71:2 identify 24:13 150:22 166:14,22 immigrant 112:20 immigrants 120:21 124:15 125:4 175:9 immigration 10:8 65:5,8 66:17 67:3 67:18 112:8,19 116:21 124:13 125:2 132:17 147:12 167:3 impact 10:7 impediment 156:21 importance 125:20 important 69:19 152:15 improve 44:6 improved 120:17 improvements 44:8 improves 153:10 imputation 28:18 29:2,8 30:1 33:13 34:1 37:6,9 39:6 40:9 42:16 43:7,10 43:22 44:1 53:1,3 53:16 54:8 88:8,11 88:11,15,20 90:17 94:15 95:6,9,22 96:3 97:11 98:5,21 176:4,6 imputations 175:15 impute 8:13 37:21 53:21 65:3 78:13 82:9,12 85:1,16 89:16 131:10 137:2 156:10 171:15,21 imputed 37:3 94:16 imputing 62:13 88:12 89:11 99:15	include 35:1 45:20 46:19 47:7,15,21 48:3 51:15,20 56:11 70:16 99:11 123:13 169:17 170:4 172:13 included 43:6 45:17 47:3 55:7 140:9 149:16 includes 46:3,20 51:17,21,22 52:5,7 160:6 including 41:5 43:13 income 70:22 incoming 87:16 inconsistencies 96:7 97:2,10 inconsistency 96:22 incorporate 24:12 incorrect 169:3 indian 18:2 25:15 25:18 indians 118:21 indicate 28:7 indicated 79:2 124:7 indicates 23:1 117:5 individual 23:5 34:3,7 35:9 55:22 60:15 80:18 89:21 93:14 100:9 101:19 128:10,22 129:13 140:15 150:4,22 individual's 101:20 150:3 individually 151:8 individuals 24:17 27:2 54:21 68:11	71:3,8,16 85:20 139:3 140:2 146:12 149:8 158:19 infants 76:8 information 10:8 21:11 23:1,7 24:16 25:13,14,17,20 26:4,10,13 28:20 29:10,11 32:1,5,13 34:9,17,18,19 35:3 35:12,20 36:4,12 36:13,15,22 37:1 37:10,13,17,21 38:20,22 39:4,19 39:21 40:1,5,7,13 40:18,20 41:10 43:12 49:11,12 50:17 53:14,18,22 54:5 56:12 57:20 57:21 58:3 61:4,5 63:12,14 64:17 66:15 71:6,10,15 73:15 75:14 76:13 78:5,11,12,15 85:8 88:22 89:5 92:1,15 93:11 95:14 96:16 99:12 100:7,17,19 101:6,9 102:4,4 108:17 109:12,21 111:21 112:22 113:15 115:1 119:12 127:11 128:11,20 129:1 130:1,8 132:16 133:8 134:14 137:22 139:2,18 140:4,7,9,15 141:10,21 142:3 145:15 150:3,18 151:3,4,4 156:2,14 158:20 164:18	165:11 167:3 170:6 171:15 172:2,8,14 172:22 173:6,7,18 175:8 177:9 informs 49:2 infuse 149:11 infusion 149:15 ingested 131:5 132:3 ingesting 104:8,16 134:16 inhabitants 43:8 initial 85:18 90:10 initially 78:3 inject 149:18,19 150:1 162:22 injected 149:7 162:13,15 163:7 injecting 152:16,21 153:13,14 161:21 injection 151:16 instance 28:10 53:7 101:15 instances 27:5 instruct 21:2 59:19 78:8 86:7 92:7 135:16 156:16 174:18 instructing 142:14 instruction 126:1 instructions 128:1 insurance 115:4 intend 57:13 85:15 99:5 144:5,9 169:13 170:13 intended 137:12 154:14 intending 75:13 intends 59:1 78:13 123:2 137:17 144:15,19 169:16
---	---	---	--

Freedom Court Reporting
A Veritext Company

limiting 172:5 line 79:3 83:5 148:18 181:11,14 181:17,20,23 182:1 182:4,7,10,13 lines 18:17 26:11 84:5 link 34:22 70:5 71:13 84:22 85:14 85:19 86:16 linkages 69:21 71:11,20 linked 23:3 83:1,2 85:10 linking 88:17 list 27:18 44:20 48:20,22 93:21 101:18 111:11 114:21 146:5 155:18 listed 15:10,16 16:8 26:20 49:21 74:9 74:18 76:2 80:1 90:5 94:9 101:22 106:11 107:2 108:22 111:22 139:11 172:21 173:17 listen 121:16 listing 28:3 66:12 66:20 lists 66:10 106:4 108:15 114:7 140:19 155:10 173:4 litigation 11:17 135:9 147:8,10 148:15 little 45:2 121:18 154:8 155:18 162:21	live 36:20 53:3 54:22 55:10,15 126:22 128:3 129:17 living 26:14 40:6 41:4 43:12 47:16 48:9 150:11 loan 107:3,12 108:14,22 109:4 110:1 local 120:15 location 21:13 lodge 77:22 long 12:5,18 52:13 63:22 64:3,8 117:10 look 14:17 32:15 34:2,6,16 35:13 36:1 44:13 50:5 53:19 54:9 61:11 64:14 66:19 69:10 72:1 81:6 89:13 96:20 102:6 105:3 105:21 110:9 111:4 115:11 122:21 135:12 146:1,5 151:6 157:5 160:5 162:15 166:7 173:17 looking 28:6 30:8 31:15 35:18 54:20 60:7 65:13 71:19 79:21 122:11 looks 151:21 lot 45:7 80:15,17 lunch 115:10	madison 14:10 mail 31:16 64:1 180:10,19 mail.house.gov 3:19 mailing 21:2 mailings 22:4 mails 129:6 maintaining 98:13 maintains 20:15 making 44:8 62:14 86:22 87:8 91:10 91:10 103:21 141:6 145:20 159:4,6 161:18 181:8,8 maldef 4:5 maldef.org 4:9 males 18:1 118:20 man 41:2,3 management 48:20 mandated 51:4 manner 83:20 manual 42:1 manually 180:8 marc 7:5 march 126:20,21 128:3,4 129:6 138:8 164:16 mark 14:19 23:21 32:18 44:15 61:17 65:21 66:1 93:15 105:10 110:11 115:15 117:3 121:22 138:10 147:5 166:16 marked 14:22 15:3 24:2 31:22 32:21 33:3 44:18 61:19 61:21,22 62:2 66:3 66:6 74:10 93:18 105:12,22 110:13	115:18 116:14 117:1 122:3 130:13 138:13 147:15 155:9 157:6 166:18 166:20 167:1,6,13 167:19 172:5 marking 14:15 115:20 116:16 marriage 179:13 marshall.yates 3:19 martinez 4:3 master 20:16 114:15,17 master's 13:22 match 35:10 36:1 53:15,22 71:8 97:6 97:16 112:2 materially 78:17 materials 77:5 mathematical 30:16 149:21,22 150:19 matter 77:16 93:14 142:10 179:14 maximizing 111:9 maximum 111:12 124:1,14 155:13 mcannon 5:10 mean 19:20 21:9,10 30:12 33:17 36:8 68:3,16 72:3 78:12 90:4 100:15 126:16 148:17 149:18,18 149:19 150:13 158:7 160:13 171:13 173:7,20 meaning 132:2 means 40:3 73:17 82:2 160:17,19
	m		
	m 1:22 3:4 8:21 62:1 105:19 179:4 ma'am 16:6 123:7		

meant 165:21 measure 126:11 137:1 162:2 measurement 94:16,20 95:12 medb 109:13 medicaid 26:6 108:22 109:3,12,17 109:20 115:1,4 medicare 25:8 108:22 109:2,12,14 109:20 meet 144:3 176:3 meeting 80:3 143:22 meetings 80:6,16 member 80:11 members 66:8 79:15 126:6 membership 80:16 memberships 45:14 memo 83:10 95:5 105:8 131:21 132:1 136:7 147:2 memorandum 8:16 8:21 9:4,11,13 10:3 62:1,5,9 63:20 105:14,18 106:21 116:1,6,8,18 133:15 135:7 138:9 157:8 167:6 173:3 173:14,21 174:2 memorandums 173:11 memos 101:14 102:1 135:16 mention 74:20 mentioned 32:4 39:12 56:18 101:14 126:4	mentions 67:1 110:1 123:8 method 59:13 95:17 methodologies 60:19 methodology 30:7 35:22 36:7 37:4,16 38:3,5,6,15 40:16 41:20 42:1 44:6 53:11 54:10 58:2 58:10,16 60:1 61:2 61:7 72:17 73:1,2 73:10 86:20 91:17 92:18 99:9 100:6 135:5,19 136:5 137:6 149:10 153:3 158:16 159:10 160:10,15,21 methods 17:12,13 38:12 44:10 59:17 62:12,15 95:1 99:3 meyer 5:14 michael 2:8 5:4 105:19 108:4,11,19 109:5 michigan 14:1,7,8 migrant 123:8 migrants 172:16 miles 7:6 military 46:4 mind 95:19 ming 7:14,14 minute 154:20 minutes 52:17 115:8 117:16 misleading 15:19 19:1 70:10 99:20 100:18 127:19 128:19 130:6 135:14 158:15	166:1 167:10 168:7 169:5 170:17 171:4 171:19 missing 30:4 33:22 34:4,5,18,21 35:12 35:15 36:3,14,22 69:14 94:17 95:18 96:16 97:11 misspoke 16:1 misstates 126:14 mistake 166:17 misunderstood 127:14 mo 18:13 model 31:13,20 83:2 84:18,19,20 85:22 88:14 157:19 modeling 30:12,13 84:2 85:15 86:17 87:15,18 88:8,11 88:14 91:7,12 99:12 models 22:20 24:12 24:20 28:11 30:15 160:8 moment 108:1 montgomery 3:8 months 12:6 51:6 morning 11:8,9 15:7 morris 1:6 3:14,15 motor 103:5 move 40:8 126:21 127:1,15 128:17 moved 128:4,13 msis 109:16 multiple 73:5 85:6 89:8,21 100:7 102:6	n n 3:1 4:1 5:1 6:1 7:1 8:1,1 11:1 n.w. 2:5 4:6,18 5:7 6:7 name 11:10,11,12 56:11 69:21 104:2 104:20 108:1,3,4 narrowed 15:14,17 16:9 83:15 national 112:8 113:11 114:7 120:13 126:3 native 18:2 natives 118:21,22 119:3 naturalization 67:2 67:18 112:12 139:7 naturalizations 102:3 112:9 naturalized 172:15 nature 86:4 163:15 nearest 30:8 36:1,3 36:17 37:17 40:17 40:19 53:11,19 nebraska 74:14,19 127:1,16 128:5,6 128:11 173:17,20 necessarily 28:22 55:6 89:10 necessary 181:9 need 12:11 38:12 38:20,21 39:8 40:15 41:19 42:4 44:10,10 54:1 55:12 63:11,14 69:3,5,10,16,20,21 70:1 85:21 92:21 93:3 97:12 104:19 106:20 108:19 109:5 110:2 114:9
--	---	---	---

114:9 115:12 123:17 125:9 127:11 128:22 132:20 133:5,6 134:17,19 135:3 145:21 159:11 166:3 168:8 169:8 169:11,11 173:2,13 174:14 175:2 177:5 177:10 needed 49:5 129:3 needs 99:22 100:5 160:15 168:19 174:2 needy 26:7 76:9 106:6 negotiate 148:1 negotiated 83:7 121:14 147:19 161:13,16 negotiation 77:17 negotiations 67:12 77:4,19 78:6 79:3 neighbor 30:8 36:1 36:3,17 39:6 40:4 40:18,19 41:1,2,3 53:11,20 175:14 neighborhood 40:21 41:7 53:3,4 neighboring 37:22 neighbors 37:17 53:6 neither 124:6 nesters 41:1 network 120:12 never 95:19 128:13 129:3 139:7 new 5:13,15,18,18 6:7 22:18 68:17,19 106:8 107:3 108:15 116:11 117:17	147:11 177:3 newly 71:7,21 nfe 9:12,14 nine 51:6 noise 149:12,15,19 150:1,13 151:16 152:16,21 153:6,13 161:21 162:6,13,15 162:22 163:7 non 22:8,19,21 24:14 26:2 27:1 28:9 30:22 33:11 39:11 42:22 51:15 51:20,22,22 52:1,6 60:16 100:14 112:20 150:12 158:13 161:4 170:15 171:1,16 172:9 174:12 175:2 noon 118:2 northern 1:2 notarized 180:10 notary 2:9 179:4 182:23 note 121:9 147:17 notebook 14:11,17 32:17 44:14 61:12 81:7 93:7 105:4 121:6 147:5 166:7 noted 121:11 181:4 181:5 notice 2:8 8:10 15:2 15:17,20 16:8 noticed 124:20 noting 180:7 nrfu 26:2 28:17,20 29:5 30:21 nuclear 122:7 number 8:9 9:2 10:2 14:21 19:20 20:10 24:1 25:12	32:20 38:4 44:17 54:14 61:12,14,15 61:18 65:18,19 66:2,14 70:14 71:4 76:17 81:21 82:18 89:2 90:3 93:17 101:14 105:11 109:9,10 110:12 111:5 112:3,5 114:12 115:17 116:13,22 122:2 130:14,18 138:12 139:5,13 140:3,22 146:3,19 147:14 150:14 162:3,3,7 166:19 169:22 170:5,9 171:1 numbered 63:21 65:1 94:12 122:9 122:11 130:17 138:19 146:8 155:9 numbers 14:16 70:20 71:1 131:2 152:4 161:4,18,19 161:20 162:14 163:8 170:8 numerical 25:9 70:17 numident 25:9 35:6 70:16 106:5 139:1 139:14 nursing 27:4,10,16 27:18,21 nutrition 76:7	objected 75:3 objection 15:5,19 16:11,18 17:1,5,17 18:7,22 19:7,22 20:3 21:19 27:19 30:14 31:10 32:9 33:8 38:1,17 40:14 41:12 42:19 43:9 43:18 44:3 46:17 48:1,12 49:22 51:10 52:3,10 53:8 54:6,17 56:6,17 57:4,15 58:8 59:15 60:5,17 62:17 63:10 64:16 68:6 70:9 72:6 74:2,11 75:3 78:1,8 79:12 80:7 81:2 83:4 85:3 85:17 86:3 87:2,9 87:22 88:9 89:3,18 90:6,18 91:13 96:4 97:22 98:15 99:7 99:19 100:18 101:8 102:18 103:3,14 104:11 106:16 107:5 108:10 110:20 111:18 117:7 119:16,22 120:22 124:3 126:1 126:12 127:5,18 128:7,18 129:11,20 130:6 131:13,14 132:13 133:2,13 135:13 136:1,12 137:3,10,20 139:21 140:17 141:9 142:2 143:2 144:16 145:5 145:14 146:14,21 148:3,7 150:15 151:11 153:1,16 156:11,22 157:3
		o	
		o 8:1 11:1 oakland 6:19 object 77:3 94:7 103:18 123:3 124:16 152:5,6,7,8 163:11 174:17	

158:14 159:8,20 160:3,14 161:6 162:8,16 163:2 164:1,13,20 165:4 165:13 166:1 167:9 168:6,18 169:4 170:2,16 171:3,18 173:12 174:16,17 175:4,20 176:9 objectionable 148:8 objections 145:11 148:9 obtain 63:7,12 74:17 76:10 144:22 obtained 67:2 117:10 134:10 140:3 171:11 obtaining 63:2 103:6 117:11 obviously 51:21 94:2 occupied 22:22 23:2 24:8,14 26:14 28:12 31:2,5,14 32:3,8,14 39:14 occur 28:19 occurred 94:17 office 3:5 5:6,16 6:17 28:2 48:19 office's 27:7 offices 2:3 180:3,10 okay 12:5 16:20 19:4 20:9,13 21:8 23:10,20 24:19 27:12,22 28:6 29:12,20 32:15 33:17 34:15 37:2 37:19 39:2 40:10 41:22 46:11 47:4 47:19 48:8 49:14	50:10 51:14 52:15 52:17 53:13 54:11 54:13 55:1,5 56:4 56:13 57:8,12 58:5 58:22 59:12 62:20 63:6 64:7,19 67:4,4 67:21 68:13 70:3 70:12 72:12 73:6,9 74:7 76:20 77:12 77:21 80:3 82:1,1,2 82:8,13,17 84:1,18 84:21 85:9,13 86:2 86:22 87:19 88:5 88:16 89:13 91:9 91:20 92:21 93:5 93:12 95:5,9,19 96:14 97:14 98:7 98:11 99:3 100:2 100:10 102:9 103:8 104:4 105:17 106:14 107:2,10,14 108:5,13 109:7,18 110:6,9,15 111:20 112:16 113:8,15 114:3,13 115:6 116:4,12 117:15,20 118:8,22 119:7,13 119:19 120:19 123:16,20 125:10 125:16 126:16,20 127:8,13 129:2,5 129:15 131:19 132:9,19 135:7 137:19 138:2,5 140:8,13 145:10 146:1 148:21 149:17 150:7 154:6 154:17 155:20 156:7 158:7,11,21 159:6,9,15,22 160:18,22 162:14	163:8 164:4 165:17 168:15 169:21 172:3 older 56:21 60:14 61:7 63:13 olson 7:7 once 12:4,5 22:14 48:22 68:18 69:9 77:3 90:18 129:12 163:12 180:10 ones 14:14 93:21 157:6 ongoing 77:4 86:5 92:4 131:17 156:13 161:7 online 21:3 operates 27:17 operation 22:19 27:2 29:2,22 30:2 39:11 42:6 48:15 48:17,17 49:3 123:13 operations 176:2 opportunity 121:20 162:1 opposed 27:8 96:15 99:17 opposite 96:21 option 63:2 133:3 order 9:10 66:9 69:1 79:19 83:20 89:16 110:10,16,17 110:22 111:8 113:9 113:17 114:13,21 120:9 125:3 134:18 143:16,17,18 144:4 144:10,12,14,19 155:6,8 156:10 173:9 174:1,14 ordering 180:13	organization 27:17 107:18 organizational 73:4 organizations 82:6 120:15 organized 154:20 origin 34:11 94:18 98:18 151:4 original 105:6 128:9 180:13,15 outcome 30:19 39:16 179:14 outside 83:6 94:5,7 121:13 124:19 141:2 161:12 165:5 167:13 outstanding 81:5 overseas 46:4 47:16 48:6,9,9,21 49:3,7,8 50:12,18 51:19 169:19 oversees 49:19
			<p style="text-align: center;">p</p> p 3:1,1 4:1,1,16 5:1 5:1 6:1,1 7:1,1 11:1 62:3 63:21 65:1 81:11,22 82:19 111:5 130:17 137:8 138:19 140:21 146:8 155:10 p.m. 118:6 155:3,4 176:16,17 178:1 p.o. 3:7 page 8:3,9 9:2 10:2 45:12 63:20 64:22 66:7,12,19 67:5 74:13 80:1 81:11 81:22 82:17 94:12 95:20 105:21 110:4 111:4,7 112:5,10

112:20 113:21 114:16,17 115:3 121:11 122:9,9,11 122:15,15 123:6 130:17 138:10,19 140:21 146:8 147:5 148:16,17 153:18 154:3 155:9 157:11 157:12 172:10,18 180:18 181:11,14 181:17,20,23 182:1 182:4,7,10,13 pages 1:21 64:22 181:9 paper 21:4 paragraph 62:22 95:20 122:13 157:16 paren 67:18 parent 35:16 part 16:20 27:1 48:9 73:6 83:22 90:17 95:6,22 99:21 103:10 108:14 123:2 127:14 135:15 137:2,8,13 144:18 160:9 169:21 172:11 173:8 175:17 partial 69:16 participant 118:9 participants 66:10 participating 125:20 participation 120:11,17 124:2,14 125:3 particular 17:7 19:6 22:1,6 23:4 27:21 34:3,7 42:1	42:10 45:22 46:6 49:5 59:14 60:3 73:20 88:19 98:11 103:20 105:8 114:21 120:8,15 140:4,10 141:7 142:18 145:2 150:10 151:3 161:2 161:20 163:9 167:20 171:21 parties 2:11 147:19 148:14 179:12 180:13 partner 120:13,14 partnered 126:6 partnership 120:13 126:3 passes 129:7,13 passport 114:8,10 116:5 141:1,3 patient 25:19 patrick 9:5 42:14 pause 74:21 pdf 180:7 people 21:15 26:14 28:15 29:4,14 36:11 37:12 40:6 43:12 46:21 47:16 50:13 52:5 54:14 55:9,15,17 57:14 60:13 62:14 71:13 71:17 97:6 109:19 127:6 129:17 139:12,17 140:20 140:20 146:16,19 150:10 172:16 percent 21:1,17 64:2,2 69:14 perform 131:11 performed 86:2	performing 72:14 performs 152:12 permanent 67:1,17 112:9,11 172:14 permission 115:7 154:18 permit 136:5 156:3 156:9 perry 7:5 person 35:4 42:10 48:8 49:20 60:12 67:22 68:4 85:2 88:19 89:1 97:15 100:11,12,14 103:20 104:5,6 107:22 128:13 129:4,5 157:21 158:12 159:2 170:14 171:16 person's 104:4 personal 75:6 124:4 personnel 48:20 persons 131:1 175:1 pertains 156:12 pertinent 161:11 phone 6:15 7:10 18:12 118:7,9 phrased 59:22 physically 54:15 piece 32:1 pieces 100:16 101:6 102:15 pl 47:6,9 137:13,14 137:15 place 29:9 86:21 116:7 141:15 172:6 plaintiff 3:2 11:6 plaintiffs 1:9	plan 58:6 90:13 91:5 92:6 170:22 planned 80:6 119:20 120:3,20 planning 59:4 plans 59:9 90:21 91:2 145:8 157:17 158:1,4 163:3 164:14 171:5 plays 45:10 please 11:10 13:21 14:18,20 23:22 32:19 39:10 44:13 44:16 60:6 61:12 65:17 66:1 81:12 82:19 93:6 105:3 109:9 110:11 117:5 121:5 122:1 127:21 130:11 138:5,10 143:3 146:1 147:3 147:6 166:8 180:10 180:18 181:9,9 plus 46:22 48:5 63:13 point 12:10 21:14 22:12 24:21 25:2 30:2 36:6 42:3 65:16 80:8,10 86:19 89:19 109:11 117:22 175:7 points 80:9,11 pool 89:19 pop 46:21 population 12:13 12:16 13:6 16:17 16:21 17:11 18:2,3 18:10,16,19,20 19:3,5,18 20:5,6 37:18 45:19,21,22 46:3,8,9,10,12,20 47:3,8,16 48:2,6,9
--	--	--	--

50:19,20,21 51:5 51:16,17 55:7 56:8 56:12,19 58:4,7,12 58:17,19 59:2,6 61:6 63:4,9,14,17 82:5 95:1 98:19 118:19 120:4 121:4 126:11 133:11,22 135:1 140:8 143:8 150:20 151:14,16 163:1,5,6,21 164:2 164:5 168:4 169:3 169:8,14,17,18,19 170:4,12 172:20 populations 17:7,8 17:21 18:10,14 19:12 118:12 119:21 120:5,9 portion 26:3 156:16 portions 148:14 posed 81:13 position 12:18 13:6 13:10 14:10 151:19 177:11 positions 12:21 14:5 positive 165:17 possible 28:5 36:22 40:8 43:8,16 89:21 120:21 122:18 128:15 142:1,6 175:19 176:1 postal 25:20 31:2 31:15,21 potential 106:8 107:3 108:15 148:9 potentially 68:1 77:5,19 100:3 124:17	prattville 126:22 127:15 128:3 precisely 142:8 predicate 163:16 predict 30:19 31:1 31:4 preliminaries 16:13 premise 53:10 83:14 preparation 84:8 prepared 15:15 16:6 105:18,19 124:6 presence 52:8 present 2:10 6:15 7:4,10 52:1,2 54:15 69:6 171:1 174:12 175:1 presented 88:3 president 51:1,5,9 51:15 111:15 presidential 9:9 preventing 150:4 previous 100:22 previously 24:21 130:12 primary 70:15 101:15 principles 55:13 56:3 print 180:8 prior 13:4,8,11,13 13:15 75:3 126:14 135:9 prison 27:9 prisons 27:3 55:19 106:6 privacy 10:7 149:2 149:7,11,16 151:15 151:18 153:3 154:4	privilege 59:19 77:6,11 79:6 86:7 100:20 124:18 131:15 133:17 136:13 141:11 142:4,13 156:15 161:10 164:22 174:18 probabilities 160:17 probability 157:19 158:8,9,11 159:1 160:9,12 probably 14:15 problem 57:7 procedure 36:9 149:10 154:2 181:6 procedures 98:5 99:13 proceed 154:21 process 29:8 33:5 33:18,21 34:1 42:12 45:2,8,13 47:14 58:1 59:19 72:11 74:1,4 77:6 86:7 87:13 89:16 90:17,19 91:12 95:7 100:20 124:18 125:6 131:15 133:17 136:13 141:11 142:4,13 153:12 156:15 161:10 162:13 164:22 174:18 processes 91:21 processing 29:6,18 29:20 81:17 113:19 114:1 produce 58:2,12 61:5 83:17 133:8 133:11,21 135:1	157:19 158:7 164:15 168:3 169:2 169:7,21 produced 75:11 105:7 122:10 175:8 177:1 produces 99:2 producing 137:6 143:7 product 47:1,12,15 56:18 57:19 58:17 59:4,6 61:2,6 63:13 135:20 136:6 137:18 169:22 170:12 production 180:20 products 47:5,7 56:14 149:14 proffer 152:10 program 8:15 26:7 76:7,8,9 94:16,20 94:21 95:12 115:4 120:14 126:3 164:19 165:12 programs 121:3 project 9:18 68:2 157:14 projects 81:15 proliferation 122:7 pronounced 153:6 property 26:10,18 protect 125:5 149:7 149:16 150:2 protected 100:19 141:10 142:3,12 156:14 161:9 protection 113:1 149:2 prove 121:20 provide 28:2,22 35:8 38:20 49:6,10
--	--	---	---

50:4 76:13,15 77:1 78:15 96:11 111:13 111:16 145:2,13 155:14 provided 34:17,19 35:3 51:8,15 96:9 130:1,7 150:5 156:2 provides 26:10 32:12 50:22 66:15 96:10 providing 173:18 proxy 40:3,7 public 2:9 25:15 98:10 179:5 182:23 publication 56:22 57:16 publicly 64:20 90:14 91:3,6 98:8 153:2 publish 119:9 169:16 published 164:7 175:8 publishes 19:2 47:13 puerto 47:22 48:3 pull 28:1 pulling 37:16 purpose 79:16 88:15 135:18 143:22 purposefully 143:5 purposes 11:21 45:2 46:15 50:16 61:1 74:9 82:10 105:9 127:2 134:15 147:18 169:11 pursuant 2:8 181:6 pursue 84:4 94:3	pursued 133:4 pursuing 124:8 134:9 135:2 put 74:16 98:9 128:1 133:3	39:3 questions 8:20 12:9 34:7,8 44:21 63:19 84:5,6 93:12 94:3,4 95:16 121:12 142:19 159:18 162:20 168:1 176:19 177:17 quick 83:3 quicker 62:10 quite 166:5 quote 111:11 132:2	reaches 49:1 read 69:4 81:11,19 122:15 124:2 139:21 148:12 177:18 180:6 181:2 readandsign 180:18 reading 62:20 67:10 141:3 reads 130:20 ready 138:1 real 106:14 really 28:17 36:9 37:10 69:19 71:19 79:20 80:9 83:3 87:16 152:13 165:19 166:13 176:19 reason 75:3 181:13 181:16,19,22 182:3 182:6,9,12,15 reasons 102:1 176:5 181:8 recall 83:13,15 102:13 104:2 receive 21:2,22 25:10 32:6 73:21 88:18 89:15 148:13 received 66:14,21 68:4 73:18 74:19 88:22 114:19 156:7 177:3 recessed 52:19 118:5 155:3 176:16 recognize 75:11 recollection 122:20 122:22 recommend 159:18 recommendation 62:15 160:7
	q		
	q&a 81:11,22 quality 131:6,11 132:3,7 168:3 169:2,7,10 quantified 146:16 quarters 20:17 26:21,22 27:3,6 123:13 question 12:11 16:3 23:15 24:20 33:21 45:12 57:7 59:22 65:1,17 66:16 75:4 77:5 78:17 79:8 81:12 86:4,10,17 94:7 108:8 121:16 123:4 125:11 127:20 130:18,19,19 131:15,18 133:14 133:19 134:5 135:22 136:16 138:21 139:21 141:9 142:2,16,18 143:11,13 145:18 148:7,8 149:18 152:7,18 154:14 155:22 161:8,9,12 163:14 168:16 175:16 questioning 83:5 questionnaire 20:19 21:16 22:5 24:6 31:7 130:2,9 questionnaires 20:11,14 21:17	r	
		r 2:2 3:1 4:1 5:1 6:1 7:1 8:2 11:1,3 83:1 84:14 178:2 180:2 race 26:16 28:4 34:5,9,10,14,14 35:15,17 37:5 53:5 53:21 56:9,19 57:18 94:17 98:18 109:15 151:4 racial 13:14 17:21 118:19 raise 78:7 83:4 125:22 148:7 random 129:5 randomness 149:1 149:6 153:15,19 range 160:16 rate 21:17 64:1,4 64:15 rates 26:5 63:22 rationale 142:9 rdp 1:11 reach 22:12 40:4 103:12 119:20 120:3,16,20 125:17 reached 76:4 101:10 103:4	

recommendations 62:8 88:1,3 160:1	104:8,9,16 107:20 111:14 114:15	refugee 113:19,20 114:1 172:20	remaining 47:5,7 81:4
recommended 62:21	117:9 134:10	refusal 78:15	remember 107:22
reconcile 101:6	135:18 136:20	refuse 143:5 144:15,20	remembering 105:1
reconvened 52:20	140:6,10,14 141:17	refused 77:1 145:9	remind 118:14 146:2
118:6 155:4 176:17	144:2 145:9 155:11	regarding 106:21	rent 26:17
record 34:3 46:5	155:14 158:3,17	107:1 116:20 125:8	rental 25:16
49:11,17,21 50:4,6	168:5,9 169:7	139:2 140:1 141:14	repeat 16:5 61:14 127:20
50:7,9,14 61:21	170:19 172:1,8,19	145:8 165:16	report 49:20 56:4 64:18 90:14 91:3
69:20 71:14 93:16	176:7	172:20 175:9	97:6 126:22 127:6 127:15 129:17
93:20 105:5,10	redistricting 47:6	regardless 52:7,8 57:9 60:22 171:7	136:7
114:7,18 121:8	47:14 137:13 152:9	registration 25:19	reported 1:22 19:5 34:11 36:12 50:13
130:10 136:4 138:8	152:14	reimbursable 104:14,18 105:1	64:20 69:15 97:1,4 97:21 98:3,8 100:4
146:3,7 147:16	refer 65:17 109:9	related 10:8 24:7	128:15 151:9 161:5 163:8
157:7 166:15,17	111:22 112:10	98:17,22 99:3	reporting 36:11 150:13
174:5,7 176:11	130:18 143:15	101:2 124:13	reports 97:15 119:11 135:8 150:9
179:9	148:16 157:10	165:11 167:3 172:8	represent 11:15 20:6 44:22 122:12
records 8:12 9:15	172:4	179:11	147:7 148:22
23:3,8,10 24:7,13	reference 19:9 20:7	relationship 30:18 94:17 98:22	representative 1:7 11:20 15:20 75:12
24:15,22 25:1,6	23:12 65:11,11	release 46:12 59:2	135:10
26:16,21,22 27:7	70:15,16 71:20	59:5 91:12 164:11	representatives 45:15 66:11
27:13,17 28:2,9,14	102:5 109:1,8	164:14 169:13	represented 154:15
28:22 29:3,13,15	115:3 127:11,12	173:6	reproduction 105:17
30:3,21 31:15 32:4	references 99:14	released 58:19	request 63:1 76:5 76:14 80:22 81:1
33:12 35:1,6,11	referred 153:14	137:8,19 138:3	103:1,2,6,22
37:11,14 38:8,10	165:18	162:5 170:8	107:11 108:18
39:3,14 44:9 49:6	referring 25:3 82:7	releases 16:17,21 18:19 56:14	
57:20 60:8,10 61:4	83:21 101:4 110:4	releasing 164:4	
63:3,8,16 66:13	144:21 153:18	relevant 111:12 155:12	
68:10,18 69:14	refers 83:8 84:16	reliable 100:17	
71:8 74:3 79:18	84:19	relied 38:4,5	
82:11,14 83:20	reflect 28:17 128:1 150:20	religious 126:7	
84:17,22 85:1,7,10	reflected 102:5 112:20	rely 38:12 40:17 44:10	
85:11,14,20 87:12	reflects 25:15 45:21 109:21		
88:18,19 89:1,6,14	reformatted 105:9		
89:15 90:5,15	refrain 142:22		
91:16 92:2,17	refreshes 122:19 122:22		
96:15 100:1,5,11			
100:13 102:2,12,16			
102:21 103:22			

112:11 113:22 requested 66:21 68:8 69:11 74:9 75:18,19 76:2,21 78:2,11 80:20 102:12,16,21 107:4 107:8,9 111:21 113:4 114:4,18 135:4 145:2,13 156:2 173:5,8 180:6 requesting 80:14 106:22 116:5 173:16 requests 74:17 81:4 108:17 117:17 required 132:10 139:12 requirement 144:14 157:2 research 14:5,10 72:17,22 73:1,2,9 88:2 118:18 119:1 133:5 157:13 reserve 177:6,17 reside 29:14 54:21 55:15 residence 46:1 54:20 55:3,8,10,12 55:14,22 residency 173:1 resident 27:9 45:21 46:7,21 47:7 50:19 51:17 67:1,17 112:12 128:6 130:4 169:18 171:17 residents 19:21 27:18 28:3 47:21 50:11 53:4 54:16 57:5,9 112:9 113:2 171:7,12 172:14	residing 27:3,6 45:22 46:21 170:1 resolve 96:7 97:1,9 177:13 resort 37:15 resorts 35:22 resources 12:8 respect 144:8 respective 2:11 respond 21:3 23:15 31:7 35:2 65:17 responded 22:7 76:14 77:10 78:14 78:20 130:8 respondents 85:20 responds 96:18 response 21:4,17 21:22 22:8,15,19 22:21 24:6,14 26:2 27:1 28:9,13 30:22 31:12 33:11 34:5 39:11 45:12 63:1 63:21 64:1,4,15 65:4 81:15 100:22 101:3 131:3 132:9 138:21 150:6 responses 34:4,8 35:2 150:1 responsibility 72:13 180:6 responsible 42:5 98:13,19 103:21 104:7,15 107:19 rest 154:21 restate 79:8 143:3 result 22:5 38:15 56:5 results 43:22 46:18 46:19 50:17 176:8 retired 41:2	returned 22:5 31:17 180:12,15 returns 25:7 revealing 142:9 revenue 25:7 32:6 71:3 117:12 132:7 134:13 review 111:15 122:20 142:16 149:4 180:7 reviewed 15:2 45:4 106:12 110:17,21 167:18 reviewing 112:1 177:4 rico 47:22 48:4 right 24:4 27:15 31:19 50:16 51:12 59:1 70:6 81:10,20 82:15 103:17 106:12 108:1,9,21 110:16 113:5 114:6 117:18 134:3 137:14 153:20 161:11 176:13 177:6,18 rights 6:6 robert 1:22 2:8 179:4 role 45:9 113:14 roman 155:18 ron 4:13 125:15 rosenberg 4:16 166:4 ross 4:13 10:3 62:2 138:9 rough 76:19 routinely 81:17 row 67:4 109:13 112:21	rows 67:15,16 rpr 1:22 2:9 179:4 rule 1:15 181:6,7 rules 97:16,19 98:4 98:14,21,22 99:5 rural 21:7 ryan 7:6
			s
			s 3:1 4:1,13 5:1 6:1 7:1 8:1,8 9:1 10:1 11:1 sampling 137:1 san 6:2 santa 6:13 sapna 5:3 save 121:18 saying 30:16 says 26:5 62:21 64:1 65:4 67:21 68:15 69:13 73:14 73:16 81:16 89:1 94:14 95:21 106:8 109:4,13,15 111:8 113:10 122:21 124:5,5 132:10 151:22 155:8,10,11 157:17 scenario 160:19 scope 94:5 121:14 123:5 124:4,17,20 152:6,8 161:12 163:12 164:21 165:5,9 167:14 seal 180:12 sean 7:17 search 140:5 seats 45:14 second 46:2 62:21 66:12 73:14 74:22 112:17 131:13 139:21 141:1

secondly 55:17 section 104:6 111:7 111:8 112:6,18 130:20 155:17 sections 21:5 138:18 security 25:11,12 31:4 35:7 66:22 67:8,9,13 68:9 70:4 70:18,20 71:4,9 73:13,19 88:19 89:2 90:16 101:16 101:18,22 106:4 112:7,19 113:10,18 114:14 116:20 117:12 131:2 132:6 132:15 134:12 139:5,8,11,13,14 140:3,22 157:10 167:3,8,12,16 172:13 see 25:4 30:3 34:7 34:16,21 35:19 36:6 40:5 57:7 62:9 66:20,22 67:4,15 71:7,12,15,19 72:2 73:12 74:13 82:19 110:15 111:5,16 112:10 113:22 114:11,15 118:4 122:13,19,22 127:14 133:6 134:11 135:12 141:4 148:17 149:1 153:21 157:12 162:20 163:13 172:11 seek 75:13 78:5 141:7 164:18 165:3 165:11 177:7	seeking 124:12 141:21 seeks 143:11 seen 15:7 33:4 62:5 93:9 99:14 self 128:15 send 20:13,19 24:6 24:9 156:5 175:13 180:13 sending 22:13 sends 21:15 sense 27:14 128:12 155:1 162:21 sentence 94:14 132:9 senteno 4:4 separate 137:18 september 121:12 122:8 series 8:16 22:3 36:4 served 13:5,6,8,9 13:11,13 serves 45:1 service 25:7,19,20 31:2,15,21 32:6 71:3 117:13 132:7 134:13 services 65:6,9 66:17 67:3,19 112:8 114:22 132:17 set 60:3 73:14 90:8 100:11,13 140:10 156:20 179:8,15 sets 69:3 71:14,21 seven 140:20 146:6 146:13 sex 13:9 26:16 28:4 35:9 37:5 69:22 94:18 96:19,20,21	98:18 shady 180:21 share 58:11 91:6 145:9 156:3,5,8 sharing 10:9 167:3 sharma 5:3 sheet 9:3 65:11,18 65:19 109:2,8 sheets 23:12 65:12 short 63:22 64:2,8 showed 18:9 shown 19:12 shows 85:18 117:8 side 83:2 sign 177:18 180:6 signature 179:18 180:2,16 182:18 signed 116:8 180:10,12,15 similar 29:4,8 33:15 37:15 123:14 126:1 simply 41:17 55:1 81:1 105:7 sinclair 7:12 single 24:9 41:2,3 89:13 sister 98:22 sit 134:3 situation 96:18 six 39:20 140:20 skip 163:18 174:16 sleep 54:22 55:10 55:15 slightly 63:18 sloppy 75:9 slow 150:7 small 155:18 smith 3:4 61:14,16 snap 76:5,6 102:14	social 25:10,12 31:3 35:7 70:18,20 71:4,9 88:18 89:2 99:1 101:16,17,21 106:4 114:14 117:11 131:2 132:6 132:15 134:12 139:5,8,11,12,14 140:3,22 sociology 13:22 solicit 125:19 solution 87:8 somebody 49:17 103:8 somewhat 83:6 sorry 72:20 81:21 104:17 109:7 139:20 155:15 166:9 sort 59:18 sorts 29:16 sought 171:11 sounds 118:4 source 54:4 67:7 70:15 74:13 89:11 101:15 140:5 sources 9:7 25:5 31:1 68:18,19 85:6 85:7 89:8,20,22 90:11 91:7,15 97:12 100:7 101:17 102:6 136:4 157:18 172:21 southern 1:3 spanish 53:19,20 speak 15:15 16:7 42:11 162:1 171:20 176:21 177:6 special 13:5,11 29:1 49:2 56:9 57:18 58:12 137:18
--	---	--	--

specific 56:18 58:1 58:10 77:8 89:11 91:21 94:3 104:20 136:4 138:4 146:22 150:21 specifically 60:10 84:9 87:17 90:11 91:15 93:9 109:4 158:5 173:4 specification 98:6 specifications 98:7 98:9,20 99:2 164:8 specifics 86:6,9 93:14 specify 33:22 speculation 41:13 53:9 85:4 89:4 106:17 140:18 144:17 145:6 150:16 153:17 162:17 spence 6:5 spent 14:8 spite 127:22 spot 36:21 88:6 spreading 125:19 spring 90:9 91:11 91:14 135:22 136:3 138:1 ss 179:2 ssa 131:7 132:4 ssharma 5:9 stack 23:17 staff 42:21 65:6 72:18 87:11 103:4 104:15 108:3,7,12 108:19 standard 38:3 54:8 start 22:10 37:12 42:13 47:20 48:19 60:13 69:10 156:18	172:6 starting 83:5 140:20,21 starts 20:11 state 1:5 3:2 5:13 5:15 11:10,15 16:22 18:20 19:5 19:18 20:5 45:22 46:5,6,7 48:10 49:9 49:11,13,15,17,18 49:19,21 50:3,4,6,7 50:9,10,11,14,18 54:15,16 55:2,3,6,8 61:20 75:13 102:12 102:17,21 103:13 103:22 108:16 113:19,22 114:7,11 116:3 127:17 128:17 145:2,13 151:16 163:14,21 164:2,5 169:14,17 169:18,20 170:1 171:2,7 172:19 173:6 174:13 175:2 state's 50:19 163:5 stated 83:16 136:2 statement 9:19 122:5 123:20 132:22 133:1 136:8 153:18 168:11 181:8 states 1:1,11 16:22 20:18 21:1 25:20 45:15 46:13,22 47:13 48:5 56:15 74:17 75:20 76:5 76:10,12,17 88:20 103:5 105:10 106:15,22 112:7 145:1,8 151:20 157:8,9 171:17	173:10 179:1 181:7 stating 156:4 stationed 48:21 49:7,19 statistical 22:20 24:12,20 28:11 30:12,13,15 31:13 36:9 38:12 42:8 44:5 84:19 85:15 85:22 86:17 87:15 88:7,10,14,14 91:6 91:12 99:12 157:19 160:8 statistics 13:6,9,14 16:17 57:16 99:2 status 58:3 60:20 63:3,7,16 65:7 66:15 68:1,15 72:2 73:16 78:14 85:8 85:22 89:5,8,10 90:1 99:15 100:8 101:20 128:2 133:8 134:14,20 135:19 157:18 158:18 171:8,21 172:9 step 39:8 87:15 162:2 stephanie 7:7 steps 33:6,9 36:5 41:8,9,17 43:5 97:17 122:20 145:4 145:7,12,21 175:11 175:17 stick 70:5 162:3 stock 69:12 stopping 117:22 store 36:12 strategy 22:2,18 street 4:6,18 5:17 6:18 41:1	strike 135:14 strives 43:19 175:22 student 172:16 studies 42:9 72:19 72:21 study 111:15 stuff 117:15 sub 109:16 subcommittee 122:7 subject 17:8 77:6 79:6 118:13 submitted 129:12 130:9 subpopulations 17:14,15 subscribed 182:19 subsequent 133:16 subsequently 139:6 subsets 59:14 substance 136:17 181:7 substitute 16:3 successful 23:7 suggest 109:18 suggesting 29:14 suggests 24:8 31:16 100:12,13 119:2 suite 3:16 4:6 6:7 6:18 summarize 62:8 138:22 summary 94:11 summer 13:16 supervisor 108:2 supervisor's 108:3 supplemental 76:6 support 125:19 suppose 129:15
---	---	---	---

supposed 119:14	97:22 98:15 99:7	114:2 115:1	talks 33:11,13
supreme 105:10	99:19 100:18 101:8	t	106:2 112:21 154:4
sure 23:13 38:21	102:18 103:3,14,18	t 8:1,1,8 9:1 10:1	tanf 26:6 76:5,8
43:5 61:8 69:4,5,6	104:11 106:16	tab 14:16,17 32:16	102:14
77:22 78:16 80:19	107:5 108:10	44:14 61:12,14,15	targeting 126:10
86:13 88:6 96:2	110:20 111:1,18	81:7 93:7 105:4	tax 70:22
104:21 108:3	117:7 118:2,7	110:9,10 121:6	taxes 26:10 32:12
127:22 132:20	119:16,22 120:22	130:12 138:6	team 160:6
135:4 143:4 146:18	121:8,19 123:3	143:17 146:2 147:4	technical 177:2
150:7 158:21	124:3,16 125:5,22	154:9 155:8 166:7	techniques 176:2
169:10	126:12 127:5,18	166:9,10	tell 13:20 23:18
surmised 86:4	128:7,18 129:11,20	table 58:11 106:3	28:7 29:16 32:15
surname 53:19,20	130:6 131:13	108:15 172:11	40:2 43:3 47:11
survey 58:15,20	132:13 133:2,13	tabs 14:13	56:11 59:16 77:12
95:13,16 104:18	134:2,4 135:13	tabulation 56:9	77:14 79:10 81:12
surveys 64:5	136:1,12 137:3,10	58:13 137:18	82:2 93:3 110:7
104:14	137:20 139:20	tabulations 132:12	115:8,21 117:4
sverdlov 4:15 15:5	140:17 141:9 142:2	take 28:19 36:16	122:16 132:14
15:19 16:11,18	142:8,16 143:2,10	43:5 50:5 52:16	147:22 148:11
17:1,5,17 18:7,22	144:16 145:5,14	54:1 69:11 73:17	151:7 158:20 172:7
19:7,22 20:3 21:19	146:7,14,21 147:16	86:21 89:8,12	temporary 26:7
27:19 30:14 31:10	148:2 150:15	100:6 115:7 118:3	76:9 106:5 113:2
32:9 33:8 38:1,17	151:11 152:5,18	145:8,12 149:22	172:15,16
40:14 41:12 42:19	153:1,16 154:7,17	150:17,19 153:8,9	ten 16:14 150:11
43:9,18 44:3 46:17	155:1,15,20 156:11	162:9 166:12	161:4
48:1,12 49:22	156:22 157:3	176:12	tenant 25:16
51:10 52:3,10,15	158:14 159:8,20	taken 122:21	tend 17:15,19
53:8 54:6,17 56:6	160:3,14 161:6	145:22 147:9	tended 118:12
56:17 57:4,15 58:8	162:8,16 163:2,11	takes 29:8	tends 118:16
59:15 60:4,17	164:1,13,20 165:4	talk 20:9 33:9 39:8	tenure 26:17 94:18
61:20 62:17 63:10	165:13 166:1,9	80:13 108:19 109:5	98:22
64:16 68:6 70:9	167:9 168:6,18	125:12 160:11	term 13:3
72:6 74:2,11,21	169:4 170:2,16	176:12	terms 33:10 57:16
75:2,15 77:2,18	171:3,18 173:12	talked 106:10	59:20 60:10 82:22
78:7,16,22 79:12	174:16 175:4,20	113:14 118:12	84:11,12 86:8
80:7 81:2 83:3,12	176:9,14 177:11,16	153:2	90:21 92:6 99:22
84:4 85:3,17 86:3	177:20 180:1	talking 31:6 37:8	115:8 131:16
86:13 87:2,9,22	sworn 11:5 179:8	65:22 117:16	136:14 147:20
88:9 89:3,18 90:6	182:19	122:17 141:4 154:5	149:22 160:11
90:18 91:13 92:3	system 73:15 96:1	165:21	test 33:10
92:21 93:19 96:4	112:22 113:20		

testified 11:5 126:13 testify 15:21 75:5 83:17 131:16 152:10 167:11 testifying 167:15 testimony 24:5 124:8 126:14 135:8 148:21 149:3 154:4 154:10,15 177:6,7 179:9 181:2,7 thank 61:16 75:15 79:20 92:20 137:16 146:5 155:2 176:20 177:15,22 thing 34:6 68:19 69:2 74:12 153:15 154:5 things 26:3 29:17 84:8 97:8 110:2,2 127:3 152:9 think 32:2 64:19 68:22 77:7,18 78:22 79:2 83:4 84:4 92:3 93:13 94:4 99:9 101:9 106:20 107:18 117:21 128:8 131:14 148:13 154:7,20 161:11,13 176:18 thinking 40:21 85:18 87:7 third 39:22 76:19 109:13 thirdly 55:21 thought 133:4 three 12:6 55:13 56:2 62:12,15,22 115:16 140:19	thursday 1:18 time 24:9 52:13 54:22 55:11,16 61:8 65:10 77:22 81:3 86:19 93:3 101:21 102:22 105:7 107:13 111:1 117:22 121:18 128:14 133:14 139:4 140:2 148:6 148:9 154:19,21 163:12 166:12 176:21 177:13 180:15 times 12:3 39:20 165:17 title 12:15 104:5 titled 8:11,18 9:6 111:8 today 12:10 15:15 16:6 45:1,5 62:6 65:14 115:10 151:19 157:6 165:18 177:3 today's 133:19 134:2 told 100:22 tools 36:4 top 64:6 104:3 105:22 113:21 148:17 154:3 172:18 topic 63:18 83:22 165:16 topics 15:9,14,16 16:7,8 83:6,15,18 93:21 94:7 121:10 121:14,17 124:20 147:18 148:1 161:13,15 165:9	total 18:19,20 19:18 46:12 50:15 54:14 56:15 162:22 169:13 totals 16:21 151:9 151:17,17 163:5,6 164:2 touched 88:5 tourist 55:5 tracks 153:8 tracts 153:9 traditional 44:10 traditionally 164:6 transaction 113:12 transcript 10:17 177:18 179:9 180:7 180:13,15 181:2 transfer 73:17 113:4 114:4 115:5 173:14 transpire 41:21 tries 54:3 trouble 152:16 true 64:11 119:8 128:4 131:22 132:12 133:1 150:12 152:4 159:19 168:13 176:5 179:9 try 22:10,13 23:6 29:19 34:20 35:11 36:1 40:4,19 53:15 53:20,22 57:8 77:21 79:1 90:10 97:9 100:16 120:15 132:21 136:14 150:8 177:8 trying 27:16 30:18 36:21 39:20 41:15 54:13 63:15 70:3,5 96:7 100:22 101:5	101:11 102:2,6 126:11 153:22 turn 82:17 87:17 93:6 106:20 107:18 121:5 122:8 130:11 138:5 147:3 155:7 turns 51:6 two 17:12 28:8 45:20 67:16 70:7 95:1 129:17 140:19 type 32:5 37:2 39:16 40:11 67:15 73:14 123:15 161:14 types 20:21 44:5 52:5 55:18 66:20 typically 98:9
			u
			u.s. 1:16 2:4 4:12 4:17 5:5 10:9 12:14 45:14 48:19 51:15 56:5 57:14 65:5,8 140:21,22 141:1,2 141:2 147:12 157:20 158:8 159:2 167:4,8,15 169:22 uua 26:1 uh 65:15 95:11 105:20 106:1,9 114:9 121:7 138:7 umbrella 83:11 unable 156:20 unavoidable 177:2 unclear 75:4 undeliverable 25:22 31:17,22 undersigned 181:2 understand 12:10 24:4 41:16 42:12 45:2,8 50:2 59:1 62:11 68:3 87:5

91:20 93:10 95:5 100:22 101:3 104:21,22 110:3 111:10 119:1 134:21 140:11 143:17,18 149:5 150:8 151:6 154:1 158:21 161:22 163:10 177:11 understanding 9:11 29:17 32:11 76:16 106:21 116:2 143:20 152:16 173:3,11,14,21 174:3 understood 32:5 96:2 165:20 170:9 undocumented 120:21 122:14,18 124:14 125:4 unique 71:1,6 unit 21:13 22:6 23:1,4 28:12 34:3 38:22 39:16,20 40:20 43:11 73:4 united 1:1,11 16:21 20:18,22 25:20 46:13 56:15 88:20 105:9 112:7 157:8 157:9 171:17 179:1 units 20:17 21:1 22:21 39:12,13,18 43:13 universe 22:8,22 24:14 27:1 89:14 universities 14:5,6 university 14:1,7,8 14:9 unlawfully 175:1 update 101:21	updated 71:17 102:4 139:7 140:4 140:7 urban 117:13 usable 72:5 90:4,16 91:4,11 uscis 65:6 106:10 132:10 usdoj.gov 4:21,22 use 9:17 23:11 24:17,22 25:2 26:9 26:15 27:13 31:12 34:13 35:17,22 36:7,21 37:6,15 38:9 39:5,15 42:2 42:21 44:9 47:13 53:12 59:13 60:3 65:10 68:16,21,21 68:22 72:2,14 74:1 75:10 78:13 81:13 82:13 83:9 84:22 85:7,15 86:16 131:4,9 133:10,21 134:22 135:11 140:6 149:10 150:18 156:10,13 156:20 157:17 158:17 159:11 160:8 169:1,1,6 170:18 176:7 181:9 uses 17:12 38:14 42:16 95:2 176:6 usual 46:1 54:20 55:3,7,10,14,22 57:5 171:6 usually 46:21 54:21 utility 83:19 utilize 23:8 26:12 26:18 28:14 29:2 30:6 37:14 44:12 60:7 85:11 89:21	96:8 utilized 33:12 61:5 85:22 90:11 91:8 147:2 utilizes 54:19 176:2 utilizing 30:21 58:3 72:18 v v 4:15 180:1 vague 15:5 16:18 17:1,5,17 18:7,22 19:7 30:14 31:10 33:8 38:1 40:14 41:13 42:19 43:9 46:17 52:10 53:8 54:6 56:6,17 57:15 58:8 59:15 60:17 62:17 63:10 64:16 68:6 70:9 74:2,11 79:12 80:7 81:2 85:3,17 87:9,22 88:9 89:3,18 90:6 90:18 98:15 99:7 99:19 101:8 102:18 103:3,14 104:11 106:16 108:10 110:20 111:1 117:7 119:16,22 120:22 127:5,18 132:13 133:2,13 135:13 136:1 137:3,10,20 139:22 144:16 146:14,21 150:15 151:11 152:7 156:22 158:14 159:8,20 160:3,14 161:6 162:8 163:2 164:1,13 167:9 168:6 169:4 170:2 170:16 171:3,18 173:12 175:4,20	176:9 value 96:9 102:10 158:10 160:12 170:20 values 94:16,17 100:4 160:16 variable 70:1 101:5 variables 30:19 67:21,22 68:1,12 69:6,11,13,18 80:14 96:20 173:4 various 50:13 100:16 145:1 veer 83:5 veering 59:18 vehicles 103:5 venture 121:13 verges 90:19 92:4 verging 77:3 131:14 161:12 veritext 180:10,20 veritext.com 180:18 versus 147:12 vetted 159:12 viable 131:5,10 132:2 133:1 136:9 136:11,20 view 77:4,10,18 79:6 86:5 100:19 142:12 148:6 156:14 161:14 visa 73:15 112:22 visas 112:20 113:20 172:16,17 visit 39:20,22 visits 22:16 voters 152:1 voting 56:8,12,19 57:18 58:6,12,16 58:19 59:2,5 60:14
--	--	---	---

BC-DOC-0000033028

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.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.



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
Jakupciak, RPR, a Notary Public in and for the
District of Columbia, when were present on behalf of
the respective parties:

A P P E A R A N C E S

On behalf of Plaintiff State of Alabama:

JAMES W. DAVIS, ESQUIRE

BRENTON M. SMITH, ESQUIRE

Office of the Attorney General

501 Washington Avenue

P.O. Box 300152

Montgomery, Alabama 36130-0152

(334) 242-7300

jim.davis@alabamaag.gov

brenton.smith@alabamaag.gov

On behalf of Morris J. Brooks, Jr.:

Congressman Morris Brooks

2101 W. Clinton Avenue, Suite 302

Huntsville, Alabama 35805

(256) 355-9400

marshall.yates@mail.house.gov

A P P E A R A N C E S (Cont'd.)

On behalf of the Intervenor Defendant Diana
Martinez:

ANDREA E. SENTENO, ESQUIRE

MALDEF

1016 16th Street, N.W., Suite 100

Washington, D.C. 20036

(202) 293-2828

b(6)

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)

A P P E A R A N C E S (Cont'd.)

and

SAPNA SHARMA, ESQUIRE

MICHAEL A. CANNON, ESQUIRE

U.S. Department of Commerce

Office of the General Counsel

1401 Constitution Avenue, N.W.

Washington, D.C. 20230

ssharma@doc.gov

mcannon@doc.gov

On behalf of Intervenor Defendant State of New York:

AMANDA MEYER, ESQUIRE

State of New York

Office of the Attorney General

28 Liberty Street

New York, New York 10005

(212) 416-6225

amanda.meyer@ag.ny.gov

A P P E A R A N C E S (Cont'd.)

On behalf of the Intervenor Defendant San Jose,
California; King County, Washington; City of
Atlanta, Georgia:

DORIAN LAWRENCE SPENCE, ESQUIRE
Lawyers Committee for Civil Rights Under Law
1401 New York Avenue, N.W., Suite 400
Washington, D.C. 20019
(202) 663-8324
dspence@lawyerscommittee.org

On behalf of Intervenor Defendant County of Santa
Clara, California:
(Present by phone.)

JONATHAN WEISSGLASS, ESQUIRE, ESQUIRE
Law Office of Jonathan Weissglass
410 12th Street, Suite 250-B
Oakland, California 94607
(510) 836-4200
jonathan@weissglass.com

A P P E A R A N C E S (Cont'd.)

Also Present:

Marc Perry, Esquire

Miles Ryan, Esquire

Stephanie Olson, Esquire

Also Present by phone:

Edmund Gerard LaCour

Winfield Sinclair

Bryan Kusmin

Ming Ming Yang

Don Lewis

Julia Gomez

Sean Brebbia

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

C O N T E N T S

THE WITNESS: KAREN R. BATTLE

EXAMINATION	PAGE NO.
By Mr. Davis	11

E X H I B I T S

BATTLE EXHIBIT NUMBER	PAGE NO.
Exhibit 1 Notice of Deposition	14
Exhibit 2 Chart titled Administrative Records Expected To Be Used in the 2020 Census To Impute or Assign Characteristics	24
Exhibit 3 2020 Census Program Internal Memorandum Series: 2018.08.i, dated 3/26/18	32
Exhibit 4 Document titled Congressional Apportionment - Frequently Asked Questions	44
Exhibit 5 Memorandum from John M. Abowd dated 1/19/18	61

E X H I B I T S

BATTLE EXHIBIT NUMBER	PAGE NO.
Exhibit 6 Background Sheet 2	66
Exhibit 7 Memorandum dated 5/22/12 from Patrick J. Cantwell	93
Exhibit 8 Document titled Alternative Sources of Citizenship Data for the 2020 Census dated 12/22/17	105
Exhibit 9 Presidential Documents - Executive Order 13880	110
Exhibit 10 Memorandum of Understanding - Agreement No. 2064-FY20-NFE-0324	115
Exhibit 11 Memorandum of Agreement - Agreement No. 2064-FY20-NFE-0335	116
Exhibit 12 Existing Administrative Records Data Available at Census for Early Evaluation of Use for Citizenship Project	117
Exhibit 13 Statement of the Director of the Bureau of the Census dated 9/18/85	122

E X H I B I T S

BATTLE EXHIBIT NUMBER	PAGE NO.
-----------------------	----------

Exhibit 14 Memorandum to Wilbur Ross dated 3/1/18	138
--	-----

Exhibit 15 Excerpts from Deposition of Dr. John Abowd dated 8/29/18	147
--	-----

Exhibit 16 Privacy Impact Assessment for DHS Immigration-Related Information Sharing with U.S. Census Bureau	166
--	-----

(Exhibits attached to transcript.)

P R O C E E D I N G S

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.

1 Q Have you ever given a deposition before?

2 A Yes.

3 Q How many times? More than five?

4 A Once.

5 Q Once. Okay. How long ago was that?

6 A Three months ago.

7 Q What kind of case was that?

8 A A human resources case.

9 Q I have some questions about the lawsuit
10 today. If at any point you don't understand my
11 question, let me know. If you need a break, let me
12 know. Where do you work?

13 A I work in the Population Division at the
14 U.S. Census Bureau.

15 Q What is your title?

16 A Division Chief, Chief of the Population
17 Division.

18 Q How long have you held that position?

19 A I have been the Division Chief for five
20 years.

21 Q Did you have any positions in the Division
22 before you were Chief?

1 A Yes.

2 Q What were those, and approximately for
3 what term?

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

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

11 Prior to that I served as the Special
12 Assistant to the Division Chief from approximately
13 2004 -- 2000 to 2004. And prior to that I served as
14 a Data Analyst in the Racial Statistics Branch and
15 the Ethnicity and Ancestry Branch. And prior to
16 that I was a summer intern in 1998.

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

19 A Yes.

20 Q Tell me about your education background,
21 please.

22 A I have a Master's Degree in Sociology from

1 the Western Michigan University.

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

5 A I held research positions at universities.

6 Q Which universities?

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

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

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

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

21 (Battle Exhibit Number 1
22 was marked for identification.)

1 BY MR. DAVIS:

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

5 MR. SVERDLOV: Objection. Vague.

6 BY MR. DAVIS:

7 Q Have you seen it before this morning?

8 A Yes.

9 Q Are you familiar with the topics that are
10 listed?

11 A Yes.

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

19 MR. SVERDLOV: Objection. Misleading.

20 The deposition notice is for a representative of the
21 Census Bureau to testify, not the Department of
22 Commerce.

1 MR. DAVIS: You are correct. I misspoke.

2 BY MR. DAVIS:

3 Q Same question, except substitute "census
4 bureau" for "commerce"?

5 A Could you repeat that?

6 Q Yes, ma'am. Are you prepared today to
7 speak on behalf of the Census Bureau for the topics
8 listed on this deposition notice as those topics
9 have been narrowed through discussions between
10 counsel?

11 MR. SVERDLOV: Objection. Compound.

12 A Yes.

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

15 A Yes.

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

18 MR. SVERDLOV: Objection. Vague.

19 A Yes.

20 Q Okay. And part of the data the Census
21 Bureau releases is population totals for the United
22 States and for each state; is that correct?

1 MR. SVERDLOV: Objection. Vague.

2 A Yes.

3 Q Are there known under-counts in the
4 census?

5 MR. SVERDLOV: Objection. Vague.

6 A Yes.

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

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

15 Q What subpopulations tend to be
16 under-counted?

17 MR. SVERDLOV: Objection. Vague.

18 A We know from our analyses that young
19 children, children under the age of five, tend to be
20 under-counted in the decennial census. In addition,
21 there are other racial and ethnic populations that
22 may be under-counted in the decennial census; for

1 example, young black males or the Hispanic
2 population or the American Indian or Alaskan Native
3 population.

4 Q Are there over-counts in the census?

5 A Yes.

6 Q How does that work? Who is over-counted?

7 MR. SVERDLOV: Objection. Vague and
8 compound.

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

12 (Joining the phone conference is
13 Congressman Mo Brooks.)

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

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

22 MR. SVERDLOV: Objection. Vague, compound

1 and misleading.

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

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

7 MR. SVERDLOV: Objection. Vague and
8 assumes facts not in evidence.

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

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

14 A Yes.

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

17 A Yes.

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

22 MR. SVERDLOV: Objection.

1 BY MR. DAVIS:

2 Q Would you agree with that?

3 MR. SVERDLOV: Objection. Compound and
4 argumentative.

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

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

12 A Yes.

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

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

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

21 A There are different types of enumeration
22 approaches for different areas within the United

1 States, but about 95 percent of the housing units do
2 receive a mailing to either instruct them to go
3 online to respond to the decennial census or they
4 can fill out a paper response. There are other
5 sections of the country where the Census Bureau may
6 go out and just enumerate those areas that may be
7 more rural or hard to enumerate, for example.

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

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

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

19 MR. SVERDLOV: Objection. Compound.

20 A That is correct.

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

1 particular household?

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

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

17 A Well, for the 2020 census the Census
18 Bureau is employing a new strategy for the
19 non-response follow-up operation. And what we are
20 doing is using statistical models to determine if
21 the housing units within the non-response follow-up
22 universe are indeed occupied. And if we have

1 information that indicates that that housing unit is
2 indeed occupied, and we also have administrative
3 records available that are associated or linked to
4 that particular housing unit, then we would only
5 make one attempt to have an individual out there
6 knocking on the door to try to collect that
7 information. And if they are not successful, then
8 we would utilize the administrative records to
9 enumerate that household.

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

12 A We actually have a reference sheets.

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

16 A Yes.

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

19 A This one.

20 Q Okay.

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

1 (Battle Exhibit Number 2

2 was marked for identification.)

3 BY MR. DAVIS:

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

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

19 Q Okay. I want to come back to the
20 statistical models, but first deal with the question
21 I asked previously. If you get to the point where
22 you use administrative records to enumerate that

1 household, what administrative records does the
2 Census Bureau use? And at this point you are
3 referring to Exhibit 2.

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

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

18 We have data from the Indian Health
19 Service Patient Registration. We have data from the
20 United States Postal Service. They have information
21 on addresses that where they attempt to deliver but
22 they are undeliverable as addressed. That's the

1 UAA.

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

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

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

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

22 A Well, the Group Quarters Records, it's not

1 part of the non-response follow-up universe, but we
2 have an operation to enumerate individuals who are
3 residing in group quarters, like prisons and college
4 dormitories and nursing homes.

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

12 Q Okay.

13 A So we use administrative records in that
14 sense.

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

19 MR. SVERDLOV: Objection. Compound.

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

22 Q Okay.

1 A And that administrator will pull upon
2 their records from their office to provide us with a
3 listing of the residents and their demographic
4 characteristics; age, date of birth, sex and race
5 and ethnicity if possible.

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

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

18 Next to that we have Count Imputation, and
19 this may take into, occur when we do not have
20 information that would allow us to do a NRFU actual
21 enumeration. So we don't have administrative
22 records that could provide necessarily at first

1 glance characteristics, so we have a special
2 operation for count imputation where we utilize
3 administrative records to help us determine the
4 count of people in that household, similar to the
5 NRFU.

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

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

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

20 Q Okay. And what further processing would
21 you do?

22 A That is when we have an operation called

1 the edit and -- edit and imputation characteristics
2 operation, and at that point we will make another
3 attempt to see if we have administrative records
4 that can be used to fill in the missing
5 characteristics.

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

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

14 MR. SVERDLOV: Objection. Vague.

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

20 So in this case the Census Bureau would be
21 utilizing administrative records for the NRFU, a
22 non-response follow-up, to assess different data

1 sources to help us predict whether that household is
2 occupied. So using data from the Postal Service,
3 using data from the IRS, using data from the Social
4 Security Administration to help us predict whether
5 that household is occupied.

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

9 A Yes.

10 MR. SVERDLOV: Objection. Vague.

11 BY MR. DAVIS:

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

19 A Yes. That's exactly right. That's one of
20 the components into the model. When we have data
21 from the Postal Service, do they have this address
22 marked as undeliverable as addressed. So that's a

1 piece of information that goes into helping us
2 determine whether or not we think that household is
3 occupied, for example.

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

9 MR. SVERDLOV: Objection. Compound.

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

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

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

20 (Battle Exhibit Number 3
21 was marked for identification.)
22

1 BY MR. DAVIS:

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

4 A I believe I have seen this document.

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

8 MR. SVERDLOV: Objection. Vague.

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

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

19 A So after the census data has been
20 collected, we know that not everyone answers every
21 question, and so we have a process that we create
22 where we specify how we are to fill in missing data.

1 And so that's our edit and imputation process.

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

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

15 Q Okay.

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

19 If there is no other information provided
20 in that form to help us, then our next effort to try
21 to fill in missing data is to see are we able to
22 link up that household with our administrative

1 records, which would include the 2010 census
2 responses. Did this household respond to the 2010
3 Census? If so, was information provided for this
4 person and can bring forward and assign for 2020?

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

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

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

21 And if that fails, then one of our last
22 resorts is to use this hot deck methodology where we

1 then look for the nearest neighbor and try to match
2 up the household on certain characteristics and then
3 the nearest neighbor can donate that missing
4 information. So there is a series of business tools
5 and steps we go through.

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

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

19 Q Why is it called hot deck?

20 A Well, just that you are using live data on
21 the spot and you are trying to use as fresh of
22 information as possible to fill in the missing

1 information.

2 Q Okay. And give me an example of what type
3 of characteristic might be imputed using the hot
4 deck methodology.

5 A Race, ethnicity, and age and sex.

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

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

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

1 MR. SVERDLOV: Objection. Vague and
2 compound and assumes facts not in evidence.

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

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

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

17 MR. SVERDLOV: Same objection.

18 BY MR. DAVIS:

19 Q Do you agree?

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

1 decennial census.

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

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

10 Q Please.

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

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

22 For the 2020 census, after the third visit

1 if we still are not able to get information, then
2 the Census Bureau will tell the enumerator to
3 attempt to get a proxy interview, which means the
4 enumerator will then try to reach out to a neighbor
5 to see if they have information about how many
6 people are living there and if they have any
7 information on the characteristics. If the proxy
8 interviews are not possible, then we move to the
9 imputation aspect of it.

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

14 MR. SVERDLOV: Objection. Vague.

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

21 Q I'm thinking of my neighborhood, and you
22 have in our household, my wife and I are empty

1 nesters, I have an across the street neighbor who is
2 a single retired man, a next door neighbor who is a
3 very young single man, another next door neighbor
4 who is an African-American woman who is living
5 withing extended family, including both grandparents
6 and young children. It's a very diverse
7 neighborhood.

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

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

14 BY MR. DAVIS:

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

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

22 Q Okay. Where would you go to examine the

1 detailed methodology? Is there a particular manual
2 or document in the Census Bureau that you would use
3 to educate yourself on that point?

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

7 Q What would that area be?

8 A That would be the Decennial Statistical
9 Studies Division.

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

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

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

19 MR. SVERDLOV: Objection. Vague.

20 A Well, the Census Bureau does determine
21 through the use of staff whether they believe a
22 household to be non-existent, the address is, you

1 know, it's not a habitable address, and those, of
2 course, are deleted.

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

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

9 MR. SVERDLOV: Objection. Vague.

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

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

18 MR. SVERDLOV: Objection. Form.

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

21 Q Of course. And in this case the Census
22 Bureau has determined that imputation results in a

1 more accurate census than not using imputation.

2 Would you agree with that?

3 MR. SVERDLOV: Objection. Argumentative.

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

7 Q Of course.

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

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

15 MR. DAVIS: And let's mark this as Exhibit
16 4, please.

17 (Battle Exhibit Number 4
18 was marked for identification.)

19 BY MR. DAVIS:

20 Q This is a list of frequently asked
21 questions, Mrs. Battle, from the Bureau's website.
22 And I'll represent to you that it may not be in this

1 exact form on the website today, but it serves our
2 purposes to help me understand the process a little
3 better.

4 Have you reviewed this document before
5 today?

6 A Yes.

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

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

16 A Yes.

17 Q And who is included in the apportionment
18 counts?

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

1 as of census day. That's their usual residence.

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

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

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

14 A Yes.

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

17 MR. SVERDLOV: Objection. Vague.

18 A The results of the decennial census, the
19 first results from a decennial census include the
20 apportionment population counts, which includes the
21 resident pop, people enumerated as usually residing
22 in these states, plus the federally affiliated. So

1 that is the only data product that comes out of a
2 decennial census where you have the federally
3 affiliated population included.

4 Q Okay.

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

9 Q And the PL-94 --

10 A 171.

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

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

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

18 A That is correct.

19 Q Okay. In the apportionment count, and
20 that's -- let me start over. Does the apportionment
21 count, for example, include residents of the
22 District of Columbia or Puerto Rico?

1 MR. SVERDLOV: Objection. Compound.

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

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

7 A Correct.

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

12 MR. SVERDLOV: Objection.

13 BY MR. DAVIS:

14 Q In the apportionment count?

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

22 And once we have that list, the Census

1 Bureau reaches out to those agencies and establishes
2 a contact and informs them of the special federally
3 affiliated overseas operation. The Census Bureau
4 works with these agencies and explains what is
5 needed, and these particular agencies will then go
6 and through their records provide counts for
7 everyone in their agency whose stationed overseas or
8 deployed overseas and they will give us a count by
9 state.

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

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

16 A Yes.

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

22 MR. SVERDLOV: Objection.

1 BY MR. DAVIS:

2 Q Did I understand you correctly?

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

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

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

21 Q And this apportionment population count is
22 something the Census Bureau provides to the

1 President; correct?

2 A Yes.

3 Q And when does that happen?

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

8 Q So that will be provided no later than
9 December 31st of 2020 to the President?

10 MR. SVERDLOV: Objection.

11 BY MR. DAVIS:

12 Q Is that right?

13 A That is correct.

14 Q Okay. Does the apportionment count
15 provided to the President include non-U.S. citizens?

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

21 Q Obviously then if it includes both
22 citizens and non-citizens, it includes non-citizens

1 who are lawfully present and non-citizens who are
2 not lawfully present?

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

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

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

10 MR. SVERDLOV: Objection. Vague.

11 A Yes.

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

15 MR. SVERDLOV: Okay.

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

18 THE WITNESS: Yes.

19 (Recessed at 10:03 a.m.)

20 (Reconvened at 10:26 a.m.)

21 BY MR. DAVIS:

22 Q Mrs. Battle, going back to the hot deck

1 imputation, do you know what the Census Bureau would
2 do if my household is eligible for hot deck
3 imputation, but I happen to live in the neighborhood
4 where all of the residents of the neighborhood are
5 very different from me, different race and all the
6 other neighbors have kids and I don't; do you know
7 what the Census Bureau would do in that instance?

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

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

13 Q Okay.

14 A Now, when we do have some information
15 about the household, we do try to match up those
16 characteristics when we do the hot deck imputation.

17 So, for example, if we know that the
18 householder who does not have information, if they
19 have a Spanish surname, then we look for nearest
20 neighbor with a Spanish surname to try to perhaps
21 impute race or ethnicity. So if we do have some
22 information, we try to match up those

1 characteristics and then take what we need to have
2 donated.

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

6 MR. SVERDLOV: Objection. Vague.

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

11 Q Okay.

12 A -- address that further.

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

17 MR. SVERDLOV: Objection. Compound.

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

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

4 A Yes.

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

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

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

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

21 And then, thirdly, if we cannot determine
22 the usual residence for an individual or they don't

1 know, they don't have one, then we count them where
2 they are on census day. So those are the three
3 principles.

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

6 MR. SVERDLOV: Objection. Vague.

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

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

17 MR. SVERDLOV: Objection. Vague.

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

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

4 MR. SVERDLOV: Same objection.

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

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

11 A Yes.

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

15 MR. SVERDLOV: Objection. Vague.

16 A In terms of the publication of statistics,
17 the Census Bureau is finalizing the exact format of
18 the citizen voting age by race and ethnicity special
19 product, but in the efforts to develop that
20 information and using administrative records, I
21 am -- the information on citizenship for those who
22 are under the age of 18 would be involved in the

1 process. While we have not finalized the specific
2 methodology to produce those data, we will be
3 utilizing information on citizenship status for the
4 population.

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

8 MR. SVERDLOV: Objection. Vague.

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

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

21 A Yes.

22 Q Okay. After the 2020 census do I

1 understand you right that the Census Bureau intends
2 to release citizen voting age population based on
3 the 2020 census itself?

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

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

11 A Yes.

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

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

21 BY MR. DAVIS:

22 Q The way I phrased the question is although

1 final methodology hasn't been determined, have you
2 at least determined that, for example, yes, we will
3 use this particular set of administrative data?

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

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

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

17 MR. SVERDLOV: Objection. Vague.

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

22 Q For everyone regardless of age?

1 A For the purposes of developing the data
2 product in and of itself, the methodology is not
3 finalized, but the Census Bureau will be collecting
4 information on, through administrative records and
5 that information will be utilized to help us produce
6 the final product which is focused on the population
7 18 years and older. It's because the methodology is
8 not determined, I cannot say for sure at this time
9 exactly to what extent we would be collecting the
10 data on citizenship.

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

14 MR. SMITH: Can you repeat the tab number?

15 MR. DAVIS: Tab Number 8.

16 MR. SMITH: Thank you.

17 MR. DAVIS: Can we mark this?

18 (Battle Exhibit Number 5
19 was marked for identification.)

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

22 MR. DAVIS: Yes. We've marked as Exhibit

1 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 response to the request from the Department of
2 Justice, and one of those is Option C, obtaining
3 citizenship status from administrative records for
4 the whole 2020 census population?

5 A Yes.

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

10 MR. SVERDLOV: Objection. Vague.

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

18 Q This is a slightly different topic. There
19 are questions and answers towards the back of the
20 memorandum, Mrs. Battle. On the page that's Bates
21 numbered P-11, there is a Q and A about the response
22 rates for the 2000 census long form and short form,

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

1 Numbered P-15, question 12 asked about other data
2 that may be available, other administrative data
3 that may be available to impute citizenship.

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

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

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

15 A Uh-huh.

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

18 A Background sheet number 2. Background
19 sheet number 2.

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

1 about. And let's mark that as Exhibit 6, please.

2 (Battle Exhibit Number 6
3 was marked for identification.)

4 BY MR. DAVIS:

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

7 A Well, the first page of the document lays
8 out the members of the Interagency Working Group
9 that the Census Bureau created per Executive Order
10 13880 and lists the departments who are participants
11 as well as the representatives.

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

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

18 Q Correct.

19 A And so if you look on page 2, what you
20 will see is a listing of the types of data that we
21 have requested from the, received from the
22 Department of Homeland Security, and you will see it

1 mentions that the lawful permanent resident file and
2 naturalization data have been obtained from the
3 Citizen and Immigration Services.

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

6 A Yes.

7 Q The source agency is the Department of
8 Homeland Security, and you finalized an agreement
9 with the Department of Homeland Security on December
10 23, 2019. Am I reading that correctly?

11 A Yes.

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

14 A Yes.

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

20 A Yes.

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

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

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

6 MR. SVERDLOV: Objection. Vague. Assumes
7 facts not in evidence.

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

13 Q Okay.

14 A Yeah.

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

17 A So the Census Bureau is acquiring new
18 sources of administrative records, and once those
19 new sources arrive, the first thing we have to do is
20 evaluate those data to help us determine if we can
21 use the data, and if we can use the data, then we
22 begin to think through how best can we use the data

1 to comply with the executive order.

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

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

19 And that's really important because we
20 need to be able to assess if we can make record
21 linkages, and so we need identifiers like name, age,
22 date of birth, sex, address. And, of course, the

1 citizenship variable itself, we need to assess how
2 complete are those data, et cetera.

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

9 MR. SVERDLOV: Objection. Vague and
10 misleading.

11 A Yes.

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

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

19 That's a huge database that has all of
20 these data, data on all Social Security numbers ever
21 issued. In addition to that we have a file that
22 contains what's called ITI, income tax

1 identification numbers. These are unique
2 identifiers that are assigned by the Internal
3 Revenue Service to individuals who are not eligible
4 for a Social Security Number.

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

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

19 So we are really looking to see how we can
20 make linkages, not only with our internal reference
21 files, but across the newly acquired data sets as
22 well.

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

6 MR. SVERDLOV: Objection.

7 BY MR. DAVIS:

8 Q Or that it has not made a determination
9 yet?

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

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

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

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

1 A The Research and Methodology Directorate.

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

4 A It is an organizational unit that contains
5 multiple divisions.

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

8 A Yes.

9 Q Okay. And who heads the Research and
10 Methodology?

11 A John Abowd. Dr. John Abowd.

12 Q Now, back at Exhibit 6, and I see under
13 Department of Homeland Security that there is a
14 second data set, which is under Data Type it says
15 Arrival Departure Information System and Visa Data.

16 And there under Status it says, "Awaiting
17 Data Transfer from DHS." I take it that just means
18 you haven't received the data yet from Homeland
19 Security?

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

22 Q Yeah. Is there any data where the fitness

1 for use determination process has been completed?

2 MR. SVERDLOV: Objection. Vague.

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

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

11 MR. SVERDLOV: Objection. Vague.

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

15 Q Yes.

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

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

1 MR. DAVIS: Yes.

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

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

15 MR. SVERDLOV: Thank you.

16 BY MR. DAVIS:

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

22 A Correct.

1 Q Are you aware of any other data that the
2 Census Bureau has requested that is not listed on
3 this chart?

4 A The Census Bureau has also reached out to
5 states to request data on WIC, and TANF, and SNAP.
6 So that would be SNAP would be the Supplemental
7 Nutrition Assistance Program data. WIC is the
8 Women, Infants and Children's Program. And TANF is
9 the Temporary Assistance for Needy Families Program.
10 So we are working to obtain those data from states
11 as well.

12 Q Do you know if any states have declined to
13 provide driver's license information, if they have
14 responded to the Census Bureau's request and said we
15 are not going to provide that?

16 A My understanding is that there have been a
17 number of states who have said no.

18 Q Do you know how many?

19 A Rough approximation, about a third.

20 Q Okay. Are you aware of any administrative
21 data that the Census Bureau has requested from
22 federal agencies and those federal agencies have

1 refused to provide the administrative data?

2 MR. SVERDLOV: Counsel, I'm going to
3 object here once again because we are verging very
4 close to ongoing negotiations, and we would view
5 materials that this question potentially calls for
6 as subject to the deliberative process privilege.

7 So I think if the witness can answer in a
8 general way, that would be fine. But specific
9 details about agencies which have and have not
10 responded we would view as falling within the
11 privilege.

12 MR. DAVIS: Okay. Tell me this. And I
13 will direct this to counsel. Just -- if -- would
14 the witness be allowed to tell me whether, that if a
15 hypothetical federal agency had said no, whether the
16 Census Bureau would consider the matter closed or
17 whether that issue would still be under negotiation?

18 MR. SVERDLOV: I think we would view that
19 issue as still under negotiations potentially.

20 BY MR. DAVIS:

21 Q Okay. Let me try to ask it this way, and
22 be sure to allow your counsel time to lodge an

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

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

9 BY MR. DAVIS:

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

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

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

22 MR. SVERDLOV: I think if we can answer it

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

9 BY MR. DAVIS:

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

12 MR. SVERDLOV: Objection. Vague.

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

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

22 Now, this working group, that is what is

1 listed on the first page of Exhibit 6; correct?

2 A Yes.

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

5 A Yes.

6 Q Are any further meetings planned?

7 MR. SVERDLOV: Objection. Vague.

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

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

21 Q Is there any administrative data that the
22 Census Bureau has determined that it will request

1 but it simply has not made that request yet?

2 MR. SVERDLOV: Objection. Vague.

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

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

10 A All right.

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

19 First off, I read at that correctly;
20 right?

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

22 Q It's Q&A 20 on page P-17.

1 A Okay. Okay.

2 Q Okay. First tell me what it means by
3 economic censuses.

4 A So the Census Bureau not only conducts a
5 census of the population, but it also conducts a
6 census of organizations, businesses, et cetera. And
7 so they are referring to those economic censuses.

8 Q Okay. Administrative data has been used,
9 was used in the 2010 census, was it not, to impute
10 characteristics and for other purposes?

11 A There were administrative records used to
12 impute characteristics used in the 2010 census.

13 Q Okay. So the use of administrative
14 records is not limited in the past to economic
15 censuses. Am I right about that?

16 A Correct.

17 Q Okay. And if you turn to the page of that
18 same exhibit where the Bates Number at the bottom is
19 P-30, please? Do you see the chart there that's
20 labeled Figure 1, Mrs. Battle?

21 A Yes.

22 Q Can you explain this to me, what the terms

1 are; Linked, Adrec, A-D-R-E-C, and then on the other
2 side Not Linked and Model?

3 MR. SVERDLOV: Counsel, really quick, I'm
4 also going to raise an objection because I think
5 this line of questioning is starting to veer
6 somewhat outside of the topics that we have
7 negotiated.

8 MR. DAVIS: I believe this Figure 1 refers
9 to the use of administrative data in general and the
10 memo is about citizenship. That seems to fall under
11 the umbrella.

12 MR. SVERDLOV: Yes. And as you will
13 recall -- my yes was not me acceding to your
14 premise.

15 As you recall, we narrowed those topics in
16 our December 27th, 2019 letter, which stated that we
17 will produce a witness who can testify about these
18 topics to the extent they concern the feasibility
19 and utility of collecting and using administrative
20 records in the manner directed by Executive Order
21 13880, and I believe the document you are referring
22 to is part of Topic 5.

1 MR. DAVIS: Okay. Well, is the witness
2 allowed to explain to me, for example, what modeling
3 is?

4 MR. SVERDLOV: I think we can pursue some
5 general questions along those lines, but I do want
6 to flag that, you know, questions about like the
7 general background of this document and it's
8 preparation was one of the things that we
9 specifically limited.

10 MR. DAVIS: I'm not asking about that. I
11 want to explain the terms. I asked her to explain
12 the terms.

13 BY MR. DAVIS:

14 Q First, Mrs. Battle, what is A-D-R-E-C? Do
15 you know?

16 A Yes. That refers to administrative
17 records.

18 Q Okay. And what is model?

19 A Model refers to developing a statistical
20 model.

21 Q Okay. So after the 2020 census if you are
22 able to link records, you will use the

1 administrative records to impute citizenship for a
2 person; is that correct?

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

5 A The basic idea is that the Census Bureau
6 will combine multiple sources of citizenship from
7 different sources of administrative records and use
8 that information to determine citizenship status.

9 Q Okay.

10 A Linked records can then, we can then
11 utilize those administrative records to determine
12 citizenship.

13 Q Okay. And in the 2020 census if you are
14 not able to link administrative records, does the
15 Census Bureau intend to use statistical modeling to
16 impute citizenship?

17 MR. SVERDLOV: Objection. Vague.

18 A This diagram shows that initial thinking
19 is that if we are not able to link administrative
20 records to respondents or individuals counted in the
21 census and we need to determine their citizenship
22 status, that a statistical model would be utilized

1 to determine that.

2 Q Okay. And how will that be performed?

3 MR. SVERDLOV: Objection. As you might
4 have surmised from the nature of that question, the
5 work in this area is still ongoing, so we view the
6 specifics of that work to be covered by the
7 deliberative process privilege. I will instruct the
8 witness to answer in general terms if she can, but
9 not the specifics.

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

13 MR. SVERDLOV: Sure.

14 BY MR. DAVIS:

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

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

22 Q Okay. Who is working on making the final

1 determination of how that will work?

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

4 BY MR. DAVIS:

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

9 MR. SVERDLOV: Objection. Vague and
10 compound.

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

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

22 MR. SVERDLOV: Objection. Vague.

1 A I believe recommendations will come from
2 those involved in this research and those
3 recommendations will be presented to executive
4 leadership at the Census Bureau and the department.

5 Q Okay. We touched on this, but I'm not
6 sure it's clear in one spot, Mrs. Battle. Can you
7 describe for me the difference between statistical
8 modeling and imputation?

9 MR. SVERDLOV: Objection. Vague.

10 A Well, I would say that statistical
11 modeling is a form of imputation, whereas imputation
12 might involve imputing data from someone else in the
13 same household or using a hot deck or using a
14 statistical model. So to me statistical modeling
15 for this purpose is a form of imputation.

16 Q Okay. Let's say for the 2020 census
17 through linking databases you learn from the
18 administrative records you receive from the Social
19 Security records that a particular person is a
20 United States citizen. That's imputation because
21 you are taking, is it not, when you are taking
22 information you received directly from other

1 administrative records that says that this person
2 with this Social Security Number is a citizen?

3 MR. SVERDLOV: Objection. Vague, compound
4 and calls for speculation.

5 A So information on citizenship status from
6 these administrative records will be used in
7 combination to help us determine the citizenship
8 status, so we are going to take multiple sources
9 into account to help us determine the citizenship
10 status. It may not necessarily be taking one
11 specific source and then imputing it. We are going
12 to take all of that into account and then determine.

13 Q Okay. You wouldn't look then at a single
14 agency's administrative records, but at the universe
15 of the administrative records you receive in this
16 process in order to impute citizenship? Did I hear
17 you correctly?

18 MR. SVERDLOV: Objection. Vague.

19 A The general idea at this point is to pool
20 as many different sources on citizenship for an
21 individual as possible and to utilize those multiple
22 sources to help us determine what the citizenship

1 status is.

2 Q Does the Census Bureau have a goal for a
3 deadline for determining, number one, what of this
4 data is usable? And by this data I mean the
5 administrative records that are listed on Exhibit 6?

6 MR. SVERDLOV: Objection. Vague and
7 compound.

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

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

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

1 BY MR. DAVIS:

2 Q That's what I asked. Are there plans to
3 publicly report the decisions as to the
4 determinations as to whether the data is usable?

5 A I know the Census Bureau does plan to
6 share publicly the approach, the statistical
7 modeling approach and the data sources to be
8 utilized.

9 Q Okay. And you said that there is a goal
10 of making the decision by, making the determination
11 by spring of 2020 as to whether the data is usable
12 or to release the statistical modeling process?

13 MR. SVERDLOV: Objection. Compound.

14 A The goal for spring of 2020 is to be able
15 to determine specifically which sources of
16 administrative records could be used and the
17 methodology.

18 Q Both?

19 A Yes.

20 Q Okay. While I understand there is no
21 final determination of the specific processes to be
22 used, has a decision been made on what to do if

1 there is conflicting information about citizenship
2 among different administrative records?

3 MR. SVERDLOV: I think that this very much
4 verges into the ongoing deliberations of the agency.
5 To the extent that the witness can answer in general
6 terms about whether there is or is not a plan, that
7 would be fine. But otherwise I will instruct the
8 witness not to answer.

9 MR. DAVIS: That's what I asked, Aleks. I
10 asked has a determination been made on what to do.
11 I didn't ask what that determination is. I don't
12 want to know. I asked if a decision has been made.

13 BY MR. DAVIS:

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

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

20 Q Thank you.

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

1 THE WITNESS: I'm good.

2 BY MR. DAVIS:

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

5 A Okay.

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

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

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

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

17 (Battle Exhibit Number 7
18 was marked for identification.)

19 MR. SVERDLOV: Just to be clear on the
20 record, this is a document that was not one of the
21 ones identified in your list of topics. So to the
22 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. DAVIS: 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. DAVIS:

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.

19 Q Okay. And -- no. Never mind.

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. SVERDLOV: 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. SVERDLOV: Objection. Assumes facts

1 not in evidence.

2 A So --

3 Q Are they reported?

4 A The business rules for how to conduct the
5 editing and imputation procedures, they are
6 contained in a specification.

7 Q Okay. Where are the specifications? Are
8 those something that's publicly reported?

9 A Those specifications typically are not put
10 out to the public.

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

15 MR. SVERDLOV: Objection. Vague and
16 compound.

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

21 For editing and imputation rules, business
22 rules related to relationship and tenure, our sister

1 division, the Social, Economic and Household
2 Statistics Division produces those specifications.

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

7 MR. SVERDLOV: Objection to vague and
8 compound.

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

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

16 A Yes.

17 Q What is best citizenship as opposed to
18 just citizenship?

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

21 A So this is part of what the Census Bureau
22 needs to do in terms of evaluating the

1 administrative records that have been acquired.

2 Q Okay.

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

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

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

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

1 BY MR. DAVIS:

2 Q So this was directly related to her past
3 response. Did I understand you correctly, Mrs.
4 Battle, that when the Bureau is referring to best
5 citizenship variable, that you are trying to
6 reconcile which conflicting pieces of information is
7 correct?

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

13 A One example that might help that is
14 mentioned in a number of the memos is that, for
15 instance, our primary source of citizenship data
16 comes from the Social Security Administration, and
17 we know that if the sources of data from the Social
18 Security Administration, for example, may list that
19 an individual is not a citizen, but we don't know if
20 that individual's citizenship status has changed
21 over time and they just didn't update the Social
22 Security Administration, and so, again as listed in

1 some of the memos, that's one of the reasons for
2 trying to acquire administrative records on
3 naturalizations, for example, that may have more
4 current information or updated information that may
5 not be reflected in our reference file. So we are
6 trying to gather multiple sources and look at them
7 together to help us determine the best
8 citizenship --

9 Q Okay.

10 A -- value.

11 Q Mrs. Battle, have we discussed all of the
12 records that have been requested for state
13 governments? As I recall, we have discussed
14 driver's license data, SNAP, WIC and TANF, four
15 categories. Are there any other pieces of data or
16 administrative records that have been requested from
17 state governments by the Census Bureau?

18 MR. SVERDLOV: Objection. Vague and
19 compound.

20 A I'm not aware of any additional
21 state-level records that have been requested at this
22 time.

1 Q Let's say for a request for driver's
2 license data, how would that request be made?

3 MR. SVERDLOV: Objection. Vague.

4 A The Census Bureau staff reached out to the
5 heads of the states Department of Motor Vehicles to
6 request, have a discussion about obtaining those
7 data.

8 Q Okay. So somebody from the Census Bureau
9 would call, like in Alabama there is the Alabama Law
10 Enforcement Agency which is part of, is the agency
11 which issues driver's licenses. They would likely
12 reach out to the head of that department in the
13 State of Alabama?

14 MR. SVERDLOV: Objection. Vague and
15 compound.

16 BY MR. DAVIS:

17 Q Is that right?

18 MR. SVERDLOV: Object.

19 A Yes.

20 Q Is there any particular person in the
21 Census Bureau who is responsible for making the
22 request for administrative records to the state

1 governments?

2 A There is, but I do not recall the name off
3 the top of my head.

4 Q Okay. Do you know what that person's
5 title or what division that person likely works in?

6 A That person likely works in the section of
7 the Census Bureau that is responsible for acquiring
8 administrative records and ingesting those
9 administrative records.

10 Q And what would that be?

11 MR. SVERDLOV: Objection. Vague.

12 A That -- it's the -- within the Economic
13 Directorate there is a division called I believe
14 Economic Reimbursable Surveys Division, and that
15 houses the staff that are responsible for acquiring
16 and ingesting the administrative records.

17 Q I'm sorry, Mrs. Battle. Did you say
18 Economic Reimbursable Survey?

19 A That is my -- I would need to double check
20 on the specific name, but I believe that's correct.

21 Q I understand you are not sure. But I did
22 understand you correctly? The word was

1 "reimbursable," if you are remembering correctly?

2 A Yes.

3 Q Would you look, please, Mrs. Battle, at
4 the document behind Tab 3 of the notebook?

5 MR. DAVIS: And for the record, I have no
6 doubt we have the original of this in what you
7 produced. There simply wasn't time to get that in
8 every case. So the format of this particular memo
9 was as it was reformatted for purposes of the United
10 States Supreme Court record. So let's mark that.

11 (Battle Exhibit Number 8

12 was marked for identification.)

13 BY MR. DAVIS:

14 Q Are you familiar with this memorandum,
15 Mrs. Battle?

16 A Yes.

17 Q Okay. And this is a reproduction of a
18 memorandum dated December 22, 2017 prepared for John
19 M. Abowd prepared by Michael Berning and others?

20 A Uh-huh.

21 Q So look at page, it will say 304 at the
22 top. This has been marked as Exhibit 8.

1 A Uh-huh.

2 Q This was a couple years ago, but it talks
3 about, under Table 2, data that is currently in
4 census inventory and lists Social Security
5 Administration Numident, Temporary Assistance to
6 Needy Families, and Bureau of Prisons; correct?

7 A Yes.

8 Q Then it says Potential New Acquisitions.

9 A Uh-huh.

10 Q Now the USCIS Citizen Data, we talked
11 about that because it was listed on one of the other
12 documents we reviewed; right?

13 A Yes.

14 Q Okay. And Real ID Act Data, is that data,
15 Mrs. Battle, that states would have?

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

18 BY MR. DAVIS:

19 Q Driver's license data, for example?

20 A I think we would need to turn to a
21 memorandum of understanding regarding exactly what
22 the Census Bureau is requesting from the states

1 regarding the driver's license data.

2 Q Okay. And another document listed under
3 Potential New Acquisitions is FHA Loan Applications.
4 Do you know if those have been requested?

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

7 BY MR. DAVIS:

8 Q Do you know if those have been requested?

9 A I am not aware of this being requested.

10 Q Okay. Do you know if there is any
11 intention that the Census Bureau has to request FHA
12 loan application data?

13 A I cannot say at this time --

14 Q Okay.

15 A -- if there is an intention to collect
16 that.

17 Q Who would know?

18 A I think we would turn to the organization
19 within the Economic Directorate who is responsible
20 for acquiring administrative records to make that
21 final determination.

22 Q And that's a person who you can't remember

1 their name at this moment; right?

2 A Well, actually the supervisor, I know his
3 name, but I'm sure his staff -- the supervisor's
4 name is Michael Berning.

5 Q Okay.

6 A So...

7 Q But there might be someone on his staff
8 who is better able to answer that question; is that
9 right?

10 MR. SVERDLOV: Objection. Vague.

11 A Well, Michael would know the answer,
12 because his staff would be involved in this.

13 Q Okay. And back to this Exhibit 8, under
14 FHA Loan Applications, still under the part of the
15 table that lists Potential New Acquisitions, the
16 next item is State Department Expatriates. Do you
17 know of any requests for that information?

18 A I am not aware of the request, but we
19 would need to talk to Michael Berning's staff to
20 confirm that.

21 Q All right. And what about the next item
22 listed, Medicare/Medicaid Loan Applications?

1 A Well, we do have on our first reference
2 sheet that the Census Bureau has both Medicare
3 enrollment data and Medicaid enrollment data. I
4 know this says specifically "loan applications," so
5 we would need to talk with Michael Berning to ensure
6 that there is a distinction there or not.

7 Q Okay. I'm sorry, Mrs. Battle. Let's go
8 back. You said the reference sheet -- would you
9 refer to that by Exhibit Number, please?

10 A Exhibit Number 2.

11 Q Would you point to me where there is
12 information about Medicare and Medicaid?

13 A The third row down says CMS MEDB. That's
14 the Medicare enrollment database. And then where,
15 towards the bottom where it says Best Race and
16 Ethnicity, the first sub-bullet, CMS MSIS is the
17 Medicaid enrollment.

18 Q Okay. Does this suggest to you that this
19 is data on people who are in fact enrolled in
20 Medicare or Medicaid?

21 A The information in Exhibit 2 reflects data
22 on those who are enrolled. Whereas, I know on 304

1 it mentions loan application, so if these are the
2 same things or different things, I need to --

3 Q I understand. When you said 304, you are
4 referring to page 304 of Exhibit 8?

5 A Yes.

6 Q Okay. And it's Mr. Berning or his group
7 who could tell us to the best of your knowledge?

8 A Yes.

9 Q Okay. Would you look now at Tab 4, the
10 document behind Tab 4, the Executive Order 13880?
11 And let's mark that as the next exhibit, please.

12 (Battle Exhibit Number 9
13 was marked for identification.)

14 BY MR. DAVIS:

15 Q Okay. Do you see this is Exhibit 9;
16 right? And it's a copy of the Executive Order
17 13880. Have you reviewed this Executive Order
18 before, Mrs. Battle?

19 A Yes.

20 MR. SVERDLOV: Objection. Vague.

21 MR. DAVIS: Have you reviewed this
22 Executive Order before?

1 MR. SVERDLOV: Vague as to time. Go
2 ahead.

3 BY MR. DAVIS:

4 Q Would you look at the page -- it's Bates
5 Number P-169 at the bottom. Do you see that?

6 A Yes.

7 Q Page? Under Section 3, the Executive
8 Order says that -- that section is titled Assistance
9 to the Department of Commerce and Maximizing
10 Citizenship Data. Do you understand this to be a
11 list of data that agencies, quote, "shall examine
12 relevant legal authorities and, to the maximum
13 extent consistent with law, provide access to the
14 following records"? These are documents the
15 President wants the agencies to review and study and
16 see if they can provide to the Department of
17 Commerce; correct?

18 MR. SVERDLOV: Objection. Compound.

19 A Yes.

20 Q Okay. Walk me through this, Mrs. Battle.
21 Has the department requested all of this information
22 listed? And we can refer to the different documents

1 we've been reviewing. I just want to be able to
2 match them up.

3 A So if we go back to Exhibit Number 6 --

4 Q Yes.

5 A So back in Exhibit Number 9 on page 169,
6 the first item under Section 3 calls for Department
7 of Homeland Security, United States Citizenship and
8 Immigration Services - National-level file of Lawful
9 Permanent Residents, and Naturalizations. And so if
10 we refer back to Exhibit 6 on page 2, you will see
11 that that request was made for Lawful Permanent
12 Resident file and Naturalization data.

13 Q Yes. That's data that in fact we
14 discussed earlier?

15 A Yes.

16 Q Okay.

17 A And back in Exhibit 9, the second bullet
18 under Section 3 calls for Department of Homeland
19 Security, Immigration and Customs Enforcement,
20 Non-immigrant Visas, and that is reflected on page 2
21 back in Exhibit 6, the last row where it talks about
22 Arrival Departure Information System and Visa data,

1 Customs and Border Protection. That is the data on
2 temporary lawful residents.

3 Q And for that data, according to Exhibit 6,
4 it's been requested, you are awaiting transfer from
5 DHS; right?

6 A Yes. Yes.

7 Q Got it.

8 A Okay.

9 Q And going back to the Executive Order,
10 bullet 3 says Department of Homeland Security,
11 National-level file of Customs and Border
12 Arrival/Departure transaction data?

13 A And that will be fulfilled through the
14 same role we just talked about.

15 Q Okay. Arrival/departure information?

16 A Yes.

17 Q And on the Executive Order bullet 4,
18 Department of Homeland Security and Department of
19 State, Worldwide Refugee and Asylum Processing
20 System, Refugee and Asylum visas?

21 A In Exhibit 6 on page 3, at the very top
22 you'll see the Department of State and the request

1 was for Worldwide Refugee Admission Processing
2 System data.

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

5 A Yes.

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

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

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

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

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

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

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

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

14 A Yes.

15 MR. DAVIS: Let's mark these as exhibits.
16 We have got three more it seems.

17 (Battle Exhibit Number 10

18 was marked for identification.)

19 BY MR. DAVIS:

20 Q So, Mrs. Battle, first I'm marking one of
21 these as Exhibit 10. Would you tell me what this
22 document is?

1 A This document is a Memorandum of
2 Understanding between the Census Bureau and the
3 Department of State.

4 Q Okay.

5 A And it is requesting passport data.

6 Q And is this a memorandum that has been
7 executed? Is it in place?

8 A This memorandum was signed earlier this
9 week, January 13th --

10 Q Great.

11 A -- when it was executed. This is new.

12 Q Okay.

13 (Battle Exhibit Number 11
14 was marked for identification.)

15 BY MR. DAVIS:

16 Q And what about the one I'm marking as
17 Exhibit 11?

18 A Exhibit 11 is another Memorandum of
19 Agreement between the Census Bureau and the
20 Department of Homeland Security regarding data on
21 immigration and citizenship.

22 (Battle Exhibit Number 12

1 was marked for identification.)

2 BY MR. DAVIS:

3 Q And the last one I'll mark as Exhibit 12.
4 This appears to be a chart. Would you tell me what
5 this indicates, please?

6 A Exhibit --

7 MR. SVERDLOV: Objection. Vague.

8 A Exhibit 12 is a chart that shows you the
9 existing administrative records that the Census
10 Bureau has and has obtained over the years, long
11 history of obtaining these data from the Social
12 Security Administration, the Internal Revenue
13 Service, and the Department of Housing and Urban
14 Development.

15 Q Okay. So some of this stuff like from DHS
16 that we've been talking about just a couple minutes
17 ago, those are kind of new requests. This is data
18 that you've had for a while? Is that right?

19 A Yes.

20 Q Okay.

21 MR. DAVIS: Very good. I think this is a
22 good stopping point. What time would you like to

1 come back?

2 MR. SVERDLOV: We are at noon now. Let's
3 take about an hour.

4 MR. DAVIS: Sounds good. See you then.

5 (Recessed at 11:54 a.m.)

6 (Reconvened at 1:23 p.m.)

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

9 PHONE PARTICIPANT: Yes.

10 BY MR. DAVIS:

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

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

22 Q Okay. Taking the Alaskan Natives as an

1 example, if I understand you correctly, research
2 after the census suggests to the Census Bureau that
3 there is likely an under-count of Alaskan Natives in
4 the census; correct?

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

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

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

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

16 MR. SVERDLOV: Objection. Vague. Calls
17 for a legal conclusion.

18 A Yes.

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

22 MR. SVERDLOV: Objection. Vague.

1 A Yes.

2 Q Would you give me an example of efforts
3 that the Census Bureau has planned to reach a
4 population that it believes to be more difficult to
5 count than other populations?

6 A So the Census Bureau has an advertising
7 campaign and the Census Bureau develops advertising
8 directed towards particular hard to count
9 populations in order to help make awareness more
10 broad of the decennial census and to encourage
11 participation.

12 The Census Bureau also has a network of
13 partner -- it's called the National Partnership
14 Program, and the idea there is to partner with
15 particular organizations, local areas, to try to
16 develop ways and approaches to reach the hard to
17 count to get participation improved in the decennial
18 census.

19 Q Okay. Are there any efforts by the Census
20 Bureau or any planned efforts to reach as many
21 undocumented immigrants as possible for the count?

22 MR. SVERDLOV: Objection. Vague. Calls

1 for a legal conclusion.

2 A I am not aware of any activities or
3 programs or advertising that would be focused on
4 that population.

5 Q Would you turn, please, Mrs. Battle, to
6 the document behind Tab 5 of the notebook?

7 A Uh-huh.

8 MR. SVERDLOV: Counsel, for the record,
9 I'm just going to note here this is also not a
10 document that was identified in the topics, and
11 given its date as noted on the first page of
12 September 18, 1985, we have concerns that questions
13 about this document would venture far outside the
14 scope of the topics negotiated.

15 MR. DAVIS: Well, it could, but you might
16 listen to my question first and then you could
17 decide whether or not it's within the topics. It
18 would save us a little bit of time.

19 MR. SVERDLOV: I'm flagging a concern.
20 I'm happy to give you an opportunity to prove me
21 wrong.

22 MR. DAVIS: Let's mark this as Exhibit 13,

1 please.

2 (Battle Exhibit Number 13
3 was marked for identification.)

4 BY MR. DAVIS:

5 Q Mrs. Battle, this is a statement of the
6 Director of the Bureau of the Census before the
7 Subcommittee on Energy, Nuclear Proliferation, et
8 cetera, dated September 18, 1985. I'm going to turn
9 to the page -- the first page is Bates Numbered
10 1820, produced by the Department of Commerce, and
11 I'm looking at the page that's Bates Numbered 1827.

12 And here I'm going to represent to you
13 that if you see a paragraph towards the bottom that
14 begins, "because undocumented aliens," et cetera?
15 On that page and the following page, as I read this,
16 and you can tell me if you disagree, the former
17 director is talking about efforts addressed to count
18 as many undocumented aliens as possible.

19 And I just want to see if this refreshes
20 your recollection if you review the steps that he
21 says were taken in the past, I ask you to look at
22 those and see if this refreshes your recollection,

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

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

6 A On page 1828 --

7 Q Yes, ma'am.

8 A -- it mentions enumerating migrant farm
9 camps.

10 Q Yes.

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

16 Q Okay.

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

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

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

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

9 BY MR. DAVIS:

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

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

21 BY MR. DAVIS:

22 Q Has the Census Bureau made any decision of

1 whether or not to work with law enforcement agencies
2 to curtail enforcement of immigration laws around
3 census days in order to ensure greater participation
4 by undocumented immigrants in the census?

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

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

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

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

14 Q And who would that be?

15 A Ron Jarmin.

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

22 MR. SVERDLOV: I will raise the same

1 objection as before and give a similar instruction
2 to the witness.

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

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

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

15 A Yes.

16 Q Okay. That doesn't mean though that
17 everyone who fills out a form fills it out on April
18 1 though, does it?

19 A No.

20 Q Okay. What if I fill out my form on March
21 the 1st and move on the 15th; on March the 1st I
22 report that I live in Prattville, Alabama, but I

1 move to Nebraska on the 15th. Where does the Census
2 Bureau count me for the purposes of the 2020 census
3 if those things were to happen?

4 A Well --

5 MR. SVERDLOV: Objection. Vague.

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

8 Q Okay.

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

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

18 MR. SVERDLOV: Objection. Vague and
19 misleading.

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

22 Q Sure. Let's say in spite of the

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

7 MR. SVERDLOV: Same objection.

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

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

18 MR. SVERDLOV: Objection. Compound and
19 misleading.

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

1 would be the information that we have.

2 Q Okay.

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

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

11 MR. SVERDLOV: Objection. Compound.

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

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

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

22 A The Census Bureau would have access to the

1 information that that family provided on their
2 questionnaire, yes.

3 Q In that case there may be an additional
4 resident of that household that the Census Bureau
5 just has no way of counting; is that correct?

6 MR. SVERDLOV: Objection. Misleading.

7 A If that household provided their
8 information, they responded to the decennial census,
9 completed the questionnaire and submitted it, then
10 that would be their record for the census.

11 Q Would you turn back, please, Mrs. Battle
12 to the document behind Tab 8? It's been previously
13 marked as an exhibit, but I didn't write down for
14 this one which Exhibit Number that was.

15 A Five.

16 Q Exhibit 5. And going back to the Q and As
17 at the back on the page that's Bates Numbered P-15,
18 I'm going to refer you to Question Number 13 at the
19 bottom. The question in this question and answer
20 section reads as follows:

21 "Is Census confident that administrative
22 data will be able to be used to determine

1 citizenship for all persons, e.g., not all citizens
2 have Social Security Numbers."

3 And the response given is: "We are
4 confident that Alternative C," use of administrative
5 data, "is viable and that we have already ingested
6 enough high-quality citizenship administrative data
7 from SSA and IRS."

8 Does the -- is the Census Bureau still
9 confident that the use of administrative data to
10 impute citizenship is viable and that you have
11 enough high-quality citizenship data to perform
12 those functions?

13 MR. SVERDLOV: Objection. One second.
14 Objection. I think this is verging into the
15 deliberative process privilege. The question by its
16 terms calls upon the witness to testify about
17 efforts that are ongoing, so I will direct the
18 witness not to answer that question.

19 MR. DAVIS: Okay.

20 BY MR. DAVIS:

21 Q This memo is dated January 19, 2018. Was
22 it true on January 19, 2018 that the Census Bureau

1 was confident that Alternative C in this memo,
2 quote, is viable and that we, meaning the Census
3 Bureau, have already ingested enough high-quality
4 citizenship administrative data from SSA and IRS?

5 A The Census Bureau knows that, yes, the
6 Social Security Administration data and the Internal
7 Revenue Service data are of high quality but there
8 are still some gaps.

9 Q Okay. The next sentence of the response
10 says: "The USCIS data are not required. They
11 would, however, make the citizenship voting age
12 tabulations better." Was that true in 2018?

13 MR. SVERDLOV: Objection. Vague.

14 A What I can tell you is that there are gaps
15 in the Social Security Administration data, and
16 acquiring information from the Citizenship and
17 Immigration Services Agency may be helpful in
18 filling in those gaps.

19 Q Okay. Then I apologize for this, but I
20 want to make sure I've asked what I need to ask,
21 Mrs. Battle. I want to try this another way.

22 The statement that Alternative C is

1 viable, was that statement true when it was made?

2 MR. SVERDLOV: Objection. Vague.

3 A Alternative C was put forward as an option
4 that the Census Bureau thought should be pursued,
5 additional research would need to be done,
6 additional data would need to be collected to see
7 how that alternative could be then developed to
8 produce information on citizenship status.

9 Q Well, on this day does the Census Bureau
10 know whether the use of administrative data will
11 allow it to produce citizen voting age population
12 after the 2020 census?

13 MR. SVERDLOV: Objection. Vague as to
14 time. To the extent that this question concerns a
15 date other than the date on the memorandum or dates
16 subsequent to it, I will direct the witness not to
17 answer based on deliberative process privilege.

18 BY MR. DAVIS:

19 Q The question is as of today's date does
20 the Census Bureau know whether it will be able to
21 use the 2020 census to produce citizen voting age
22 population data using administrative data? I'm not

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

1 data to produce citizen voting age population data?

2 A The Census Bureau is pursuing that, but we
3 need to continue to evaluate all of the data that we
4 have requested and then make sure we have developed
5 the appropriate methodology that will allow us to do
6 that. So we are still evaluating the data.

7 Q Okay. Are you aware of any memorandum or
8 reports from the Census Bureau or perhaps testimony
9 from prior litigation where the Census Bureau or a
10 representative said in effect we don't know whether
11 we can use administrative to do this, but we are
12 going to look at it and see?

13 MR. SVERDLOV: Objection. Vague and
14 misleading. To the extent that -- strike that last
15 part.

16 A I am aware of memos that instruct the
17 Census Bureau to acquire additional administrative
18 records and with the purpose of developing
19 methodology to determine citizenship status with the
20 CVAP data product.

21 Q Does the Census Bureau expect to know the
22 answer to that question by spring of 2020?

1 MR. SVERDLOV: Objection. Vague.

2 A The Census Bureau has stated that in the
3 spring of 2020 its goal is to have identified
4 specific administrative record data sources and
5 methodology that will permit it to develop the CVAP
6 data product.

7 Q When this report or memo dated January 19,
8 2018 contains the statement that we are confident
9 that Alternative C is viable, has anything happened
10 since that date to make the Census Bureau less
11 confident that Alternative C is viable?

12 MR. SVERDLOV: Objection on the basis of
13 deliberative process privilege. To the extent the
14 witness can answer in general terms, she may try to
15 do so. But I will direct the witness not to answer
16 the question to the extent it calls for the internal
17 deliberations and the substance of those
18 deliberations of the Census Bureau.

19 A I am not aware of any conversations that
20 concluded that administrative records are not viable
21 to help us with those efforts.

22 Q Has the Census Bureau made a decision as

1 to whether any sampling will be involved to measure
2 or impute citizenship as part of the 2020 census?

3 MR. SVERDLOV: Objection. Vague and
4 compound.

5 A The Census Bureau has not determined its
6 final methodology for producing the CVAP yet.

7 Q Has the Census Bureau determined whether
8 CVAP data will be released as part of the P-4 --
9 what was the data file? Dash 171?

10 MR. SVERDLOV: Objection. Vague and
11 compound.

12 A You are asking me if CVAP is intended to
13 be a part of the redistricting data file, the PL.

14 Q Right. PL dash --

15 A PL-94171.

16 Q That's it. Thank you.

17 A The Census Bureau intends for the CVAP
18 data product to be a separate special tabulation.

19 Q Okay. What form will it be released in?

20 MR. SVERDLOV: Objection. Vague.

21 A The Census Bureau is working to finalize
22 the format of the CVAP. I expect that information

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 Numident
2 is whether or not there, the information regarding
3 individuals who are not citizen 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 Numident 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. SVERDLOV: I'm sorry. Hold on one
21 second. I want to read the question. Objection.
22 Vague.

1 A So with the key issue regarding
2 individuals who are not citizens at the time that
3 they obtained the Social Security Number, that
4 information may not be updated in that particular
5 source of data, but the idea is to search other
6 administrative records to use in conjunction to then
7 have more updated information.

8 Q Okay. So it's a population who may not be
9 included in the citizenship information in a
10 particular set of administrative records? Did I
11 understand you correctly?

12 A Yes.

13 Q Okay. But there could be other
14 administrative records that do contain citizenship
15 information about that individual?

16 A Yes.

17 MR. SVERDLOV: Objection. Calls for
18 speculation.

19 Q And it lists one, two, three, four, five,
20 six, seven people starting on -- not people --
21 groups starting on page P-39. One is U.S. citizens
22 from birth with no Social Security Number or U.S.

1 passport. The second is U.S. citizens from birth
2 born outside the U.S. who do not have a U.S.
3 passport, et cetera, and I'm not reading the whole
4 description, but you see where I'm talking about?

5 A Yes.

6 Q Is the Census Bureau making any efforts to
7 seek particular data to fill the so-called
8 citizenship data gaps?

9 MR. SVERDLOV: Objection. This question
10 calls for information that is protected by the
11 deliberative process privilege. So to the extent
12 the witness can answer it in a general way, she may
13 do so. But I will direct her not to go into the
14 details regarding any efforts that may or may not be
15 taking place.

16 A So the Census Bureau has recently acquired
17 and will acquire additional administrative records,
18 and in the course of evaluating this data the Census
19 Bureau can assess how many of these gaps we might be
20 able to fill.

21 Q And was it in seeking this information,
22 was it one of the goals of the Census Department to

1 fill as many of these gaps as possible?

2 MR. SVERDLOV: Objection. That question
3 calls for information protected by the deliberative
4 process privilege.

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

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

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

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

20 BY MR. DAVIS:

21 Q Is it the goal of the Census Department to
22 refrain from asking for data that it believes would

1 be helpful?

2 MR. SVERDLOV: Objection. Argumentative.

3 A Can you please restate that?

4 Q Sure. Is it a goal of the Census
5 Department to purposefully refuse to ask for
6 administrative data from another agency that it
7 believes would be helpful in producing a more
8 accurate citizen voting age population count in the
9 2020 census?

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

14 BY MR. DAVIS:

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

20 A My understanding is that the Census Bureau
21 is directed to establish an interagency working
22 group with the purpose of meeting with federal

1 departments to discuss acquiring their
2 administrative records that may be helpful in
3 helping the Census Bureau meet and comply with the
4 executive order.

5 Q And does the Census Bureau intend to do
6 that?

7 A Yes.

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

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

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

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

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

21 Q Referring, Mrs. Battle, to the efforts of
22 the Census Bureau to obtain administrative data from

1 the various states, let's say there is a case where
2 a particular state has declined to provide requested
3 data. Has the Census Bureau made any decision yet
4 as to what the next steps might or might not be?

5 MR. SVERDLOV: Objection. Calls for
6 speculation.

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

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

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

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

20 A I am not aware of the Census Bureau making
21 any decisions about whether or not next steps need
22 to be taken.

1 Q Okay. Look back, please, Mrs. Battle, at
2 the document behind Tab 9. And remind me for the
3 record what Exhibit Number is.

4 A 14.

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

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

9 THE WITNESS: Yes.

10 BY MR. DAVIS:

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

14 MR. SVERDLOV: Objection. Vague.

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

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

21 MR. SVERDLOV: Objection. Vague.

22 A I'm not aware of any specific estimates

1 for any of these categories that may have been
2 utilized in the development of this memo.

3 Q Would you turn now, please, Mrs. Battle,
4 to the document that is behind Tab 14 of the
5 notebook? And let's mark the first page as Exhibit
6 15, please.

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

14 (Battle Exhibit Number 15
15 was marked for identification.)

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

21 MR. DAVIS: That's not helpful, because I
22 don't have to tell you what the exhibits are going

1 to be when we negotiate topics. And it --

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

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

10 BY MR. DAVIS:

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

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

20 A Yes.

21 Q Okay. There is testimony here I'll
22 represent to you, Mrs. Battle, concerning

1 introducing randomness to see that data to ensure
2 protection of privacy, at least that's the way I
3 interpret the testimony.

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

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

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

20 A The Census Bureau will be using a
21 mathematical approach to determine how to -- a
22 mathematical approach in terms of how to take census

1 responses and then be able to inject noise is the
2 best way I can describe it, to protect an
3 individual's information. So it's a way of
4 preventing an individual from being identified based
5 on their characteristics that they provided in
6 response to the decennial census.

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

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

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

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

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

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

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

11 MR. SVERDLOV: Objection. Vague.
12 Compound.

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

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

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

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

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

18 MR. SVERDLOV: Is that a question?

19 MR. DAVIS: Yes.

20 BY MR. DAVIS:

21 Q What does injecting noise have to do with
22 accuracy? How does it effect it?

1 MR. SVERDLOV: Objection. Compound.

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

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

16 MR. SVERDLOV: Objection. Calls for
17 speculation.

18 A You are referring to a statement on page
19 67 about randomness?

20 Q Right.

21 A Let's see.

22 Q And that's in Exhibit 15. I'm trying to

1 understand if you and this witness are describing
2 the same procedure.

3 A Because on the top of page 67 the
4 testimony talks about differential privacy, then we
5 are talking about the same thing.

6 Q Okay.

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

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

17 MR. SVERDLOV: Okay.

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

1 MR. SVERDLOV: That makes sense.

2 MR. DAVIS: Thank you, Mrs. Battle.

3 (Recessed at 2:15 p.m.)

4 (Reconvened at 2:40 p.m.)

5 BY MR. DAVIS:

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

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

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

20 MR. SVERDLOV: Okay.

21 BY MR. DAVIS:

22 Q My question to you, Mrs. Battle, is this:

1 Are you aware of any federal agencies that have said
2 we cannot provided requested information because the
3 law doesn't permit us to share it with you?

4 A I am not aware of any agencies stating
5 that they cannot share or send to us their data
6 because of a law.

7 Q Okay. And for the data that you received
8 or that they've agreed to share, are you aware of
9 any circumstance where the law would not permit you
10 to use the data in order to impute citizenship?

11 MR. SVERDLOV: Objection. Calls for a
12 legal conclusion, and to the extent it pertains to
13 the ongoing deliberations about the use of data,
14 that this information we would view as protected
15 under the deliberative process privilege, so I will
16 instruct the witness not to answer that portion.

17 BY MR. DAVIS:

18 Q Let's start over. Are you aware of any
19 circumstance where the Census Bureau has determined
20 that it is unable to use a set of administrative
21 data because of some impediment of the law?

22 MR. SVERDLOV: Objection. Vague.

1 BY MR. DAVIS:

2 Q Or some legal requirement?

3 MR. SVERDLOV: Objection. Compound.

4 A I am not aware of that.

5 Q Would you look at the document, one of the
6 ones that you brought with you today, that's marked
7 as Exhibit 11? And this, for the record, is a
8 Memorandum of Agreement between the United States
9 Department of Commerce and the United States
10 Department of Homeland Security. And I will refer
11 you to page 17 of that document, Mrs. Battle.

12 Do you see that page with the heading
13 Attachment 1: Description of Approved Research
14 Project?

15 A Yes. Yes.

16 Q In the first paragraph, Mrs. Battle, it
17 says: "The Census Bureau plans to use several
18 administrative data sources of citizenship status in
19 a statistical model that will produce a probability
20 of being a U.S. citizen on April 1, 2020 for each
21 person in the 2020 census."

22 First, is that in fact the Census Bureau's

1 plans?

2 A The Census Bureau is acquiring
3 administrative records that it will evaluate and the
4 Census Bureau will then finalize their plans about
5 how they specifically will determine citizenship for
6 those enumerated in the census.

7 Q Okay. What does it mean you'll produce a
8 probability of being a U.S. citizen?

9 A In this general approach the probability
10 would be a value between zero and one.

11 Q Okay. Well, what if the probability is
12 .5; is that person counted as a citizen or a
13 non-citizen?

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

16 A The final methodology for how the Census
17 Bureau will use administrative records and to
18 actually develop the citizenship status for
19 individuals in the census has not been finalized yet
20 to be able to tell you that information.

21 Q Okay. Let me make sure I understand you
22 by asking you a different way. Has the Census

1 Bureau yet decided how high the probability must be
2 of citizenship before a person is counted as a U.S.
3 citizen?

4 A I am not aware of the Census Bureau making
5 that decision yet.

6 Q Okay. And who would be making that
7 decision?

8 MR. SVERDLOV: Objection. Vague. And,
9 okay.

10 A The final methodology that the Census
11 Bureau will use to create the CVAP file will need to
12 be vetted and approved by executive leadership at
13 the Census Bureau as well as at the Department of
14 Commerce.

15 Q Okay. So executive leadership has to
16 approve it. I assume that there are employees of
17 the Census Bureau who will be working on answers to
18 these questions to recommend to executive
19 leadership. Is that true?

20 MR. SVERDLOV: Objection. Vague.

21 A Yes.

22 Q Okay. And do you know who within the

1 Census Bureau will be working on recommendations to
2 make to executive leadership?

3 MR. SVERDLOV: Objection. Vague and
4 assumes facts not in evidence.

5 A The Census Bureau will look to an internal
6 expert team that includes leadership from John Abowd
7 and the development of the recommendation about how
8 to develop the statistical models, how to use
9 probability data if that indeed will be part of the
10 final methodology.

11 Q Mrs. Battle, when you talk about in terms
12 of probability of citizenship and the value between
13 zero and one, what does zero mean?

14 MR. SVERDLOV: Objection. Vague.

15 A The methodology that needs to be finalized
16 will determine what the values of the range of the
17 probabilities actually means.

18 Q Okay. I guess you would give me the same
19 answer if I asked what one means in that scenario?

20 A Yes. All of that has to be finalized in
21 the methodology.

22 Q Okay. Let's say, Mrs. Battle, that after

1 the 2020 census the Census Bureau counts in a
2 particular census block 100 voting age white
3 citizens, 40 voting age African-American citizens,
4 and ten non-citizens. Are those numbers going to be
5 reported for that census block?

6 MR. SVERDLOV: Objection. Vague and
7 compound. To the extent it concerns ongoing
8 deliberations, that question would -- the answer to
9 that question would be protected by the deliberative
10 process privilege.

11 I think more pertinent right now is that
12 this question is verging outside the scope of the
13 negotiated topics and I think we would benefit from
14 you explaining how you view the, that type of count
15 you described as falling within one of the topics we
16 negotiated.

17 BY MR. DAVIS:

18 Q I'm making the numbers up. I don't care
19 what the numbers are. I just want to know if you
20 count particular numbers in the census block. This
21 is going back, Mrs. Battle, to the injecting noise
22 and I just want to understand that as well as I can

1 while I have the opportunity to speak with you.

2 So the first step is if you measure X
3 number of, let's just stick with X number of
4 Caucasian voting age citizens in a census block, is
5 that X in fact going to be released for that census
6 block, or because of noise, will it be changed to
7 some other number?

8 MR. SVERDLOV: Objection. Vague.

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

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

16 MR. SVERDLOV: Objection. Calls for
17 speculation.

18 BY MR. DAVIS:

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

22 After you inject noise, would the total

1 population of the block change?

2 MR. SVERDLOV: Objection. Vague.

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

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

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

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

19 BY MR. DAVIS:

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

1 MR. SVERDLOV: Objection. Vague.

2 A The state population totals will be as
3 enumerated in the decennial census.

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

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

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

13 MR. SVERDLOV: Objection. Vague.

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

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

20 MR. SVERDLOV: Objection. I will direct
21 the witness not to answer both on the basis of scope
22 and deliberative process privilege.

1 BY MR. DAVIS:

2 Q Have you made a decision as to whether or
3 not to seek that data?

4 MR. SVERDLOV: Objection. Assumes facts
5 not in evidence. And outside the scope. But if --

6 BY MR. DAVIS:

7 Q I feel like the administrative data that
8 may be available to address citizenship is well
9 within the scope of the topics. So I will ask
10 again. Has the Census Bureau made any decision as
11 to whether it will seek information related to the
12 deferred action for childhood arrivals program?

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

15 A I am not aware of any decision that's been
16 made regarding that topic.

17 Q Okay. I am almost positive that at times
18 today I have referred to the census department when
19 it's really the Census Bureau. If I have done that,
20 we understood each other? You knew who I was
21 talking about, that I meant the Census Bureau, did
22 you not?

1 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,
8 please, Mrs. Battle?

9 MR. SVERDLOV: I'm sorry? What tab?

10 MR. DAVIS: Tab 17.

11 BY MR. DAVIS:

12 Q And, Mrs. Battle, take all the time you
13 want. I really just want to know if you can
14 identify that document for me just so I can get on
15 the record if you know what that document is.

16 Let's mark it as Exhibit 18. For the
17 record, I made a mistake. This document will be
18 marked as Exhibit 16 to Mrs. Battle's deposition.

19 (Battle Exhibit Number 16
20 was marked for identification.)

21 BY MR. DAVIS:

22 Q Can you identify the document that's been

1 marked as Exhibit 16, Mrs. Battle?

2 A This is the Department of Homeland
3 Security Immigration-Related Information Sharing
4 with U.S. Census Bureau, December 20th, 2019.

5 Q And how is that different from the
6 document we marked as Exhibit 11, the Memorandum of
7 Agreement between the Department of Commerce and the
8 U.S. Department of Homeland Security?

9 MR. SVERDLOV: Objection. Vague and
10 misleading and assumes facts not in evidence. And
11 to the extent you are asking the witness to testify
12 about a Department of Homeland Security document
13 that you have marked as Exhibit 16, it is outside
14 the scope of this deposition because the witness is
15 testifying on behalf of the U.S. Census Bureau, not
16 the Department of Homeland Security.

17 BY MR. DAVIS:

18 Q Have you reviewed the document that's been
19 marked Exhibit 16 before?

20 A I am not familiar with this particular
21 document.

22 Q That's all. That's fine. Then I will

1 have no other questions about it.

2 Mrs. Battle, does the Census Bureau know
3 yet whether it is feasible to produce high-quality
4 citizen voting age population data using
5 administrative records?

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

8 A The Census Bureau will need to continue
9 evaluating the administrative records that we have
10 recently acquired before being able to make that
11 statement.

12 Q So the answer is the Bureau just doesn't
13 know yet? Is that true?

14 A Yes.

15 Q Okay. If it didn't know now, then it
16 didn't know the answer to that question in 2019 or
17 2018 or 2017, did it?

18 MR. SVERDLOV: Objection. Argumentative.

19 A The Census Bureau needs to get access to
20 the data and be able to evaluate that to make that
21 final decision.

22 Q So if someone said in 2019 that, yes, the

1 Census Bureau can use administrative data and use
2 that to produce high-quality citizen voting age
3 population data, that would have been incorrect?

4 MR. SVERDLOV: Objection. Vague and
5 misleading.

6 A The goal of the Census Bureau is to use
7 administrative records to produce high-quality data
8 on citizenship for the population. But we need to
9 access the data that we believe may be helpful to us
10 and just make sure that it will be of the quality
11 that we need for the purposes that we need.

12 Q After the 2020 census, Mrs. Battle, does
13 the Census Bureau intend to release a total
14 population count for each state?

15 A After the decennial census the Census
16 Bureau intends to publish a, an apportionment
17 population count for the state, which would include
18 a resident population count for the state as well as
19 the federal affiliated overseas population for the
20 state.

21 Q Okay. Will it produce as a part of any
22 product a count of the number of U.S. citizens

1 residing in each state?

2 MR. SVERDLOV: Objection. Vague.

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

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

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

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

16 MR. SVERDLOV: Objection. Vague and
17 misleading.

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

22 Q Does the Census Bureau plan to count the

1 number of non-citizens who are lawfully present in
2 each state?

3 MR. SVERDLOV: Objection. Vague and
4 misleading.

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

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

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

18 MR. SVERDLOV: Objection. Vague and
19 misleading.

20 A I can't speak to whether the Census Bureau
21 will impute a particular legal status to someone in
22 a decennial census. The Census Bureau is acquiring

1 administrative records that will have some of that
2 information.

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

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

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

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

1 residency?

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

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

12 MR. SVERDLOV: Objection. Vague.

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

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

19 A Yes.

20 Q Does that mean that Nebraska has entered
21 into a memorandum of understanding with the Census
22 Bureau?

1 A In order for the Census Bureau to acquire
2 those data there needs to be a memorandum of
3 understanding.

4 Q Gotcha.

5 MR. DAVIS: This is off the record.

6 - - -

7 (Discussion off the Record.)

8 - - -

9 BY MR. DAVIS:

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

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

20 BY MR. DAVIS:

21 Q Mrs. Battle, has the Census Bureau made
22 any decision that should it determine to make a

1 count of persons who were unlawfully present
2 non-citizens in each state, that it would need
3 additional administrative data to do that?

4 MR. SVERDLOV: Objection. Vague and
5 compound, assumes facts not in evidence.

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

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

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

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

22 A The Census Bureau strives to conduct as

1 accurate and as complete a count as possible and
2 utilizes many different operations and techniques to
3 help us meet that goal.

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

9 MR. SVERDLOV: Objection. Vague.

10 A Yes.

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

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

16 (Recessed at 3:13 p.m.)

17 (Reconvened at 3:31 p.m.)

18 MR. DAVIS: I think I'm up and I can say
19 we have no further questions. We really appreciate
20 counsel hosting Mrs. Battle. We thank you for
21 taking time to speak to us and helping with these
22 issues. Before I close I would say that there is

1 still documents to be produced or documents that
2 through unavoidable technical difficulties we just
3 received a new copy of today.

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

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

15 MR. DAVIS: Thank you.

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

19 MR. DAVIS: Certainly.

20 MR. SVERDLOV: And otherwise we have
21 nothing further.

22 MR. DAVIS: Thank you all.

(Whereupon, at 3:33 p.m., the
deposition of KAREN R. BATTLE
was concluded.)

* * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1 UNITED STATES OF AMERICA)

2 ss:

3 DISTRICT OF COLUMBIA)

4 I, ROBERT M. JAKUPCIAK, an RPR and Notary
5 Public within and for the District of Columbia do
6 hereby certify:

7 That the witness whose deposition is
8 hereinbefore set forth, was duly sworn and that the
9 within transcript is a true record of the testimony
10 given by such witness.

11 I further certify that I am not related to
12 any of these parties to this action by blood or
13 marriage and that I am in no way interested in the
14 outcome of this matter.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand this 21st day of January, 2020.

17 
18
19
20

21 My Commission Expires:
22 February 29, 2024

1 To: ALEXANDER V. SVERDLOV, ESQ.

2 Re: Signature of Deponent 30(b)(6) Karen R. Battle

3 Date Errata due back at our offices: 2/20/2020

4
5 Greetings:

6 This deposition has been requested for read and sign by
7 the deponent. It is the deponent's responsibility to
8 review the transcript, noting any changes or corrections
9 on the attached PDF Errata. The deponent may fill
10 out the Errata electronically or print and fill out
11 manually.

12 Once the Errata is signed by the deponent and notarized,
13 please mail it to the offices of Veritext (below).

14 When the signed Errata is returned to us, we will seal
15 and forward to the taking attorney to file with the
16 original transcript. We will also send copies of the
17 Errata to all ordering parties.

18 If the signed Errata is not returned within the time
19 above, the original transcript may be filed with the
20 court without the signature of the deponent.

21 Please Email the completed errata/witness cert page
22 to readandsign@veritext.com

23 or mail to

Veritext Production Facility

2031 Shady Crest Drive

Hoover, AL 35216

205-397-2397

ERRATA for ASSIGNMENT #3846101

I, the undersigned, do hereby certify that I have read the transcript of my testimony, and that

___ There are no changes noted.

___ The following changes are noted:

Pursuant to Civil Procedure, Rule 30. ALA. CODE § 5-30(e) (2017). Rule 30(e) states any changes in form or substance which you desire to make to your testimony shall be entered upon the deposition with a statement of the reasons given for making them. To assist you in making any such corrections, please use the form below. If additional pages are necessary, please furnish same and attach.

Page ___ Line ___ Change _____

Reason for change _____

Page ___ Line ___ Change _____

Reason for change _____

Page ___ Line ___ Change _____

Reason for change _____

Page ___ Line ___ Change _____

Reason for change _____

Page ___ Line ___ Change _____

Page _____ Line _____ Change _____

Reason for change _____

Page _____ Line _____ Change _____

Reason for change _____

Page _____ Line _____ Change _____

Reason for change _____

Page _____ Line _____ Change _____

Reason for change _____

Page _____ Line _____ Change _____

Reason for change _____

DEPONENT'S SIGNATURE

Sworn to and subscribed before me this ____ day of

_____, _____.

NOTARY PUBLIC / My Commission Expires: _____

0	138 10:3	2	143:9 157:20,21
001 62:3	13880 9:10 66:10	2 8:11 9:3 24:1 25:3	161:1 164:8,11
00772 1:11	83:21 110:10,17	28:6 65:18,19	169:12 179:16
0324 9:12	144:10,12 155:8	66:19 67:5 106:3	2021 59:5 164:16
0335 9:14	13th 116:9	109:10,21 112:10	20230 2:6 5:8
1	14 8:10 10:3 138:11	112:20 172:10	2024 179:22
1 1:21 8:10 14:20	138:12 146:4,5	2/20/2020 180:3	20250 179:18
14:21 15:3 19:21	147:4 154:9	20 81:11,22	2031 180:21
54:16 55:6 82:20	1401 2:5 5:7 6:7	2000 13:13 63:22	205-397-2397
83:8 126:9,18	147 10:5	64:1 148:18	180:23
128:2,3,4 138:8	15 10:5 52:16 65:1	20005 4:19	2064 9:12,14
157:13,20	130:17 147:6,14	20019 6:8	20th 167:4
1/19/18 8:22	153:22 154:20	20036 4:7	2101 3:16
10 9:11 115:17,21	15th 126:21 127:1	2004 13:10,13,13	212 5:19
154:19	127:16 128:4 129:6	2007 13:7,10	21st 179:16
100 4:6 150:10	16 1:18 10:7 166:18	2010 19:4,21 35:1,2	22 105:18
152:1 161:2	166:19 167:1,13,19	64:5,7,15 82:9,12	23 67:10
10005 5:18	166 10:7	94:15,19 119:5	24 8:11
1016 4:6	169 111:5 112:5	148:18	242-7300 3:9
1040 25:7	155:10	2014 13:7	250 6:18
105 9:6	16th 4:6	2017 105:18 168:17	256 3:18
1099 25:7	17 81:11,22 157:11	181:7	27th 83:16
10:03 52:19	166:7,10	2018 33:10 62:1	28 5:17
10:26 52:20	171 47:10,11 137:9	67:13 131:21,22	29 179:22
11 8:4 9:13 44:14	179 1:21	132:12 136:8 138:8	293-2828 4:8
63:21 116:13,17,18	18 14:17 56:20 57:3	168:17	29th 147:11
157:7 167:6	57:12,22 61:7	2018.08.i 8:16	2:15 155:3
110 9:9	63:13 121:12 122:8	2019 67:10 83:16	2:18 1:11
1100 4:18	166:16	167:4 168:16,22	2:40 155:4
115 9:11	1820 122:10	202 4:8,20 6:9	3
116 9:13	1827 122:11	2020 1:18 8:13,15	3 8:15 32:18,20
117 9:15	1828 123:6	9:8 22:17 35:4 38:9	33:3 95:20 105:4
11:54 118:5	19 62:1 131:21,22	39:22 46:11 51:9	111:7 112:6,18
12 9:15 65:1 116:22	136:7	54:16 56:5,14	113:10,21 114:16
117:3,8	1985 121:12 122:8	58:22 59:3 63:4,8	114:17 155:17
12/22/17 9:8	1998 13:16,18	63:17 64:11 84:21	172:18
122 9:19	1:23 118:6	85:13 88:16 90:9	3/1/18 10:4
12th 6:18	1st 19:10 126:21,21	91:11,14 123:2	3/26/18 8:17
13 9:19 121:22		126:10 127:2	30 1:15 82:19
122:2 130:18		133:12,21 135:22	154:11 180:2 181:6
		136:3 137:2 138:1	181:7

300152 3:7	5-30 181:6	90 150:11	163:9 175:19 176:1
302 3:16	5/22/12 9:4	93 9:4	176:8
304 105:21 109:22 110:3,4	50 45:15 48:5 74:17	94 47:9	accurately 151:10
31st 51:7,9 164:16	501 3:6	94171 47:6 137:15	achieved 139:7
32 8:15	510 6:20	94607 6:19	acquire 65:6,9 69:3
334 3:9	514-3374 4:20	95 21:1	80:14,19 102:2
35216 180:22	53.9 64:2	9:00 1:19	135:17 141:17
355-9400 3:18	5th 1:8	a	172:12,19 174:1
35805 3:17	6	a.m. 1:19 52:19,20	acquired 71:7,21
36130-0152 3:8	6 1:15 9:3 66:1,2,6	118:5	74:4 100:1 141:16
38 138:19	67:5 72:1 73:12	able 21:11 26:12	168:10 172:12
3846101 1:20 181:1	74:10 80:1 90:5	28:12,13 30:6	acquires 87:13
39 140:21 146:8	93:7 112:3,10,21	34:21 35:8,10	acquiring 68:17
3:13 176:16	113:3,21 114:3,12	36:15 37:13 38:11	71:15 79:17 104:7
3:31 176:17	114:14,16,17 115:2	40:1 69:20 84:22	104:15 107:20
3:33 178:1	115:3 154:11 172:5	85:14,19 86:15	132:16 144:1 158:2
4	172:10,22 180:2	91:14 108:8 112:1	171:22
4 8:18 44:16,17	60 69:14	130:22 133:20	acquisitions 106:8
110:9,10 113:17	61 8:21	141:20 148:13	107:3 108:15
115:3 137:8 143:17	6315 94:12	150:1 158:20	act 106:14
155:8	66 9:3	168:10,20	acting 142:10
4,779,000 19:19	66.4 64:1	abowd 8:21 10:6	action 1:10 164:19
4,779,736 19:6	663-8324 6:9	62:2 73:11,11	165:12 179:12
40 97:7 161:3	67 148:16 153:19	87:14,21 105:19	activities 121:2
400 6:7	154:3	138:9 147:10	actual 28:20
41 97:7	7	154:10 160:6	add 50:12,15
410 6:18	7 9:4 32:16 93:17	acceding 83:13	151:22
416-6225 5:19	8	acceptable 90:22	added 50:19
42 152:2	8 9:6 61:12,15 81:7	access 111:13	adding 152:1
435 45:13	105:11,22 108:13	129:22 155:14	addition 17:20
44 8:18	110:4 130:12	168:19 169:9	70:21 71:12 143:10
46 67:21 68:5,11	8/29/18 10:6	accomplish 174:14	additional 65:6,11
69:5	836-4200 6:20	accomplished	102:20 128:14
5	9	148:19	130:3 133:5,6
5 8:21 61:18 62:1	9 9:9 110:12,15	account 89:9,12	134:10 135:17
74:13 81:6 83:22	112:5,17 138:6	100:7	141:17 152:1,2
114:6 121:6 130:16	146:2	accuracy 152:14,17	174:13 175:3,7
158:12	9/18/85 9:21	152:22 153:10	177:5,7 181:9
		accurate 37:20	address 20:16
		38:16 43:16,20	31:21 32:10,12
		44:1 143:8 153:4	42:22 43:1,4 54:12

69:13,14,22 92:18 99:6 127:15 165:8 addressed 25:22 31:17,22 122:17 addresses 20:16,20 25:21 69:15,16 71:17 administration 25:11 31:4 35:7 70:18 71:9 101:16 101:18,22 106:5 114:14 117:12 132:6,15 134:12 139:8,11,15 administrative 8:11 9:15 23:2,8,10 24:7,13,15,22 25:1 25:6 26:16 27:7,13 28:9,14,21 29:3,13 29:15 30:3,21 33:12 34:22 35:6 35:11 37:11,14 38:8,10 39:3,14 44:9 57:20 60:3,8 60:10 61:4 63:3,8 63:16 65:2,9 66:13 68:18 71:7,14 74:3 74:7 76:20 77:1 78:2,12 79:18 80:21 81:14 82:8 82:11,13 83:9,19 84:16 85:1,7,11,14 85:19 86:16 87:12 88:18 89:1,6,14,15 90:5 91:16 92:2,16 96:15 100:1,5,11 100:13 102:2,16 103:22 104:8,9,16 107:20 117:9 130:21 131:4,6,9 132:4 133:10,22	134:10,22 135:11 135:17 136:4,20 139:19 140:6,10,14 141:17 143:6 144:2 144:22 145:9 155:11 156:20 157:18 158:3,17 165:7 168:5,9 169:1,7 170:19 171:10,11 172:1 173:8 174:13 175:3 176:7 administrator 27:21 28:1 admission 114:1 adrec 83:1 advertising 120:6,7 121:3 affiliated 46:3,8,22 47:3,8 48:16 49:3 50:18 51:19 169:19 african 41:4 152:3 161:3 ag.ny.gov 5:20 age 13:9 17:19 26:16 28:4 29:16 35:8 37:5 56:8,12 56:19 57:3,10,18 57:22 58:6,12,16 58:19 59:2,5 60:14 60:22 69:21 94:18 96:12,12 97:4,5,6 97:15 98:18 118:17 132:11 133:11,21 135:1 143:8 151:3 152:2,3 161:2,3 162:4 163:21 164:5 168:4 169:2 170:4 170:5,10,12,14 agencies 48:18,20 49:1,4,5,12,14	50:13 66:14 76:22 76:22 77:9 79:5 80:12,18 111:11,15 123:19,22 124:11 125:1 155:12 156:1 156:4 171:15 173:4 agency 49:7 67:7 69:7 74:13 77:15 78:3,3,12,14,20 92:4 103:10,10 132:17 143:6 agency's 89:14 aggregate 153:5,10 ago 12:5,6 106:2 117:17 agree 20:2 38:19 43:17 44:2 45:11 agreed 152:10 156:8 agreement 9:12,13 9:14 67:8 116:19 157:8 167:7 agreements 80:13 173:10,15 agrees 173:6 ahead 65:21 93:15 101:12 111:2 al 1:12,20 147:12 180:22 ala 181:6 alabama 1:2,5 3:2 3:8,17 11:15 18:20 19:5,19,21 49:18 49:21 50:8,10,12 50:14 54:15,16 103:9,9,13 126:22 128:6 alabama's 1:7 50:15 alabamaag.gov 3:10,11	alaskan 18:2 118:21,22 119:3 aleks 92:9 alexander 4:15 180:1 alexander.v.sver... 4:21 aliens 122:14,18 allow 28:20 77:22 99:10 133:11 135:5 154:22 allowed 77:14 84:2 altered 150:21 151:2 alternative 9:6 81:13,16 131:4 132:1,22 133:3,7 136:9,11 138:20 alternatives 62:22 amanda 5:14 amanda.meyer 5:20 america 46:13 179:1 american 18:2 41:4 58:14,20 118:21 152:3 161:3 americans 48:16 analyses 17:18 18:9 analyst 13:14 ancestry 13:15 andrea 4:4 annually 58:13 answer 40:16 59:17 59:20 60:5 77:7 78:8,22 79:7 86:8 86:11,12 90:20 92:5,8 101:12 108:8,11 124:19 125:6,11 130:19 131:18 133:17
--	--	---	--

Freedom Court Reporting
A Veritext Company

130:17 146:1,5 161:21 163:17 173:2 174:10 176:13 180:3 background 9:3 13:20 65:18,18 84:7 based 55:13 56:10 58:13,14,17,20 59:2,6 96:12 124:16,17 126:4 133:17 150:4 152:5 163:11 basic 85:5 basically 30:8,16 basis 123:4,4 136:12 152:8 164:21 174:17 bates 62:2 63:20 64:22 82:18 94:12 111:4 122:9,11 130:17 138:19 146:8 155:9 battle 2:2 8:2,9 9:2 10:2 11:3,11,12 14:11,21 15:4 16:13 20:9 24:1,4 30:11 32:16,20 33:3,17 41:16 42:15 44:13,17,21 52:17,22 61:13,18 62:6 63:20 66:2,6 72:20 75:11,17 78:1 81:8 82:20 84:14 88:6 90:14 93:6,8,17 99:14 101:4 102:11 104:17 105:3,11,15 106:15 109:7 110:12,18 111:20 114:14 115:17,20	116:13,22 118:11 121:5 122:2,5 130:11 132:21 138:6,11,12,16 143:16 144:21 146:1 147:3,14 148:11,22 154:19 155:2,6,22 157:11 157:16 160:11,22 161:21 163:20 166:8,12,19 167:1 168:2 169:12 172:4 174:10,21 175:10 176:20 177:17 178:2 180:2 battle's 166:18 bears 163:14 becoming 13:4 bed 27:10 began 67:12 beginning 74:5 begins 66:12 67:15 95:20 122:14 138:18 148:18 behalf 2:10 3:2,14 4:2,12 5:13 6:2,13 15:15 16:7 75:5 167:15 believe 33:4 37:19 42:21 43:11 83:8 83:21 88:1 93:9 94:1 104:13,20 169:9 believes 38:15 120:4 142:22 143:7 beneficiary 114:15 114:18 benefit 154:8 161:13 berning 105:19 108:4 109:5 110:6	berning's 108:19 best 26:5 54:4 68:22 87:19 99:15 99:17 100:8,14 101:4 102:7 109:15 110:7 150:2 better 42:11 45:3 62:16 108:8 132:12 biological 35:18 birth 28:4 35:9 69:22 96:11,13 97:4,5,15 140:22 141:1 bishops 125:18 bit 121:18 154:8 black 18:1 26:9 118:20 blank 34:10 block 150:10 151:7 151:9,21,22 153:5 153:7,8 161:2,5,20 162:4,6,10,15 163:1,9 blocks 153:7 blood 179:12 border 113:1,11 born 141:2 bottom 74:13 82:18 109:15 111:5 122:13 130:19 172:10 box 3:7 brad 4:16 brad.rosenberg 4:22 branch 13:8,9,14 13:15 break 12:11 92:22 93:4 115:10 154:20 162:19 166:3 176:12	breather 52:14 brebbia 7:17 brenton 3:4 brenton.smith 3:11 bring 35:4 96:16 97:12 broad 120:10 broken 67:16 brooks 1:6 3:14,15 18:13 brought 65:14 115:10 157:6 bryan 7:13 build 153:9,11 bullet 109:16 112:17 113:10,17 bureau 1:16 4:13 9:20 10:9 12:14 13:18 14:3 15:21 16:4,7,16,21 17:10 17:12 18:18 20:10 20:15 21:5,15,22 22:2,6,9,18 24:11 25:2 27:20 30:20 33:6 37:19 38:4,14 39:4,19 40:2,10,17 41:9,18 42:2,16,20 43:4,15,19,22 44:4 45:9 46:12 47:13 48:10,15,18 49:1,3 49:20 50:22 51:4 53:1,7 54:13,18 56:4,7 57:1,13,17 58:5,9,11,18 59:1,9 59:12 60:7,14,18 61:3 63:7,11,15 65:4 66:9,13 68:17 70:14 72:4,13 73:3 73:7 74:8 75:5,18 76:2,4,21 77:16 78:1,11 79:5,13,17
---	---	--	---

80:10,22 81:4 82:4 85:5,15 86:15,19 87:7,11,12 88:4 90:2,8,15 91:5 95:2 97:16 98:12 99:4,5 99:10,21 100:5,15 101:4,10 102:17 103:4,8,21 104:7 106:6,22 107:11 109:2 116:2,19 117:10 119:2,9,13 119:19 120:3,6,7 120:12,20 122:6 123:2,12,18 124:11 124:22 125:13,16 126:5 127:2,16 128:5,12,14,16 129:8,13,22 130:4 131:8,22 132:3,5 133:4,9,20 134:9 134:21 135:2,8,9 135:17,21 136:2,10 136:18,22 137:5,7 137:17,21 141:6,16 141:19 142:10,11 143:12,20 144:3,5 144:9,11,15,19,22 145:3,8,12,20 146:11,15 149:9,20 150:9,17 151:13 152:11 153:2 156:19 157:17 158:2,4,17 159:1,4 159:11,13,17 160:1 160:5 161:1 162:9 164:10,14,17 165:10,19,21 167:4 167:15 168:2,8,12 168:19 169:1,6,13 169:16 170:3,13,18 170:22 171:5,9,20	171:22 173:7,10,13 173:16,22 174:1,11 174:14,21 175:6,11 175:22 176:6 bureau's 44:21 76:14 151:19 157:22 175:18 business 36:4 97:19 98:4,14,21 99:5 businesses 82:6 c c 3:1 4:1 5:1 6:1 7:1 8:1 11:1 63:2 81:13 81:16 83:1 84:14 131:4 132:1,22 133:3 136:9,11 138:20 calculate 96:12 97:5 california 6:3,14,19 50:9 call 74:12 103:9 142:7 called 11:4 20:15 22:7 29:22 30:7 36:13,19 45:21 48:16 56:8 70:22 104:13 120:13 141:7 149:10 calls 41:12 53:8 77:5 85:3 89:4 100:19 106:16 112:6,18 119:16 120:22 129:20 131:16 136:16 140:17 141:10 142:3,9 144:16,17 145:5,15 150:15 153:16 156:11 162:16 175:20	campaign 120:7 camps 123:9 cannon 5:4 cantwell 9:5 42:14 capacity 75:6 care 161:18 case 12:7,8 29:12 30:20 43:21 105:8 129:18 130:3 139:4 145:1 cases 175:14 categories 102:15 146:12,17,20 147:1 155:11 category 93:22 94:1 101:9 catholic 125:18 caucasian 162:4 cell 27:9 census 1:16 4:13 8:13,15 9:8,16,20 10:9 12:14 13:17 14:4 15:21 16:3,7 16:14,16,16,20 17:4,10,11,12,20 17:22 18:4,18 19:2 19:4,9,10,11 20:6,7 20:11,15 21:3,5,12 21:21 22:2,6,8,17 22:17 24:11 25:2,9 25:13 27:8,20 30:20 33:6,19 35:1 35:3 36:11 37:19 37:20 38:4,9,14,16 39:1,19,22 40:2,10 40:17 41:9 42:2,16 42:20 43:4,6,14,15 43:16,19,21 44:1,4 45:9 46:1,11,11,18 46:19 47:2,12 48:10,15,17,22	49:3,20 50:22 51:4 51:6,7,18 53:1,7 54:13,18 55:18 56:2,5,7,10,14,15 57:1,6,13,17 58:5,9 58:11,14,17,18,22 59:1,3,7,12 60:7,9 60:14,18,21 61:3 63:4,7,8,11,15,22 64:5,7,12,15 65:4 66:9,13 68:17 70:14 72:3,13 73:3 73:6 74:8 75:5,18 76:2,4,14,21 77:16 78:1,4,10 79:4,13 79:17 80:10,17,22 81:4 82:4,5,6,9,12 84:21 85:5,13,15 85:21 86:15,19 87:7,11,12 88:4,16 90:2,8,14 91:5 94:15,20,22 95:2,3 95:10,11,15,22 97:16 98:12 99:5 99:21 100:5,15 101:10 102:17 103:4,8,21 104:7 106:4,22 107:11 109:2 116:2,19 117:9 118:13,16 119:2,2,4,5,9,10,11 119:13,19 120:3,6 120:7,10,12,18,19 122:6 123:1,2,12 123:12,18 124:1,11 124:13,22 125:3,4 125:13,16,20,21 126:5,8,9 127:1,2,6 127:12,16 128:5,12 128:14,16,21 129:6 129:7,9,10,12,13
--	---	--	--

129:16,18,22 130:4 130:8,10,21 131:8 131:22 132:2,5 133:4,9,12,20,21 134:9,21 135:2,8,9 135:17,21 136:2,10 136:18,22 137:2,5 137:7,17,21 141:6 141:16,18,22 142:5 142:10,11,21 143:4 143:9,12,19,20 144:3,5,8,11,14,19 144:22 145:3,8,12 145:20 146:11,15 149:9,13,14,15,20 149:22 150:6,9,10 150:17 151:7,9,13 151:15,19,21,22 152:11 153:2,8,9 156:19 157:17,21 157:22 158:2,4,6 158:16,19,22 159:4 159:10,13,17 160:1 160:5 161:1,1,2,5 161:20 162:4,5,9 162:11,12 163:4,6 163:9 164:3,10,12 164:14,15,17 165:10,18,19,21 167:4,15 168:2,8 168:19 169:1,6,12 169:13,15,15 170:3 170:13,18,21,22 171:5,9,20,22,22 173:7,9,13,15,21 174:1,10,14,21 175:6,11,18,18,22 176:6,8 censuses 81:17 82:3,7,15 119:8	center 72:19,21 cert 180:18 certain 17:13 36:2 55:18 118:19 175:14 certainly 57:8 75:9 176:4 177:8,12,19 certify 179:6,11 181:2 cetera 38:13 55:20 70:2 82:6 122:8,14 141:3 172:17 chance 115:11 change 19:19 163:1 163:6 181:11,13,14 181:16,17,19,20,22 181:23 182:1,3,4,6 182:7,9,10,12,13 182:15 changed 101:20 150:22 151:2 162:6 changes 180:7 181:4,5,7 characteristic 37:3 54:7 94:15 95:6,22 176:6 characteristics 8:14 24:16 28:4,16 29:1,7,10 30:1,5,9 33:14 36:2 37:15 37:22 38:13 39:7 39:15 40:7,12 41:11 42:17 44:11 53:16 54:1 82:10 82:12 98:17 150:5 characterized 18:21 chart 8:11 25:4 72:1 74:10 75:19 76:3 82:19 117:4,8	chat 176:13,14 check 104:19 114:10 123:17 125:9,10 checking 35:5 chief 12:16,16,19 12:22 13:4,5,8,12 42:13 child 35:14,18 129:18 childhood 164:19 165:12 children 17:19,19 41:6 118:17,17 children's 76:8 115:4 chip 115:1 chosen 38:6 circumstance 156:9,19 circumstances 41:18 177:8 citizen 56:8,11,19 57:18 58:6,12,16 58:19 59:2,5 60:16 60:16 65:5,8 66:17 67:3,18 88:20 89:2 100:12,14 101:19 106:10 133:11,21 135:1 139:3,6 143:8 151:8 157:20 158:8,12,13 159:3 164:4 168:4 169:2 170:4,11,15,15 171:16 172:9 citizens 51:15,20 51:20,22,22,22 52:1,6 56:5,16,20 56:22 57:2,14 131:1 140:2,21 141:1 150:11,12	152:2,3 161:3,3,4 162:4 169:22 170:5 170:10 171:1 172:15 174:12 175:2 citizenship 9:7,18 52:8 56:12 57:21 58:3 60:20 61:10 62:13,13 63:3,7,16 65:3,7 68:1,2 70:1 71:10 78:13 83:10 85:1,6,8,12,16,21 89:5,7,9,16,20,22 92:1,16 99:4,11,15 99:17,18 100:4,8 100:15 101:5,15,20 102:8 111:10 112:7 116:21 131:1,6,10 131:11 132:4,11,16 133:8 134:14,19 135:19 137:2 139:18 140:9,14 141:8 156:10 157:18 158:5,18 159:2 160:12 165:8 169:8 170:8,20 171:7 city 6:3 civil 1:10 6:6 181:6 civilian 46:4 claims 163:15 clara 6:14 clarification 154:8 clear 75:8 88:6 93:19 126:13 145:10 146:18 clearly 75:13 clergy 125:17 clinton 3:16 close 77:4 79:2,3 166:5 176:22
--	---	--	---

closed 77:16 clue 32:7 cms 109:13,16 114:22 code 181:6 cognitively 27:10 colleagues 176:12 collect 21:11,13 22:10,14 23:6 27:6 107:15 127:9 collected 33:20 95:14 128:9 133:6 162:11 collecting 36:10 40:18 61:3,9 83:19 95:13 collection 81:15 college 27:3 collision 147:12 coloring 148:12 columbia 2:10 47:22 48:3 179:3,5 column 25:5 columns 28:7,8,17 combination 60:8 89:7 combine 85:6 come 20:5 24:19 27:7 36:14 88:1 118:1 128:21 149:12,13 163:17 comes 47:1 54:7 59:8 101:16 coming 151:14 commerce 1:12 2:4 4:12 5:5 11:16,20 15:16,22 16:4 79:4 111:9,17 122:10 147:13 157:9 159:14 167:7	commission 179:21 182:23 committee 6:6 communities 126:7 community 58:15 58:20 compare 70:7 71:15 complete 38:21 43:20 69:12,16 70:2 90:9,9 176:1 completed 74:1 130:9 142:11 180:18 comply 69:1 79:18 144:3,9,11 173:9 component 46:2 126:5 components 18:16 31:20 45:20 composition 25:14 compound 16:11 18:8,22 20:3 21:19 27:19 32:9 38:2 48:1 54:17 62:18 87:10 89:3 90:7 91:13 98:16 99:8 102:19 103:15 111:18 126:12 128:18 129:11 137:4,11 151:12 153:1 157:3 161:7 175:5 concept 54:18,19 concern 83:18 121:19 concerning 148:22 164:18 concerns 121:12 133:14 161:7	concluded 136:20 178:3 conclusion 119:17 121:1 129:21 144:17 156:12 175:21 conduct 95:12 98:4 175:22 conducted 94:22 conducts 82:4,5 conference 18:12 125:18 confident 130:21 131:4,9 132:1 136:8,11 confirm 108:20 conflicting 92:1,15 101:6 congressional 1:8 8:18 congressman 3:15 18:13 conjunction 134:12 140:6 connect 70:7 consent 177:12 consider 62:22 77:16 consideration 59:10 consistent 111:13 155:13 consisting 67:22 constitution 2:5 5:7 consult 42:4 cont'd 4:1 5:1 6:1 7:1 contact 22:2,3 49:2 80:9,10 contacts 22:4 80:11	contain 45:20 68:11 140:14 171:11,15 contained 98:6 contains 20:16 25:11 70:22 73:4 136:8 continually 44:4 continue 39:19 65:20 78:5 80:18 134:17 135:3 139:16 168:8 continuing 90:12 conversations 123:17 124:10 136:19 convinced 60:4 copies 180:13 copy 110:16 177:3 core 54:18 55:13 corelogic 26:9 correct 11:17,21 16:1,14,22 19:13 19:16 20:11 21:18 21:20 24:10 31:8 39:7 46:13 47:17 47:18 48:7 51:1,13 52:9 55:3,8 57:10 58:20 64:9,10 66:18 67:19 73:20 75:21,22 80:1 82:16 85:2 101:7 104:20 106:6 111:17 119:4,15 130:5 138:3 139:19 163:22 170:10 173:18 corrections 180:7 181:9 correctly 29:17 32:5 50:2 62:20
---	--	--	---

67:10 81:19 87:5 89:17 95:6 101:3 104:22 105:1 119:1 140:11 163:10 170:9 correspondence 14:15 counsel 5:6 11:6 15:13,18 16:10 23:13 65:14 74:21 77:2,13,22 78:16 83:3 121:8 154:7 154:18 155:15 176:20 177:7 counsel's 115:6 count 18:19,20 28:18 29:2,4,8,11 33:13 37:7,9,18,18 43:20 46:3,12,15 47:19,21 48:11,14 49:8 50:6,8,11,18 50:21 51:14 55:7,9 55:15 56:1,4,15 57:2,9 60:13 62:14 95:3,4 118:16 119:3,6,14,20 120:5,8,17,21 122:17 127:2,16 128:5 143:8 161:14 161:20 169:14,17 169:18,22 170:14 170:22 171:5 174:11 175:1 176:1 counted 17:14,16 17:20,22 18:6,11 18:15 19:12 38:22 43:8 55:2,19 57:6 60:20 85:20 118:20 119:15 129:19 158:12 159:2 170:20 171:16,17	counties 153:9 counting 130:5 country 17:9 21:5 counts 17:3,8 18:4 19:3,15 20:5 45:18 45:19 46:10,20 48:2 49:6,13 51:5 51:16 118:13 149:13 161:1 162:10 county 6:3,13 couple 96:19 106:2 115:7 117:16 129:16 course 43:2,21 44:7 58:11 69:22 123:11 141:18 177:4 court 1:1 105:10 180:16 coverage 17:10 94:16,20 95:1,2,10 95:11 119:10 covered 69:9 86:6 create 33:21 153:8 159:11 created 66:9 crest 180:21 criteria 55:13 cures 60:5 current 102:4 163:3 currently 58:6,13 106:3 curtail 125:2 curtailing 123:22 curtailment 124:12 customs 112:19 113:1,11 cv 1:11 cvap 63:12 90:12 134:15 135:20	136:5 137:6,8,12 137:17,22 149:7,12 151:6,20 152:14 159:11 164:7,8,11 164:15 170:7 d d 11:1 83:1 84:14 d.c. 1:17 2:6 4:7,19 5:8 6:8 dash 137:9,14 data 9:7,16 13:14 16:20 21:13 22:11 22:14 24:12 25:5,8 25:8,11,15,18,19 26:4,5,6,15 27:5 28:14 30:22 31:2,3 31:3,20 33:19,22 34:21 35:8,15 36:10,17,20 47:1,5 47:6,7,12,15 48:3 56:10,18 58:2,7,19 59:6,14 60:3,9 61:1 61:10 63:12 65:1,2 65:7,9 66:16,20 67:2,15,18 68:8,11 68:20,21,21,22 69:3,6,7,12,17 70:2 70:20,20 71:14,21 72:4 73:14,14,15 73:17,18,20,22 74:5,7,18,19 75:17 75:20 76:1,5,7,10 76:21 77:1 78:2,13 80:13,19,21 81:14 81:15 82:8 83:9 86:16 87:16 88:12 90:4,4,10 91:4,7,11 95:18 96:8,8,20 97:1,9,11 99:13 101:15,17 102:14 102:15 103:2,7	106:3,10,14,14,19 107:1,12 109:3,3 109:19,21 111:10 111:11 112:12,13 112:22 113:1,3,12 114:2,4,8,10 116:5 116:20 117:11,17 127:9 128:8 130:22 131:5,6,9,11 132:4 132:6,7,10,15 133:6,10,22,22 134:11,13,13,16,17 134:19 135:1,1,3,6 135:20 136:4,6 137:8,9,13,18 139:14,19 140:5 141:7,8,18 142:22 143:6 144:22 145:3 145:13 149:1,7,14 149:19 150:19,20 151:7,14,20 152:15 153:4,5,10 156:5,7 156:10,13,21 157:18 160:9 162:10,11 164:7,11 164:15 165:3,7 168:4,20 169:1,3,7 169:9 170:5,12 171:10,12,14 172:11,20,21 173:8 174:2,13 175:3 database 68:4,5 70:4,6,12,13,19 71:5 72:14 109:14 databases 70:8 88:17 date 19:6,9 20:8 28:4 35:8 55:2 69:22 80:4 96:11 96:13 97:4,5,15 121:11 126:9,10,11
--	--	--	---

127:12 133:15,15 133:19 134:2 136:10 139:3 180:3 dated 8:17,22 9:4,8 9:20 10:3,6 105:18 122:8 131:21 136:7 dates 133:15 davis 3:3 8:4 11:7 11:12 14:19 15:1,6 16:1,2 20:1 23:21 24:3 31:11 32:18 33:1 38:18 41:14 44:15,19 48:13 50:1 51:11 52:12 52:16,21 59:21 61:15,17,22 62:4 65:20 66:4 72:7 75:1,8,16 77:12,20 78:9,18 79:9 83:8 84:1,10,13 86:10 86:14 87:4 91:1 92:9,13 93:2,15 94:6,10 100:21 101:1 103:16 105:5 105:13 106:18 107:7 110:14,21 111:3 115:15,19 116:15 117:2,21 118:4,10 121:15,22 122:4 124:9,21 131:19,20 133:18 134:3 138:14 142:5 142:14,20 143:14 145:18 146:10 147:21 148:5,10 152:13,19,20 154:13,18 155:2,5 155:17,21 156:17 157:1 161:17 162:18 163:17,19 165:1,6 166:3,5,6	166:10,11,21 167:17 174:5,9,20 176:11,18 177:15 177:19,22 day 46:1 51:6 55:18 56:2 124:13 127:7 127:12 129:7,10,18 133:9 179:16 182:19 days 124:1 125:3 deadline 90:3 deal 24:20 45:7 decades 38:5 81:18 deceased 129:10 december 51:7,9 67:9 83:16 105:18 167:4 decennial 17:11,20 17:22 19:2,9 20:6 20:10 21:3,12 36:10 39:1 42:8 43:6,14 46:18,19 47:2 51:18 56:10 57:6 58:14,17 59:7 60:8,21 94:22 95:3 95:15 118:15 119:10,11 120:10 120:17 123:12 126:8 130:8 149:14 149:15 150:6 151:14 162:11 163:4 164:3 169:15 170:21 171:6,22 decide 115:12 121:17 decided 159:1 decision 91:10,22 92:12,14 101:11 124:22 125:17 136:22 145:3,11,17 149:5 159:5,7	165:2,10,15 168:21 174:22 decisions 87:20 91:3 145:21 deck 30:7 35:22 36:7,8,13,16,19 37:4,6,16 39:5 42:16 52:22 53:2 53:10,16 54:8 88:13 175:15 declined 76:12 145:2,13 deeds 26:11 deeper 69:10 defendant 4:2 5:13 6:2,13 defendants 1:13 4:12 defer 173:2 deferred 164:19 165:12 definitely 32:10 degree 13:22 deleted 43:2 deliberate 101:11 deliberation 78:21 deliberations 92:4 134:1,6 136:17,18 142:7,12 143:12 156:13 161:8 deliberative 59:19 77:6 86:7 90:19 100:20 124:17 125:5 131:15 133:17 136:13 141:11 142:3,13 145:15 156:15 161:9 164:22 174:18 deliver 25:21 49:12 51:4	demographic 28:3 department 1:11 2:4 4:12,17 5:5 11:16,20 15:15,21 49:15,18,19 50:3 63:1 66:22 67:7,9 67:12 68:9 73:13 75:12 78:4 79:4 88:4 90:16 98:12 103:5,12 108:16 111:9,16,21 112:6 112:18 113:10,18 113:18,22 114:7,11 114:22 116:3,20 117:13 122:10 141:22 142:6,21 143:5,19 147:13 154:16 157:9,10 159:13 165:18 167:2,7,8,12,16 172:13,18 department's 75:14 departments 66:10 144:1 departure 73:15 112:22 113:12,15 deployed 49:8 deponent 180:2,6,7 180:10,16 deponent's 180:6 182:18 deposition 1:15 2:2 8:10 10:5 11:21 12:1 14:13 15:3,13 15:16,20 16:8 23:14 118:11 124:20 147:8,9,10 148:15,17 154:11 166:18 167:14 178:2 179:7 180:6
---	---	---	--

181:8 deputy 125:12 describe 28:8 33:5 41:17 88:7 150:2 described 47:17 139:17 153:13 161:15 163:20 describing 154:1 description 141:4 157:13 designated 148:14 154:9 desire 181:7 detailed 40:15 41:20 42:1 details 54:9 77:9 141:14 150:21 151:1 determination 68:16 72:3,8,10,15 74:1 87:1,6 91:10 91:21 92:10,11 107:21 134:18 175:7 determinations 91:4 determine 22:20 26:13,16 28:11,15 29:3,19 31:13 32:2 32:13 37:11 39:13 40:11 42:20 48:10 54:4 55:21 57:13 60:15,19 62:13 68:20 85:8,11,21 86:1 87:14 89:7,9 89:12,22 90:10 91:15 96:9 99:11 100:8,16 102:7 130:22 135:19 149:21 158:5 160:16 173:5	174:22 determined 43:22 59:12,17 60:1,2,11 61:8 72:4 80:22 90:15 92:19 99:10 137:5,7 149:9 151:13 156:19 174:11 determining 58:15 72:13 90:3 170:19 develop 44:5 51:17 56:7 57:19 58:6 87:17 90:12 99:5 100:6 120:16 134:14,19 136:5 158:18 160:8 developed 99:10 133:7 135:4 developing 30:17 42:5 60:18 61:1 69:7 84:19 98:13 99:4,15 135:18 development 117:14 147:2 160:7 170:3 develops 120:7 device 21:11 dhs 10:7 73:17 113:5 117:15 diagram 85:18 diana 4:2 differ 46:16 difference 88:7 96:3,6 153:12 different 18:16 20:21,22 30:22 33:11 48:18 53:5,5 62:12 63:18 67:16 71:13 78:17 85:7 89:20 92:2,16 97:10,14 100:3,4	110:2 111:22 126:6 148:14,14 150:13 155:10 158:22 162:15,20 167:5 175:11 176:2 differential 149:11 151:15,18 153:3 154:4 differing 71:16 difficult 120:4 difficulties 177:2 dig 69:10 direct 77:13 124:18 125:6 131:17 133:16 134:7 136:15 141:13 142:17 143:12,19 155:16 163:13 164:20 directed 83:20 120:8 143:21 directly 88:22 101:2 director 9:19 122:6 122:17 123:21 125:12 directorate 72:18 73:1,3 104:13 107:19 disagree 122:16 disclosure 162:12 163:3 discover 143:11 discuss 144:1 discussed 33:18 102:11,13 112:14 123:21 175:10 discussing 14:12 33:6,16 62:12 discussion 65:5 103:6 174:7	discussions 15:12 15:17 16:9 65:8 distinction 109:6 district 1:1,2,8 2:10 47:22 48:3 151:22 179:3,5 districts 151:21 diverse 41:6 dividing 45:13 division 1:3 12:13 12:16,17,19,21 13:4,5,12 42:9,11 42:13 54:3 72:12 73:3 98:12,18,19 99:1,2 104:5,13,14 divisions 73:5 doc.gov 5:9,10 doctor 11:13 document 8:18 9:6 32:16 33:2,4 42:2 44:14 45:4 61:11 65:16,22 66:5,7 67:5 81:7 83:21 84:7 93:7,8,10,14 93:20 94:4 105:4 107:2 110:10 115:22 116:1 121:6 121:10,13 124:5,5 124:6,7 130:12 138:6,15 143:15 146:2 147:4,17 154:9 157:5,11 166:14,15,17,22 167:6,12,18,21 172:4 173:15 documents 9:9 14:12 23:13,14 65:14 106:12 111:14,22 115:9 155:18 177:1,1,5
---	--	---	---

doing 22:20 54:19 71:11 95:13 don 7:15 donate 36:3 39:6 40:11 41:11 donated 54:2,5 donating 30:9 door 23:6 41:2,3 doors 22:10 dorian 6:5 dormitories 27:4 123:14 double 104:19 doubt 105:6 164:10 dr 10:5 73:11 87:14 87:20 147:10 154:10 draw 151:21 drive 180:21 driver's 74:17 75:20 76:13 102:14 103:1,11 106:19 107:1 driving 55:1 dspace 6:10 due 180:3 duly 11:4 179:8	economic 72:19,21 81:17 82:3,7,14 99:1 104:12,14,18 107:19 edit 30:1,1 34:1 editing 33:18 95:21 96:3,6,13,17 97:9 98:5,21 edmund 7:11 educate 42:3 education 13:20 effect 135:10 152:22 efficiently 154:21 effort 34:20 123:1 173:8 efforts 57:19 119:20 120:2,19,20 122:17 131:17 136:21 141:6,14 144:21 175:17,18 either 21:2 74:4 172:8,11 electronically 180:8 element 71:18 eligible 53:2 71:3 email 180:18 employed 13:17 14:3 49:18 employees 46:4 48:21 49:11,13 50:5,7,8 159:16 employing 22:18 employment 14:3 empty 40:22 encourage 120:10 energy 122:7 enforcement 103:10 112:19 123:18,22 124:1,11	124:12 125:1,2 engaged 128:14 enrolled 109:19,22 enrollment 25:8 26:6 109:3,3,14,17 ensure 43:7,10 109:5 124:1,13,14 125:3 149:1 entails 48:17 enter 173:14 entered 173:20 181:8 entering 173:10 enumerate 21:6,7,9 23:9,11 24:17,22 27:2,16 54:14,20 enumerated 19:2 20:7 46:21 51:18 63:17 150:18 158:6 162:9 163:5 164:3 enumerating 123:8 enumeration 20:21 26:19 28:10,17,21 54:19 123:13 171:6 175:12 enumerator 21:10 24:9 28:13 40:2,4 175:13 enumerators 22:9 22:13 39:4 equals 46:9 50:20 equation 30:17 errata 180:3,7,8,10 180:12,13,15,18 181:1 esq 180:1 esquire 3:3,4 4:4 4:15,16 5:3,4,14 6:5,16,16 7:5,6,7 establish 143:21	established 79:14 establishes 49:1 estimate 18:21 estimates 19:3 146:19,22 149:12 et 1:12 38:13 55:19 70:2 82:6 122:7,14 141:3 147:12 172:17 ethnic 17:21 118:19 ethnicity 13:15 26:5,17 28:5 34:13 37:5 53:21 56:9,20 57:18 109:16 evaluate 68:20 69:17 87:16 135:3 158:3 168:20 evaluated 134:11 evaluating 87:11 99:22 134:17 135:6 141:18 168:9 evaluation 9:17 74:6 134:18 evaluations 90:10 evidence 19:8 38:2 52:4 68:7 87:3 96:5 98:1 99:20 107:6 158:15 160:4 165:5 165:14 167:10 168:7 175:5 exact 45:1 57:17 exactly 19:20 31:19 41:20 59:8 61:9 86:20 106:21 148:5 173:15 examination 8:3 11:6 examine 40:15 41:19,22 111:11 155:12
e			
e 3:1,1 4:1,1,4 5:1,1 6:1,1 7:1,1 8:1,8 9:1 10:1 11:1,1 83:1 84:14 181:6,7 e.g. 131:1 earlier 37:8 39:12 112:14 116:8 126:4 127:10 175:10 early 9:17 118:11 127:9 128:2 easier 41:17 easily 14:14			

examined 11:5	109:9,10,21 110:4	147:19 155:13	february 179:22
example 18:1,15	110:11,12,15 112:3	156:12 161:7	federal 46:5 48:18
21:7 27:18 31:16	112:5,10,17,21	167:11	76:22,22 77:15
32:3 34:5,10,14	113:3,21 114:3,11	f	78:2,3,11,14 79:15
37:2 47:21 49:15	114:16,17 115:2,3	face 154:12	143:22 156:1
53:17 60:2 70:5	115:17,21 116:13	facilitate 79:17	169:19
84:2 90:15 96:10	116:17,18,22 117:3	facilities 20:18	federally 46:3,8,22
96:17 97:3 101:13	117:6,8 121:22	55:18	47:2,8 48:16 49:2
101:18 102:3	122:2 130:13,14,16	facility 55:19	50:17 51:19
106:19 118:21	138:11,12 146:3	123:15 180:20	feel 165:7
119:1 120:2 125:18	147:5,14 153:22	fact 63:6 65:22	fha 107:3,11
150:8 151:1,5	157:7 166:16,18,19	78:18 109:19	108:14
176:4	167:1,6,13,19	112:13 129:9 148:7	fields 68:5
excerpt 154:9	172:5,6,10,22	153:4 157:22 162:5	figure 82:20 83:8
excerpts 10:5 147:8	exhibits 10:17	164:11	96:21 176:15
147:9	115:15 147:22	facts 19:8 38:2 52:3	file 20:16 25:10
executed 116:7,11	exist 96:8	68:7 87:2 96:4	35:6,7,7 47:6,11
executive 9:10 66:9	existent 42:22	97:22 99:20 107:5	67:1,17 68:8 69:15
69:1 79:19 83:20	existing 9:15 117:9	158:15 160:4 165:4	70:16,17,21 90:12
88:3 94:11 110:10	expatriates 108:16	165:13 167:10	102:5 112:8,12
110:16,17,22 111:7	expect 135:21	168:7 175:5	113:11 137:9,13
113:9,17 114:6,13	137:22	fails 35:21	159:11 164:7 170:4
114:21 143:16,17	expectation 68:10	fair 75:8 86:10	170:7 180:12
143:18 144:4,9,12	expected 8:12	faith 126:4	filed 32:11 180:15
144:14,19 155:6,8	experimenting	fall 83:10	files 69:4 70:15,16
159:12,15,18 160:2	38:7	falling 77:10	71:21
173:9	expert 160:6	161:15	fill 21:4 28:16 30:4
exhaust 177:9	expires 179:21	falls 93:22 94:1	33:22 34:9,13,17
exhibit 8:9,10,11	182:23	familiar 11:17 15:9	34:21 35:12,20
8:15,18,21 9:2,3,4	explain 41:20	33:2 93:8 105:14	36:15,22 38:13
9:6,9,11,13,15,19	82:22 84:2,11,11	138:15 167:20	40:19 95:18 96:16
10:2,3,5,7 14:15,20	explaining 161:14	familiarity 93:13	97:13 126:20 128:2
14:21 15:3 23:22	explains 49:4	families 26:8 76:9	128:3,10 129:16
24:1 25:3 28:6	explicitly 152:9	106:6	141:7,20 142:1,6
32:18,20 33:3	extended 41:5	family 41:5 130:1	180:7,8
44:15,17 61:18,22	extent 56:21 61:9	far 121:13 124:19	filled 129:9
65:21 66:1,2,6 67:5	83:18 90:20,20	139:17	filling 132:18
72:1 73:12 74:10	92:5 93:22 111:13	farm 123:8	fills 126:17,17
80:1 81:6 82:18	133:14 134:4	feasibility 83:18	129:6
90:5 93:17 105:11	135:14 136:13,16	feasible 168:3	final 58:10,16
105:22 108:13	141:11 145:14,15		59:13 60:1 61:6

86:22 87:6,8 91:21 101:10 107:21 134:18 137:6 158:16 159:10 160:10 164:7 168:21 170:6 finalize 137:21 158:4 finalized 58:1,9 61:3 67:8 86:20 158:19 160:15,20 164:8 170:7 finalizing 57:17 find 14:14 49:12 97:12 125:11 148:11 fine 77:8 92:7 167:22 first 11:4,12 24:20 28:8,22 29:9 34:6 38:11 42:4 45:11 45:11,12,20 46:19 48:19 55:14 60:13 66:7 68:19 69:2 80:1 81:19 82:2 84:14 87:15 94:14 95:20 109:1,16 112:6 115:20 121:11,16 122:9 138:10 147:5 152:6 157:16,22 162:2 fitness 68:15 72:2 72:14 73:22 five 12:3,19 17:19 118:17 130:15 140:19 fives 97:7 flag 84:6 flagging 121:19 148:9	focus 26:3 38:9 focused 61:6 121:3 focusing 63:13 folks 118:7 follow 22:8,15,19 22:21 24:14 26:3 27:1 28:9 30:22 33:10,11 39:11 128:22 following 15:12 19:11 111:14 122:15 155:12,14 181:5 follows 11:5 95:21 130:20 form 21:12 34:17 34:20 43:18 45:1 63:22,22 64:2,8,8 88:11,15 126:17,20 127:17 128:1,2,9 128:10,21 129:6,9 129:12,16 137:19 138:2 148:12 174:17 175:13 181:7,9 formal 80:16 format 57:17 105:8 137:22 138:4 170:6 former 122:16 123:21 forms 64:3 forth 80:17 179:8 forward 35:4 133:3 180:12 foundation 123:4 124:4 foundational 63:14 four 29:14 102:14 140:19 fourth 80:15	free 155:7 frequently 8:19 44:20 fresh 36:21 fulfilled 113:13 full 80:16 95:20 fully 36:11,12 functioning 27:11 functions 131:12 fundamental 95:21 furnish 181:9 further 15:17 29:18,20 43:5 54:12 80:6 145:12 176:19 177:21 179:11 fy20 9:12,14	give 23:17 37:2 49:8 50:6 115:11 120:2 121:20 126:1 150:8 160:18 given 12:1 69:4 121:11 131:3 179:10 181:8 glance 29:1 go 21:2,6,8,12 22:7 22:9,13,14 30:11 36:5 41:18,22 49:5 53:11 64:14 65:21 75:2 93:15 95:12 97:18 101:12 109:7 111:1 112:3 141:13 148:4 162:12 176:11 goal 43:15 63:6 71:6 90:2,8 91:9,14 136:3 142:5,21 143:4 164:15 169:6 176:3 goals 141:22 goes 32:1 33:7 175:11 going 14:12 23:17 27:8 35:5 39:17 52:12,22 57:8 64:11 72:16 76:15 77:2 78:7 83:4 87:13,20 89:8,11 113:9 121:9 122:8 122:12 123:3 124:16 128:5 130:16,18 134:5 135:12 145:12 147:22 148:3,16 149:6 150:12,17 152:4,5,6,7 161:4 161:21 162:5,19 163:11,12 174:11
		g	
		g 11:1 gap 139:9 gaps 97:13 132:8 132:14,18 141:8,19 142:1,6 gather 102:6 gender 29:16 general 3:5 5:6,16 40:16 59:20 60:6,9 77:8 79:1,7 83:9 84:5,7 86:8 89:19 90:21 92:5 93:10 93:12 101:12 115:8 125:7 134:6 136:14 141:12 142:18 147:20 158:9 geographic 153:11 geography 153:5 164:6 georgia 6:4 gerard 7:11 getting 177:9	

gomez 7:16 good 11:8,9 52:13 65:10 93:1 117:21 117:22 118:4 154:19 gotcha 174:4 government 46:5 79:16 governments 102:13,17 104:1 grab 35:20 grandparents 41:5 great 114:20 116:10 greater 125:3 greetings 180:5 groundwork 148:2 group 20:17 26:20 26:22 27:3,6,17 30:18 66:8 72:12 79:14,16,22 87:21 98:11 110:6 123:12 143:22 153:7 groups 118:19 139:17 140:21 153:7,8 guess 160:18	happy 121:20 177:13 hard 21:7 120:8,16 148:12 harder 119:20 head 64:6 103:12 104:3 heading 138:20 157:12 heads 73:9 103:5 health 25:18 114:22 115:4 hear 89:16 118:7 held 2:2 12:18 14:5 128:11 help 23:15 26:13,18 29:3 30:19 31:1,4 32:13 34:8,13,17 34:20 37:11 43:7 44:12 45:2 60:19 61:5 65:16 68:20 79:18,20 89:7,9,22 96:9 100:6 101:13 102:7 120:9 124:14 126:7 134:13,19 136:21 149:4 176:3 helpful 23:18 79:7 132:17 143:1,7 144:2 147:21 169:9 helping 32:1 144:3 176:21 helps 43:10 hereinbefore 179:8 hereunto 179:15 high 131:6,11 132:3,7 159:1 168:3 169:2,7 hispanic 18:1 34:11 34:12 94:18 98:18 151:4	history 117:11 119:5 hold 139:20 holds 163:4 home 27:10,16,18 27:21 46:5 49:11 49:17,21 50:4,5,7,9 50:14 homeland 66:22 67:8,9,13 68:9 70:4 73:13,18 90:16 112:7,18 113:10,18 116:20 157:10 167:2,8,12,16 172:13 homes 27:4 hoover 180:22 hosting 176:20 hot 30:7 35:22 36:7 36:8,13,19 37:3,6 37:16 39:5 42:16 52:22 53:2,10,16 54:8 88:13 175:15 hour 118:3 house 45:14 129:19 household 22:1,4 22:13 23:9,11 24:5 24:8,8,18 25:1,14 26:13 28:15 29:4 29:10,13,15 30:10 31:1,5,6,14,18 32:2 32:7,14 33:14,15 34:22 35:2,13,16 35:19 36:2 37:7,9 37:12,21,22 39:2,5 39:7 40:11,12,22 41:10,11 42:17,18 42:22 43:6 53:2,15 54:4 88:13 96:18 96:19 99:1 128:21 129:17 130:4,7	householder 35:14 53:18 households 24:13 36:14 houses 104:15 housing 20:17 21:1 21:12 22:6,21 23:1 23:4 25:16 28:11 34:3 38:22 39:12 39:13,16,18,20 40:20 43:11 117:13 hud 25:15 huge 38:8 70:19 huh 65:15 95:11 105:20 106:1,9 114:9 121:7 138:7 human 12:8 114:22 hundred 21:16 huntsville 3:17 hypothetical 40:12 77:15 hypothetically 100:10
i			
h 8:8 9:1 10:1 habitable 43:1,4 hand 179:16 handle 96:22 happen 51:3 53:3 69:2 86:18 127:3 128:8 happened 78:19 136:9 happening 80:8 happens 21:21 55:5 97:17			idea 36:17 55:9 60:9 85:5 89:19 120:14 140:5 identifiable 71:6 identification 14:22 24:2 25:10 32:21 44:18 61:19 66:3 70:17 71:1 93:18 105:12 110:13 115:18 116:14 117:1 122:3 138:13 147:15 166:20 identified 11:19 17:13 93:21 94:2 121:10 136:3 147:18 150:4

identifiers 67:22 69:21 71:2 identify 24:13 150:22 166:14,22 immigrant 112:20 immigrants 120:21 124:15 125:4 175:9 immigration 10:8 65:5,8 66:17 67:3 67:18 112:8,19 116:21 124:13 125:2 132:17 147:12 167:3 impact 10:7 impediment 156:21 importance 125:20 important 69:19 152:15 improve 44:6 improved 120:17 improvements 44:8 improves 153:10 imputation 28:18 29:2,8 30:1 33:13 34:1 37:6,9 39:6 40:9 42:16 43:7,10 43:22 44:1 53:1,3 53:16 54:8 88:8,11 88:11,15,20 90:17 94:15 95:6,9,22 96:3 97:11 98:5,21 176:4,6 imputations 175:15 impute 8:13 37:21 53:21 65:3 78:13 82:9,12 85:1,16 89:16 131:10 137:2 156:10 171:15,21 imputed 37:3 94:16 imputing 62:13 88:12 89:11 99:15	include 35:1 45:20 46:19 47:7,15,21 48:3 51:15,20 56:11 70:16 99:11 123:13 169:17 170:4 172:13 included 43:6 45:17 47:3 55:7 140:9 149:16 includes 46:3,20 51:17,21,22 52:5,7 160:6 including 41:5 43:13 income 70:22 incoming 87:16 inconsistencies 96:7 97:2,10 inconsistency 96:22 incorporate 24:12 incorrect 169:3 indian 18:2 25:15 25:18 indians 118:21 indicate 28:7 indicated 79:2 124:7 indicates 23:1 117:5 individual 23:5 34:3,7 35:9 55:22 60:15 80:18 89:21 93:14 100:9 101:19 128:10,22 129:13 140:15 150:4,22 individual's 101:20 150:3 individually 151:8 individuals 24:17 27:2 54:21 68:11	71:3,8,16 85:20 139:3 140:2 146:12 149:8 158:19 infants 76:8 information 10:8 21:11 23:1,7 24:16 25:13,14,17,20 26:4,10,13 28:20 29:10,11 32:1,5,13 34:9,17,18,19 35:3 35:12,20 36:4,12 36:13,15,22 37:1 37:10,13,17,21 38:20,22 39:4,19 39:21 40:1,5,7,13 40:18,20 41:10 43:12 49:11,12 50:17 53:14,18,22 54:5 56:12 57:20 57:21 58:3 61:4,5 63:12,14 64:17 66:15 71:6,10,15 73:15 75:14 76:13 78:5,11,12,15 85:8 88:22 89:5 92:1,15 93:11 95:14 96:16 99:12 100:7,17,19 101:6,9 102:4,4 108:17 109:12,21 111:21 112:22 113:15 115:1 119:12 127:11 128:11,20 129:1 130:1,8 132:16 133:8 134:14 137:22 139:2,18 140:4,7,9,15 141:10,21 142:3 145:15 150:3,18 151:3,4,4 156:2,14 158:20 164:18	165:11 167:3 170:6 171:15 172:2,8,14 172:22 173:6,7,18 175:8 177:9 informs 49:2 infuse 149:11 infusion 149:15 ingested 131:5 132:3 ingesting 104:8,16 134:16 inhabitants 43:8 initial 85:18 90:10 initially 78:3 inject 149:18,19 150:1 162:22 injected 149:7 162:13,15 163:7 injecting 152:16,21 153:13,14 161:21 injection 151:16 instance 28:10 53:7 101:15 instances 27:5 instruct 21:2 59:19 78:8 86:7 92:7 135:16 156:16 174:18 instructing 142:14 instruction 126:1 instructions 128:1 insurance 115:4 intend 57:13 85:15 99:5 144:5,9 169:13 170:13 intended 137:12 154:14 intending 75:13 intends 59:1 78:13 123:2 137:17 144:15,19 169:16
---	---	---	--

Freedom Court Reporting
A Veritext Company

limiting 172:5 line 79:3 83:5 148:18 181:11,14 181:17,20,23 182:1 182:4,7,10,13 lines 18:17 26:11 84:5 link 34:22 70:5 71:13 84:22 85:14 85:19 86:16 linkages 69:21 71:11,20 linked 23:3 83:1,2 85:10 linking 88:17 list 27:18 44:20 48:20,22 93:21 101:18 111:11 114:21 146:5 155:18 listed 15:10,16 16:8 26:20 49:21 74:9 74:18 76:2 80:1 90:5 94:9 101:22 106:11 107:2 108:22 111:22 139:11 172:21 173:17 listen 121:16 listing 28:3 66:12 66:20 lists 66:10 106:4 108:15 114:7 140:19 155:10 173:4 litigation 11:17 135:9 147:8,10 148:15 little 45:2 121:18 154:8 155:18 162:21	live 36:20 53:3 54:22 55:10,15 126:22 128:3 129:17 living 26:14 40:6 41:4 43:12 47:16 48:9 150:11 loan 107:3,12 108:14,22 109:4 110:1 local 120:15 location 21:13 lodge 77:22 long 12:5,18 52:13 63:22 64:3,8 117:10 look 14:17 32:15 34:2,6,16 35:13 36:1 44:13 50:5 53:19 54:9 61:11 64:14 66:19 69:10 72:1 81:6 89:13 96:20 102:6 105:3 105:21 110:9 111:4 115:11 122:21 135:12 146:1,5 151:6 157:5 160:5 162:15 166:7 173:17 looking 28:6 30:8 31:15 35:18 54:20 60:7 65:13 71:19 79:21 122:11 looks 151:21 lot 45:7 80:15,17 lunch 115:10	madison 14:10 mail 31:16 64:1 180:10,19 mail.house.gov 3:19 mailing 21:2 mailings 22:4 mails 129:6 maintaining 98:13 maintains 20:15 making 44:8 62:14 86:22 87:8 91:10 91:10 103:21 141:6 145:20 159:4,6 161:18 181:8,8 maldef 4:5 maldef.org 4:9 males 18:1 118:20 man 41:2,3 management 48:20 mandated 51:4 manner 83:20 manual 42:1 manually 180:8 marc 7:5 march 126:20,21 128:3,4 129:6 138:8 164:16 mark 14:19 23:21 32:18 44:15 61:17 65:21 66:1 93:15 105:10 110:11 115:15 117:3 121:22 138:10 147:5 166:16 marked 14:22 15:3 24:2 31:22 32:21 33:3 44:18 61:19 61:21,22 62:2 66:3 66:6 74:10 93:18 105:12,22 110:13	115:18 116:14 117:1 122:3 130:13 138:13 147:15 155:9 157:6 166:18 166:20 167:1,6,13 167:19 172:5 marking 14:15 115:20 116:16 marriage 179:13 marshall.yates 3:19 martinez 4:3 master 20:16 114:15,17 master's 13:22 match 35:10 36:1 53:15,22 71:8 97:6 97:16 112:2 materially 78:17 materials 77:5 mathematical 30:16 149:21,22 150:19 matter 77:16 93:14 142:10 179:14 maximizing 111:9 maximum 111:12 124:1,14 155:13 mcannon 5:10 mean 19:20 21:9,10 30:12 33:17 36:8 68:3,16 72:3 78:12 90:4 100:15 126:16 148:17 149:18,18 149:19 150:13 158:7 160:13 171:13 173:7,20 meaning 132:2 means 40:3 73:17 82:2 160:17,19
	m		
	m 1:22 3:4 8:21 62:1 105:19 179:4 ma'am 16:6 123:7		

meant 165:21 measure 126:11 137:1 162:2 measurement 94:16,20 95:12 medb 109:13 medicaid 26:6 108:22 109:3,12,17 109:20 115:1,4 medicare 25:8 108:22 109:2,12,14 109:20 meet 144:3 176:3 meeting 80:3 143:22 meetings 80:6,16 member 80:11 members 66:8 79:15 126:6 membership 80:16 memberships 45:14 memo 83:10 95:5 105:8 131:21 132:1 136:7 147:2 memorandum 8:16 8:21 9:4,11,13 10:3 62:1,5,9 63:20 105:14,18 106:21 116:1,6,8,18 133:15 135:7 138:9 157:8 167:6 173:3 173:14,21 174:2 memorandums 173:11 memos 101:14 102:1 135:16 mention 74:20 mentioned 32:4 39:12 56:18 101:14 126:4	mentions 67:1 110:1 123:8 method 59:13 95:17 methodologies 60:19 methodology 30:7 35:22 36:7 37:4,16 38:3,5,6,15 40:16 41:20 42:1 44:6 53:11 54:10 58:2 58:10,16 60:1 61:2 61:7 72:17 73:1,2 73:10 86:20 91:17 92:18 99:9 100:6 135:5,19 136:5 137:6 149:10 153:3 158:16 159:10 160:10,15,21 methods 17:12,13 38:12 44:10 59:17 62:12,15 95:1 99:3 meyer 5:14 michael 2:8 5:4 105:19 108:4,11,19 109:5 michigan 14:1,7,8 migrant 123:8 migrants 172:16 miles 7:6 military 46:4 mind 95:19 ming 7:14,14 minute 154:20 minutes 52:17 115:8 117:16 misleading 15:19 19:1 70:10 99:20 100:18 127:19 128:19 130:6 135:14 158:15	166:1 167:10 168:7 169:5 170:17 171:4 171:19 missing 30:4 33:22 34:4,5,18,21 35:12 35:15 36:3,14,22 69:14 94:17 95:18 96:16 97:11 misspoke 16:1 misstates 126:14 mistake 166:17 misunderstood 127:14 mo 18:13 model 31:13,20 83:2 84:18,19,20 85:22 88:14 157:19 modeling 30:12,13 84:2 85:15 86:17 87:15,18 88:8,11 88:14 91:7,12 99:12 models 22:20 24:12 24:20 28:11 30:15 160:8 moment 108:1 montgomery 3:8 months 12:6 51:6 morning 11:8,9 15:7 morris 1:6 3:14,15 motor 103:5 move 40:8 126:21 127:1,15 128:17 moved 128:4,13 msis 109:16 multiple 73:5 85:6 89:8,21 100:7 102:6	n n 3:1 4:1 5:1 6:1 7:1 8:1,1 11:1 n.w. 2:5 4:6,18 5:7 6:7 name 11:10,11,12 56:11 69:21 104:2 104:20 108:1,3,4 narrowed 15:14,17 16:9 83:15 national 112:8 113:11 114:7 120:13 126:3 native 18:2 natives 118:21,22 119:3 naturalization 67:2 67:18 112:12 139:7 naturalizations 102:3 112:9 naturalized 172:15 nature 86:4 163:15 nearest 30:8 36:1,3 36:17 37:17 40:17 40:19 53:11,19 nebraska 74:14,19 127:1,16 128:5,6 128:11 173:17,20 necessarily 28:22 55:6 89:10 necessary 181:9 need 12:11 38:12 38:20,21 39:8 40:15 41:19 42:4 44:10,10 54:1 55:12 63:11,14 69:3,5,10,16,20,21 70:1 85:21 92:21 93:3 97:12 104:19 106:20 108:19 109:5 110:2 114:9
--	---	---	---

114:9 115:12 123:17 125:9 127:11 128:22 132:20 133:5,6 134:17,19 135:3 145:21 159:11 166:3 168:8 169:8 169:11,11 173:2,13 174:14 175:2 177:5 177:10 needed 49:5 129:3 needs 99:22 100:5 160:15 168:19 174:2 needy 26:7 76:9 106:6 negotiate 148:1 negotiated 83:7 121:14 147:19 161:13,16 negotiation 77:17 negotiations 67:12 77:4,19 78:6 79:3 neighbor 30:8 36:1 36:3,17 39:6 40:4 40:18,19 41:1,2,3 53:11,20 175:14 neighborhood 40:21 41:7 53:3,4 neighboring 37:22 neighbors 37:17 53:6 neither 124:6 nesters 41:1 network 120:12 never 95:19 128:13 129:3 139:7 new 5:13,15,18,18 6:7 22:18 68:17,19 106:8 107:3 108:15 116:11 117:17	147:11 177:3 newly 71:7,21 nfe 9:12,14 nine 51:6 noise 149:12,15,19 150:1,13 151:16 152:16,21 153:6,13 161:21 162:6,13,15 162:22 163:7 non 22:8,19,21 24:14 26:2 27:1 28:9 30:22 33:11 39:11 42:22 51:15 51:20,22,22 52:1,6 60:16 100:14 112:20 150:12 158:13 161:4 170:15 171:1,16 172:9 174:12 175:2 noon 118:2 northern 1:2 notarized 180:10 notary 2:9 179:4 182:23 note 121:9 147:17 notebook 14:11,17 32:17 44:14 61:12 81:7 93:7 105:4 121:6 147:5 166:7 noted 121:11 181:4 181:5 notice 2:8 8:10 15:2 15:17,20 16:8 noticed 124:20 noting 180:7 nrfu 26:2 28:17,20 29:5 30:21 nuclear 122:7 number 8:9 9:2 10:2 14:21 19:20 20:10 24:1 25:12	32:20 38:4 44:17 54:14 61:12,14,15 61:18 65:18,19 66:2,14 70:14 71:4 76:17 81:21 82:18 89:2 90:3 93:17 101:14 105:11 109:9,10 110:12 111:5 112:3,5 114:12 115:17 116:13,22 122:2 130:14,18 138:12 139:5,13 140:3,22 146:3,19 147:14 150:14 162:3,3,7 166:19 169:22 170:5,9 171:1 numbered 63:21 65:1 94:12 122:9 122:11 130:17 138:19 146:8 155:9 numbers 14:16 70:20 71:1 131:2 152:4 161:4,18,19 161:20 162:14 163:8 170:8 numerical 25:9 70:17 numident 25:9 35:6 70:16 106:5 139:1 139:14 nursing 27:4,10,16 27:18,21 nutrition 76:7	objected 75:3 objection 15:5,19 16:11,18 17:1,5,17 18:7,22 19:7,22 20:3 21:19 27:19 30:14 31:10 32:9 33:8 38:1,17 40:14 41:12 42:19 43:9 43:18 44:3 46:17 48:1,12 49:22 51:10 52:3,10 53:8 54:6,17 56:6,17 57:4,15 58:8 59:15 60:5,17 62:17 63:10 64:16 68:6 70:9 72:6 74:2,11 75:3 78:1,8 79:12 80:7 81:2 83:4 85:3 85:17 86:3 87:2,9 87:22 88:9 89:3,18 90:6,18 91:13 96:4 97:22 98:15 99:7 99:19 100:18 101:8 102:18 103:3,14 104:11 106:16 107:5 108:10 110:20 111:18 117:7 119:16,22 120:22 124:3 126:1 126:12 127:5,18 128:7,18 129:11,20 130:6 131:13,14 132:13 133:2,13 135:13 136:1,12 137:3,10,20 139:21 140:17 141:9 142:2 143:2 144:16 145:5 145:14 146:14,21 148:3,7 150:15 151:11 153:1,16 156:11,22 157:3
		o	
		o 8:1 11:1 oakland 6:19 object 77:3 94:7 103:18 123:3 124:16 152:5,6,7,8 163:11 174:17	

158:14 159:8,20 160:3,14 161:6 162:8,16 163:2 164:1,13,20 165:4 165:13 166:1 167:9 168:6,18 169:4 170:2,16 171:3,18 173:12 174:16,17 175:4,20 176:9 objectionable 148:8 objections 145:11 148:9 obtain 63:7,12 74:17 76:10 144:22 obtained 67:2 117:10 134:10 140:3 171:11 obtaining 63:2 103:6 117:11 obviously 51:21 94:2 occupied 22:22 23:2 24:8,14 26:14 28:12 31:2,5,14 32:3,8,14 39:14 occur 28:19 occurred 94:17 office 3:5 5:6,16 6:17 28:2 48:19 office's 27:7 offices 2:3 180:3,10 okay 12:5 16:20 19:4 20:9,13 21:8 23:10,20 24:19 27:12,22 28:6 29:12,20 32:15 33:17 34:15 37:2 37:19 39:2 40:10 41:22 46:11 47:4 47:19 48:8 49:14	50:10 51:14 52:15 52:17 53:13 54:11 54:13 55:1,5 56:4 56:13 57:8,12 58:5 58:22 59:12 62:20 63:6 64:7,19 67:4,4 67:21 68:13 70:3 70:12 72:12 73:6,9 74:7 76:20 77:12 77:21 80:3 82:1,1,2 82:8,13,17 84:1,18 84:21 85:9,13 86:2 86:22 87:19 88:5 88:16 89:13 91:9 91:20 92:21 93:5 93:12 95:5,9,19 96:14 97:14 98:7 98:11 99:3 100:2 100:10 102:9 103:8 104:4 105:17 106:14 107:2,10,14 108:5,13 109:7,18 110:6,9,15 111:20 112:16 113:8,15 114:3,13 115:6 116:4,12 117:15,20 118:8,22 119:7,13 119:19 120:19 123:16,20 125:10 125:16 126:16,20 127:8,13 129:2,5 129:15 131:19 132:9,19 135:7 137:19 138:2,5 140:8,13 145:10 146:1 148:21 149:17 150:7 154:6 154:17 155:20 156:7 158:7,11,21 159:6,9,15,22 160:18,22 162:14	163:8 164:4 165:17 168:15 169:21 172:3 older 56:21 60:14 61:7 63:13 olson 7:7 once 12:4,5 22:14 48:22 68:18 69:9 77:3 90:18 129:12 163:12 180:10 ones 14:14 93:21 157:6 ongoing 77:4 86:5 92:4 131:17 156:13 161:7 online 21:3 operates 27:17 operation 22:19 27:2 29:2,22 30:2 39:11 42:6 48:15 48:17,17 49:3 123:13 operations 176:2 opportunity 121:20 162:1 opposed 27:8 96:15 99:17 opposite 96:21 option 63:2 133:3 order 9:10 66:9 69:1 79:19 83:20 89:16 110:10,16,17 110:22 111:8 113:9 113:17 114:13,21 120:9 125:3 134:18 143:16,17,18 144:4 144:10,12,14,19 155:6,8 156:10 173:9 174:1,14 ordering 180:13	organization 27:17 107:18 organizational 73:4 organizations 82:6 120:15 organized 154:20 origin 34:11 94:18 98:18 151:4 original 105:6 128:9 180:13,15 outcome 30:19 39:16 179:14 outside 83:6 94:5,7 121:13 124:19 141:2 161:12 165:5 167:13 outstanding 81:5 overseas 46:4 47:16 48:6,9,9,21 49:3,7,8 50:12,18 51:19 169:19 oversees 49:19
p			
p 3:1,1 4:1,1,16 5:1 5:1 6:1,1 7:1,1 11:1 62:3 63:21 65:1 81:11,22 82:19 111:5 130:17 137:8 138:19 140:21 146:8 155:10 p.m. 118:6 155:3,4 176:16,17 178:1 p.o. 3:7 page 8:3,9 9:2 10:2 45:12 63:20 64:22 66:7,12,19 67:5 74:13 80:1 81:11 81:22 82:17 94:12 95:20 105:21 110:4 111:4,7 112:5,10			

112:20 113:21 114:16,17 115:3 121:11 122:9,9,11 122:15,15 123:6 130:17 138:10,19 140:21 146:8 147:5 148:16,17 153:18 154:3 155:9 157:11 157:12 172:10,18 180:18 181:11,14 181:17,20,23 182:1 182:4,7,10,13 pages 1:21 64:22 181:9 paper 21:4 paragraph 62:22 95:20 122:13 157:16 paren 67:18 parent 35:16 part 16:20 27:1 48:9 73:6 83:22 90:17 95:6,22 99:21 103:10 108:14 123:2 127:14 135:15 137:2,8,13 144:18 160:9 169:21 172:11 173:8 175:17 partial 69:16 participant 118:9 participants 66:10 participating 125:20 participation 120:11,17 124:2,14 125:3 particular 17:7 19:6 22:1,6 23:4 27:21 34:3,7 42:1	42:10 45:22 46:6 49:5 59:14 60:3 73:20 88:19 98:11 103:20 105:8 114:21 120:8,15 140:4,10 141:7 142:18 145:2 150:10 151:3 161:2 161:20 163:9 167:20 171:21 parties 2:11 147:19 148:14 179:12 180:13 partner 120:13,14 partnered 126:6 partnership 120:13 126:3 passes 129:7,13 passport 114:8,10 116:5 141:1,3 patient 25:19 patrick 9:5 42:14 pause 74:21 pdf 180:7 people 21:15 26:14 28:15 29:4,14 36:11 37:12 40:6 43:12 46:21 47:16 50:13 52:5 54:14 55:9,15,17 57:14 60:13 62:14 71:13 71:17 97:6 109:19 127:6 129:17 139:12,17 140:20 140:20 146:16,19 150:10 172:16 percent 21:1,17 64:2,2 69:14 perform 131:11 performed 86:2	performing 72:14 performs 152:12 permanent 67:1,17 112:9,11 172:14 permission 115:7 154:18 permit 136:5 156:3 156:9 perry 7:5 person 35:4 42:10 48:8 49:20 60:12 67:22 68:4 85:2 88:19 89:1 97:15 100:11,12,14 103:20 104:5,6 107:22 128:13 129:4,5 157:21 158:12 159:2 170:14 171:16 person's 104:4 personal 75:6 124:4 personnel 48:20 persons 131:1 175:1 pertains 156:12 pertinent 161:11 phone 6:15 7:10 18:12 118:7,9 phrased 59:22 physically 54:15 piece 32:1 pieces 100:16 101:6 102:15 pl 47:6,9 137:13,14 137:15 place 29:9 86:21 116:7 141:15 172:6 plaintiff 3:2 11:6 plaintiffs 1:9	plan 58:6 90:13 91:5 92:6 170:22 planned 80:6 119:20 120:3,20 planning 59:4 plans 59:9 90:21 91:2 145:8 157:17 158:1,4 163:3 164:14 171:5 plays 45:10 please 11:10 13:21 14:18,20 23:22 32:19 39:10 44:13 44:16 60:6 61:12 65:17 66:1 81:12 82:19 93:6 105:3 109:9 110:11 117:5 121:5 122:1 127:21 130:11 138:5,10 143:3 146:1 147:3 147:6 166:8 180:10 180:18 181:9,9 plus 46:22 48:5 63:13 point 12:10 21:14 22:12 24:21 25:2 30:2 36:6 42:3 65:16 80:8,10 86:19 89:19 109:11 117:22 175:7 points 80:9,11 pool 89:19 pop 46:21 population 12:13 12:16 13:6 16:17 16:21 17:11 18:2,3 18:10,16,19,20 19:3,5,18 20:5,6 37:18 45:19,21,22 46:3,8,9,10,12,20 47:3,8,16 48:2,6,9
--	--	--	--

50:19,20,21 51:5 51:16,17 55:7 56:8 56:12,19 58:4,7,12 58:17,19 59:2,6 61:6 63:4,9,14,17 82:5 95:1 98:19 118:19 120:4 121:4 126:11 133:11,22 135:1 140:8 143:8 150:20 151:14,16 163:1,5,6,21 164:2 164:5 168:4 169:3 169:8,14,17,18,19 170:4,12 172:20 populations 17:7,8 17:21 18:10,14 19:12 118:12 119:21 120:5,9 portion 26:3 156:16 portions 148:14 posed 81:13 position 12:18 13:6 13:10 14:10 151:19 177:11 positions 12:21 14:5 positive 165:17 possible 28:5 36:22 40:8 43:8,16 89:21 120:21 122:18 128:15 142:1,6 175:19 176:1 postal 25:20 31:2 31:15,21 potential 106:8 107:3 108:15 148:9 potentially 68:1 77:5,19 100:3 124:17	prattville 126:22 127:15 128:3 precisely 142:8 predicate 163:16 predict 30:19 31:1 31:4 preliminaries 16:13 premise 53:10 83:14 preparation 84:8 prepared 15:15 16:6 105:18,19 124:6 presence 52:8 present 2:10 6:15 7:4,10 52:1,2 54:15 69:6 171:1 174:12 175:1 presented 88:3 president 51:1,5,9 51:15 111:15 presidential 9:9 preventing 150:4 previous 100:22 previously 24:21 130:12 primary 70:15 101:15 principles 55:13 56:3 print 180:8 prior 13:4,8,11,13 13:15 75:3 126:14 135:9 prison 27:9 prisons 27:3 55:19 106:6 privacy 10:7 149:2 149:7,11,16 151:15 151:18 153:3 154:4	privilege 59:19 77:6,11 79:6 86:7 100:20 124:18 131:15 133:17 136:13 141:11 142:4,13 156:15 161:10 164:22 174:18 probabilities 160:17 probability 157:19 158:8,9,11 159:1 160:9,12 probably 14:15 problem 57:7 procedure 36:9 149:10 154:2 181:6 procedures 98:5 99:13 proceed 154:21 process 29:8 33:5 33:18,21 34:1 42:12 45:2,8,13 47:14 58:1 59:19 72:11 74:1,4 77:6 86:7 87:13 89:16 90:17,19 91:12 95:7 100:20 124:18 125:6 131:15 133:17 136:13 141:11 142:4,13 153:12 156:15 161:10 162:13 164:22 174:18 processes 91:21 processing 29:6,18 29:20 81:17 113:19 114:1 produce 58:2,12 61:5 83:17 133:8 133:11,21 135:1	157:19 158:7 164:15 168:3 169:2 169:7,21 produced 75:11 105:7 122:10 175:8 177:1 produces 99:2 producing 137:6 143:7 product 47:1,12,15 56:18 57:19 58:17 59:4,6 61:2,6 63:13 135:20 136:6 137:18 169:22 170:12 production 180:20 products 47:5,7 56:14 149:14 proffer 152:10 program 8:15 26:7 76:7,8,9 94:16,20 94:21 95:12 115:4 120:14 126:3 164:19 165:12 programs 121:3 project 9:18 68:2 157:14 projects 81:15 proliferation 122:7 pronounced 153:6 property 26:10,18 protect 125:5 149:7 149:16 150:2 protected 100:19 141:10 142:3,12 156:14 161:9 protection 113:1 149:2 prove 121:20 provide 28:2,22 35:8 38:20 49:6,10
--	--	---	---

50:4 76:13,15 77:1 78:15 96:11 111:13 111:16 145:2,13 155:14 provided 34:17,19 35:3 51:8,15 96:9 130:1,7 150:5 156:2 provides 26:10 32:12 50:22 66:15 96:10 providing 173:18 proxy 40:3,7 public 2:9 25:15 98:10 179:5 182:23 publication 56:22 57:16 publicly 64:20 90:14 91:3,6 98:8 153:2 publish 119:9 169:16 published 164:7 175:8 publishes 19:2 47:13 puerto 47:22 48:3 pull 28:1 pulling 37:16 purpose 79:16 88:15 135:18 143:22 purposefully 143:5 purposes 11:21 45:2 46:15 50:16 61:1 74:9 82:10 105:9 127:2 134:15 147:18 169:11 pursuant 2:8 181:6 pursue 84:4 94:3	pursued 133:4 pursuing 124:8 134:9 135:2 put 74:16 98:9 128:1 133:3	39:3 questions 8:20 12:9 34:7,8 44:21 63:19 84:5,6 93:12 94:3,4 95:16 121:12 142:19 159:18 162:20 168:1 176:19 177:17 quick 83:3 quicker 62:10 quite 166:5 quote 111:11 132:2	reaches 49:1 read 69:4 81:11,19 122:15 124:2 139:21 148:12 177:18 180:6 181:2 readandsign 180:18 reading 62:20 67:10 141:3 reads 130:20 ready 138:1 real 106:14 really 28:17 36:9 37:10 69:19 71:19 79:20 80:9 83:3 87:16 152:13 165:19 166:13 176:19 reason 75:3 181:13 181:16,19,22 182:3 182:6,9,12,15 reasons 102:1 176:5 181:8 recall 83:13,15 102:13 104:2 receive 21:2,22 25:10 32:6 73:21 88:18 89:15 148:13 received 66:14,21 68:4 73:18 74:19 88:22 114:19 156:7 177:3 recessed 52:19 118:5 155:3 176:16 recognize 75:11 recollection 122:20 122:22 recommend 159:18 recommendation 62:15 160:7
	q		
	q&a 81:11,22 quality 131:6,11 132:3,7 168:3 169:2,7,10 quantified 146:16 quarters 20:17 26:21,22 27:3,6 123:13 question 12:11 16:3 23:15 24:20 33:21 45:12 57:7 59:22 65:1,17 66:16 75:4 77:5 78:17 79:8 81:12 86:4,10,17 94:7 108:8 121:16 123:4 125:11 127:20 130:18,19,19 131:15,18 133:14 133:19 134:5 135:22 136:16 138:21 139:21 141:9 142:2,16,18 143:11,13 145:18 148:7,8 149:18 152:7,18 154:14 155:22 161:8,9,12 163:14 168:16 175:16 questioning 83:5 questionnaire 20:19 21:16 22:5 24:6 31:7 130:2,9 questionnaires 20:11,14 21:17	r	
		r 2:2 3:1 4:1 5:1 6:1 7:1 8:2 11:1,3 83:1 84:14 178:2 180:2 race 26:16 28:4 34:5,9,10,14,14 35:15,17 37:5 53:5 53:21 56:9,19 57:18 94:17 98:18 109:15 151:4 racial 13:14 17:21 118:19 raise 78:7 83:4 125:22 148:7 random 129:5 randomness 149:1 149:6 153:15,19 range 160:16 rate 21:17 64:1,4 64:15 rates 26:5 63:22 rationale 142:9 rdp 1:11 reach 22:12 40:4 103:12 119:20 120:3,16,20 125:17 reached 76:4 101:10 103:4	

recommendations 62:8 88:1,3 160:1	104:8,9,16 107:20 111:14 114:15	refugee 113:19,20 114:1 172:20	remaining 47:5,7 81:4
recommended 62:21	117:9 134:10	refusal 78:15	remember 107:22
reconcile 101:6	135:18 136:20	refuse 143:5 144:15,20	remembering 105:1
reconvened 52:20	140:6,10,14 141:17	refused 77:1 145:9	remind 118:14 146:2
118:6 155:4 176:17	144:2 145:9 155:11	regarding 106:21	rent 26:17
record 34:3 46:5	155:14 158:3,17	107:1 116:20 125:8	rental 25:16
49:11,17,21 50:4,6	168:5,9 169:7	139:2 140:1 141:14	repeat 16:5 61:14 127:20
50:7,9,14 61:21	170:19 172:1,8,19	145:8 165:16	report 49:20 56:4 64:18 90:14 91:3
69:20 71:14 93:16	176:7	172:20 175:9	97:6 126:22 127:6 127:15 129:17
93:20 105:5,10	redistricting 47:6	regardless 52:7,8 57:9 60:22 171:7	136:7
114:7,18 121:8	47:14 137:13 152:9	registration 25:19	reported 1:22 19:5 34:11 36:12 50:13
130:10 136:4 138:8	152:14	reimbursable 104:14,18 105:1	64:20 69:15 97:1,4 97:21 98:3,8 100:4
146:3,7 147:16	refer 65:17 109:9	related 10:8 24:7	128:15 151:9 161:5 163:8
157:7 166:15,17	111:22 112:10	98:17,22 99:3	reporting 36:11 150:13
174:5,7 176:11	130:18 143:15	101:2 124:13	reports 97:15 119:11 135:8 150:9
179:9	148:16 157:10	165:11 167:3 172:8	represent 11:15 20:6 44:22 122:12
records 8:12 9:15	172:4	179:11	147:7 148:22
23:3,8,10 24:7,13	reference 19:9 20:7	relationship 30:18 94:17 98:22	representative 1:7 11:20 15:20 75:12
24:15,22 25:1,6	23:12 65:11,11	release 46:12 59:2	135:10
26:16,21,22 27:7	70:15,16 71:20	59:5 91:12 164:11	representatives 45:15 66:11
27:13,17 28:2,9,14	102:5 109:1,8	164:14 169:13	represented 154:15
28:22 29:3,13,15	115:3 127:11,12	173:6	reproduction 105:17
30:3,21 31:15 32:4	references 99:14	released 58:19	request 63:1 76:5 76:14 80:22 81:1
33:12 35:1,6,11	referred 153:14	137:8,19 138:3	103:1,2,6,22
37:11,14 38:8,10	165:18	162:5 170:8	107:11 108:18
39:3,14 44:9 49:6	referring 25:3 82:7	releases 16:17,21 18:19 56:14	
57:20 60:8,10 61:4	83:21 101:4 110:4	releasing 164:4	
63:3,8,16 66:13	144:21 153:18	relevant 111:12 155:12	
68:10,18 69:14	refers 83:8 84:16	reliable 100:17	
71:8 74:3 79:18	84:19	relied 38:4,5	
82:11,14 83:20	reflect 28:17 128:1 150:20	religious 126:7	
84:17,22 85:1,7,10	reflected 102:5 112:20	rely 38:12 40:17 44:10	
85:11,14,20 87:12	reflects 25:15 45:21 109:21		
88:18,19 89:1,6,14	reformatted 105:9		
89:15 90:5,15	refrain 142:22		
91:16 92:2,17	refreshes 122:19 122:22		
96:15 100:1,5,11			
100:13 102:2,12,16			
102:21 103:22			

112:11 113:22 requested 66:21 68:8 69:11 74:9 75:18,19 76:2,21 78:2,11 80:20 102:12,16,21 107:4 107:8,9 111:21 113:4 114:4,18 135:4 145:2,13 156:2 173:5,8 180:6 requesting 80:14 106:22 116:5 173:16 requests 74:17 81:4 108:17 117:17 required 132:10 139:12 requirement 144:14 157:2 research 14:5,10 72:17,22 73:1,2,9 88:2 118:18 119:1 133:5 157:13 reserve 177:6,17 reside 29:14 54:21 55:15 residence 46:1 54:20 55:3,8,10,12 55:14,22 residency 173:1 resident 27:9 45:21 46:7,21 47:7 50:19 51:17 67:1,17 112:12 128:6 130:4 169:18 171:17 residents 19:21 27:18 28:3 47:21 50:11 53:4 54:16 57:5,9 112:9 113:2 171:7,12 172:14	residing 27:3,6 45:22 46:21 170:1 resolve 96:7 97:1,9 177:13 resort 37:15 resorts 35:22 resources 12:8 respect 144:8 respective 2:11 respond 21:3 23:15 31:7 35:2 65:17 responded 22:7 76:14 77:10 78:14 78:20 130:8 respondents 85:20 responds 96:18 response 21:4,17 21:22 22:8,15,19 22:21 24:6,14 26:2 27:1 28:9,13 30:22 31:12 33:11 34:5 39:11 45:12 63:1 63:21 64:1,4,15 65:4 81:15 100:22 101:3 131:3 132:9 138:21 150:6 responses 34:4,8 35:2 150:1 responsibility 72:13 180:6 responsible 42:5 98:13,19 103:21 104:7,15 107:19 rest 154:21 restate 79:8 143:3 result 22:5 38:15 56:5 results 43:22 46:18 46:19 50:17 176:8 retired 41:2	returned 22:5 31:17 180:12,15 returns 25:7 revealing 142:9 revenue 25:7 32:6 71:3 117:12 132:7 134:13 review 111:15 122:20 142:16 149:4 180:7 reviewed 15:2 45:4 106:12 110:17,21 167:18 reviewing 112:1 177:4 rico 47:22 48:4 right 24:4 27:15 31:19 50:16 51:12 59:1 70:6 81:10,20 82:15 103:17 106:12 108:1,9,21 110:16 113:5 114:6 117:18 134:3 137:14 153:20 161:11 176:13 177:6,18 rights 6:6 robert 1:22 2:8 179:4 role 45:9 113:14 roman 155:18 ron 4:13 125:15 rosenberg 4:16 166:4 ross 4:13 10:3 62:2 138:9 rough 76:19 routinely 81:17 row 67:4 109:13 112:21	rows 67:15,16 rpr 1:22 2:9 179:4 rule 1:15 181:6,7 rules 97:16,19 98:4 98:14,21,22 99:5 rural 21:7 ryan 7:6
			s
			s 3:1 4:1,13 5:1 6:1 7:1 8:1,8 9:1 10:1 11:1 sampling 137:1 san 6:2 santa 6:13 sapna 5:3 save 121:18 saying 30:16 says 26:5 62:21 64:1 65:4 67:21 68:15 69:13 73:14 73:16 81:16 89:1 94:14 95:21 106:8 109:4,13,15 111:8 113:10 122:21 124:5,5 132:10 151:22 155:8,10,11 157:17 scenario 160:19 scope 94:5 121:14 123:5 124:4,17,20 152:6,8 161:12 163:12 164:21 165:5,9 167:14 seal 180:12 sean 7:17 search 140:5 seats 45:14 second 46:2 62:21 66:12 73:14 74:22 112:17 131:13 139:21 141:1

secondly 55:17 section 104:6 111:7 111:8 112:6,18 130:20 155:17 sections 21:5 138:18 security 25:11,12 31:4 35:7 66:22 67:8,9,13 68:9 70:4 70:18,20 71:4,9 73:13,19 88:19 89:2 90:16 101:16 101:18,22 106:4 112:7,19 113:10,18 114:14 116:20 117:12 131:2 132:6 132:15 134:12 139:5,8,11,13,14 140:3,22 157:10 167:3,8,12,16 172:13 see 25:4 30:3 34:7 34:16,21 35:19 36:6 40:5 57:7 62:9 66:20,22 67:4,15 71:7,12,15,19 72:2 73:12 74:13 82:19 110:15 111:5,16 112:10 113:22 114:11,15 118:4 122:13,19,22 127:14 133:6 134:11 135:12 141:4 148:17 149:1 153:21 157:12 162:20 163:13 172:11 seek 75:13 78:5 141:7 164:18 165:3 165:11 177:7	seeking 124:12 141:21 seeks 143:11 seen 15:7 33:4 62:5 93:9 99:14 self 128:15 send 20:13,19 24:6 24:9 156:5 175:13 180:13 sending 22:13 sends 21:15 sense 27:14 128:12 155:1 162:21 sentence 94:14 132:9 senteno 4:4 separate 137:18 september 121:12 122:8 series 8:16 22:3 36:4 served 13:5,6,8,9 13:11,13 serves 45:1 service 25:7,19,20 31:2,15,21 32:6 71:3 117:13 132:7 134:13 services 65:6,9 66:17 67:3,19 112:8 114:22 132:17 set 60:3 73:14 90:8 100:11,13 140:10 156:20 179:8,15 sets 69:3 71:14,21 seven 140:20 146:6 146:13 sex 13:9 26:16 28:4 35:9 37:5 69:22 94:18 96:19,20,21	98:18 shady 180:21 share 58:11 91:6 145:9 156:3,5,8 sharing 10:9 167:3 sharma 5:3 sheet 9:3 65:11,18 65:19 109:2,8 sheets 23:12 65:12 short 63:22 64:2,8 showed 18:9 shown 19:12 shows 85:18 117:8 side 83:2 sign 177:18 180:6 signature 179:18 180:2,16 182:18 signed 116:8 180:10,12,15 similar 29:4,8 33:15 37:15 123:14 126:1 simply 41:17 55:1 81:1 105:7 sinclair 7:12 single 24:9 41:2,3 89:13 sister 98:22 sit 134:3 situation 96:18 six 39:20 140:20 skip 163:18 174:16 sleep 54:22 55:10 55:15 slightly 63:18 sloppy 75:9 slow 150:7 small 155:18 smith 3:4 61:14,16 snap 76:5,6 102:14	social 25:10,12 31:3 35:7 70:18,20 71:4,9 88:18 89:2 99:1 101:16,17,21 106:4 114:14 117:11 131:2 132:6 132:15 134:12 139:5,8,11,12,14 140:3,22 sociology 13:22 solicit 125:19 solution 87:8 somebody 49:17 103:8 somewhat 83:6 sorry 72:20 81:21 104:17 109:7 139:20 155:15 166:9 sort 59:18 sorts 29:16 sought 171:11 sounds 118:4 source 54:4 67:7 70:15 74:13 89:11 101:15 140:5 sources 9:7 25:5 31:1 68:18,19 85:6 85:7 89:8,20,22 90:11 91:7,15 97:12 100:7 101:17 102:6 136:4 157:18 172:21 southern 1:3 spanish 53:19,20 speak 15:15 16:7 42:11 162:1 171:20 176:21 177:6 special 13:5,11 29:1 49:2 56:9 57:18 58:12 137:18
--	---	--	--

specific 56:18 58:1 58:10 77:8 89:11 91:21 94:3 104:20 136:4 138:4 146:22 150:21 specifically 60:10 84:9 87:17 90:11 91:15 93:9 109:4 158:5 173:4 specification 98:6 specifications 98:7 98:9,20 99:2 164:8 specifics 86:6,9 93:14 specify 33:22 speculation 41:13 53:9 85:4 89:4 106:17 140:18 144:17 145:6 150:16 153:17 162:17 spence 6:5 spent 14:8 spite 127:22 spot 36:21 88:6 spreading 125:19 spring 90:9 91:11 91:14 135:22 136:3 138:1 ss 179:2 ssa 131:7 132:4 ssharma 5:9 stack 23:17 staff 42:21 65:6 72:18 87:11 103:4 104:15 108:3,7,12 108:19 standard 38:3 54:8 start 22:10 37:12 42:13 47:20 48:19 60:13 69:10 156:18	172:6 starting 83:5 140:20,21 starts 20:11 state 1:5 3:2 5:13 5:15 11:10,15 16:22 18:20 19:5 19:18 20:5 45:22 46:5,6,7 48:10 49:9 49:11,13,15,17,18 49:19,21 50:3,4,6,7 50:9,10,11,14,18 54:15,16 55:2,3,6,8 61:20 75:13 102:12 102:17,21 103:13 103:22 108:16 113:19,22 114:7,11 116:3 127:17 128:17 145:2,13 151:16 163:14,21 164:2,5 169:14,17 169:18,20 170:1 171:2,7 172:19 173:6 174:13 175:2 state's 50:19 163:5 stated 83:16 136:2 statement 9:19 122:5 123:20 132:22 133:1 136:8 153:18 168:11 181:8 states 1:1,11 16:22 20:18 21:1 25:20 45:15 46:13,22 47:13 48:5 56:15 74:17 75:20 76:5 76:10,12,17 88:20 103:5 105:10 106:15,22 112:7 145:1,8 151:20 157:8,9 171:17	173:10 179:1 181:7 stating 156:4 stationed 48:21 49:7,19 statistical 22:20 24:12,20 28:11 30:12,13,15 31:13 36:9 38:12 42:8 44:5 84:19 85:15 85:22 86:17 87:15 88:7,10,14,14 91:6 91:12 99:12 157:19 160:8 statistics 13:6,9,14 16:17 57:16 99:2 status 58:3 60:20 63:3,7,16 65:7 66:15 68:1,15 72:2 73:16 78:14 85:8 85:22 89:5,8,10 90:1 99:15 100:8 101:20 128:2 133:8 134:14,20 135:19 157:18 158:18 171:8,21 172:9 step 39:8 87:15 162:2 stephanie 7:7 steps 33:6,9 36:5 41:8,9,17 43:5 97:17 122:20 145:4 145:7,12,21 175:11 175:17 stick 70:5 162:3 stock 69:12 stopping 117:22 store 36:12 strategy 22:2,18 street 4:6,18 5:17 6:18 41:1	strike 135:14 strives 43:19 175:22 student 172:16 studies 42:9 72:19 72:21 study 111:15 stuff 117:15 sub 109:16 subcommittee 122:7 subject 17:8 77:6 79:6 118:13 submitted 129:12 130:9 subpopulations 17:14,15 subscribed 182:19 subsequent 133:16 subsequently 139:6 subsets 59:14 substance 136:17 181:7 substitute 16:3 successful 23:7 suggest 109:18 suggesting 29:14 suggests 24:8 31:16 100:12,13 119:2 suite 3:16 4:6 6:7 6:18 summarize 62:8 138:22 summary 94:11 summer 13:16 supervisor 108:2 supervisor's 108:3 supplemental 76:6 support 125:19 suppose 129:15
---	---	---	---

supposed 119:14	97:22 98:15 99:7	114:2 115:1	talks 33:11,13
supreme 105:10	99:19 100:18 101:8	t	106:2 112:21 154:4
sure 23:13 38:21	102:18 103:3,14,18	t 8:1,1,8 9:1 10:1	tanf 26:6 76:5,8
43:5 61:8 69:4,5,6	104:11 106:16	tab 14:16,17 32:16	102:14
77:22 78:16 80:19	107:5 108:10	44:14 61:12,14,15	targeting 126:10
86:13 88:6 96:2	110:20 111:1,18	81:7 93:7 105:4	tax 70:22
104:21 108:3	117:7 118:2,7	110:9,10 121:6	taxes 26:10 32:12
127:22 132:20	119:16,22 120:22	130:12 138:6	team 160:6
135:4 143:4 146:18	121:8,19 123:3	143:17 146:2 147:4	technical 177:2
150:7 158:21	124:3,16 125:5,22	154:9 155:8 166:7	techniques 176:2
169:10	126:12 127:5,18	166:9,10	tell 13:20 23:18
surmised 86:4	128:7,18 129:11,20	table 58:11 106:3	28:7 29:16 32:15
surname 53:19,20	130:6 131:13	108:15 172:11	40:2 43:3 47:11
survey 58:15,20	132:13 133:2,13	tabs 14:13	56:11 59:16 77:12
95:13,16 104:18	134:2,4 135:13	tabulation 56:9	77:14 79:10 81:12
surveys 64:5	136:1,12 137:3,10	58:13 137:18	82:2 93:3 110:7
104:14	137:20 139:20	tabulations 132:12	115:8,21 117:4
sverdlov 4:15 15:5	140:17 141:9 142:2	take 28:19 36:16	122:16 132:14
15:19 16:11,18	142:8,16 143:2,10	43:5 50:5 52:16	147:22 148:11
17:1,5,17 18:7,22	144:16 145:5,14	54:1 69:11 73:17	151:7 158:20 172:7
19:7,22 20:3 21:19	146:7,14,21 147:16	86:21 89:8,12	temporary 26:7
27:19 30:14 31:10	148:2 150:15	100:6 115:7 118:3	76:9 106:5 113:2
32:9 33:8 38:1,17	151:11 152:5,18	145:8,12 149:22	172:15,16
40:14 41:12 42:19	153:1,16 154:7,17	150:17,19 153:8,9	ten 16:14 150:11
43:9,18 44:3 46:17	155:1,15,20 156:11	162:9 166:12	161:4
48:1,12 49:22	156:22 157:3	176:12	tenant 25:16
51:10 52:3,10,15	158:14 159:8,20	taken 122:21	tend 17:15,19
53:8 54:6,17 56:6	160:3,14 161:6	145:22 147:9	tended 118:12
56:17 57:4,15 58:8	162:8,16 163:2,11	takes 29:8	tends 118:16
59:15 60:4,17	164:1,13,20 165:4	talk 20:9 33:9 39:8	tenure 26:17 94:18
61:20 62:17 63:10	165:13 166:1,9	80:13 108:19 109:5	98:22
64:16 68:6 70:9	167:9 168:6,18	125:12 160:11	term 13:3
72:6 74:2,11,21	169:4 170:2,16	176:12	terms 33:10 57:16
75:2,15 77:2,18	171:3,18 173:12	talked 106:10	59:20 60:10 82:22
78:7,16,22 79:12	174:16 175:4,20	113:14 118:12	84:11,12 86:8
80:7 81:2 83:3,12	176:9,14 177:11,16	153:2	90:21 92:6 99:22
84:4 85:3,17 86:3	177:20 180:1	talking 31:6 37:8	115:8 131:16
86:13 87:2,9,22	sworn 11:5 179:8	65:22 117:16	136:14 147:20
88:9 89:3,18 90:6	182:19	122:17 141:4 154:5	149:22 160:11
90:18 91:13 92:3	system 73:15 96:1	165:21	test 33:10
92:21 93:19 96:4	112:22 113:20		

testified 11:5 126:13 testify 15:21 75:5 83:17 131:16 152:10 167:11 testifying 167:15 testimony 24:5 124:8 126:14 135:8 148:21 149:3 154:4 154:10,15 177:6,7 179:9 181:2,7 thank 61:16 75:15 79:20 92:20 137:16 146:5 155:2 176:20 177:15,22 thing 34:6 68:19 69:2 74:12 153:15 154:5 things 26:3 29:17 84:8 97:8 110:2,2 127:3 152:9 think 32:2 64:19 68:22 77:7,18 78:22 79:2 83:4 84:4 92:3 93:13 94:4 99:9 101:9 106:20 107:18 117:21 128:8 131:14 148:13 154:7,20 161:11,13 176:18 thinking 40:21 85:18 87:7 third 39:22 76:19 109:13 thirdly 55:21 thought 133:4 three 12:6 55:13 56:2 62:12,15,22 115:16 140:19	thursday 1:18 time 24:9 52:13 54:22 55:11,16 61:8 65:10 77:22 81:3 86:19 93:3 101:21 102:22 105:7 107:13 111:1 117:22 121:18 128:14 133:14 139:4 140:2 148:6 148:9 154:19,21 163:12 166:12 176:21 177:13 180:15 times 12:3 39:20 165:17 title 12:15 104:5 titled 8:11,18 9:6 111:8 today 12:10 15:15 16:6 45:1,5 62:6 65:14 115:10 151:19 157:6 165:18 177:3 today's 133:19 134:2 told 100:22 tools 36:4 top 64:6 104:3 105:22 113:21 148:17 154:3 172:18 topic 63:18 83:22 165:16 topics 15:9,14,16 16:7,8 83:6,15,18 93:21 94:7 121:10 121:14,17 124:20 147:18 148:1 161:13,15 165:9	total 18:19,20 19:18 46:12 50:15 54:14 56:15 162:22 169:13 totals 16:21 151:9 151:17,17 163:5,6 164:2 touched 88:5 tourist 55:5 tracks 153:8 tracts 153:9 traditional 44:10 traditionally 164:6 transaction 113:12 transcript 10:17 177:18 179:9 180:7 180:13,15 181:2 transfer 73:17 113:4 114:4 115:5 173:14 transpire 41:21 tries 54:3 trouble 152:16 true 64:11 119:8 128:4 131:22 132:12 133:1 150:12 152:4 159:19 168:13 176:5 179:9 try 22:10,13 23:6 29:19 34:20 35:11 36:1 40:4,19 53:15 53:20,22 57:8 77:21 79:1 90:10 97:9 100:16 120:15 132:21 136:14 150:8 177:8 trying 27:16 30:18 36:21 39:20 41:15 54:13 63:15 70:3,5 96:7 100:22 101:5	101:11 102:2,6 126:11 153:22 turn 82:17 87:17 93:6 106:20 107:18 121:5 122:8 130:11 138:5 147:3 155:7 turns 51:6 two 17:12 28:8 45:20 67:16 70:7 95:1 129:17 140:19 type 32:5 37:2 39:16 40:11 67:15 73:14 123:15 161:14 types 20:21 44:5 52:5 55:18 66:20 typically 98:9
			u
			u.s. 1:16 2:4 4:12 4:17 5:5 10:9 12:14 45:14 48:19 51:15 56:5 57:14 65:5,8 140:21,22 141:1,2 141:2 147:12 157:20 158:8 159:2 167:4,8,15 169:22 uua 26:1 uh 65:15 95:11 105:20 106:1,9 114:9 121:7 138:7 umbrella 83:11 unable 156:20 unavoidable 177:2 unclear 75:4 undeliverable 25:22 31:17,22 undersigned 181:2 understand 12:10 24:4 41:16 42:12 45:2,8 50:2 59:1 62:11 68:3 87:5

91:20 93:10 95:5 100:22 101:3 104:21,22 110:3 111:10 119:1 134:21 140:11 143:17,18 149:5 150:8 151:6 154:1 158:21 161:22 163:10 177:11 understanding 9:11 29:17 32:11 76:16 106:21 116:2 143:20 152:16 173:3,11,14,21 174:3 understood 32:5 96:2 165:20 170:9 undocumented 120:21 122:14,18 124:14 125:4 unique 71:1,6 unit 21:13 22:6 23:1,4 28:12 34:3 38:22 39:16,20 40:20 43:11 73:4 united 1:1,11 16:21 20:18,22 25:20 46:13 56:15 88:20 105:9 112:7 157:8 157:9 171:17 179:1 units 20:17 21:1 22:21 39:12,13,18 43:13 universe 22:8,22 24:14 27:1 89:14 universities 14:5,6 university 14:1,7,8 14:9 unlawfully 175:1 update 101:21	updated 71:17 102:4 139:7 140:4 140:7 urban 117:13 usable 72:5 90:4,16 91:4,11 uscis 65:6 106:10 132:10 usdoj.gov 4:21,22 use 9:17 23:11 24:17,22 25:2 26:9 26:15 27:13 31:12 34:13 35:17,22 36:7,21 37:6,15 38:9 39:5,15 42:2 42:21 44:9 47:13 53:12 59:13 60:3 65:10 68:16,21,21 68:22 72:2,14 74:1 75:10 78:13 81:13 82:13 83:9 84:22 85:7,15 86:16 131:4,9 133:10,21 134:22 135:11 140:6 149:10 150:18 156:10,13 156:20 157:17 158:17 159:11 160:8 169:1,1,6 170:18 176:7 181:9 uses 17:12 38:14 42:16 95:2 176:6 usual 46:1 54:20 55:3,7,10,14,22 57:5 171:6 usually 46:21 54:21 utility 83:19 utilize 23:8 26:12 26:18 28:14 29:2 30:6 37:14 44:12 60:7 85:11 89:21	96:8 utilized 33:12 61:5 85:22 90:11 91:8 147:2 utilizes 54:19 176:2 utilizing 30:21 58:3 72:18 v v 4:15 180:1 vague 15:5 16:18 17:1,5,17 18:7,22 19:7 30:14 31:10 33:8 38:1 40:14 41:13 42:19 43:9 46:17 52:10 53:8 54:6 56:6,17 57:15 58:8 59:15 60:17 62:17 63:10 64:16 68:6 70:9 74:2,11 79:12 80:7 81:2 85:3,17 87:9,22 88:9 89:3,18 90:6 90:18 98:15 99:7 99:19 101:8 102:18 103:3,14 104:11 106:16 108:10 110:20 111:1 117:7 119:16,22 120:22 127:5,18 132:13 133:2,13 135:13 136:1 137:3,10,20 139:22 144:16 146:14,21 150:15 151:11 152:7 156:22 158:14 159:8,20 160:3,14 161:6 162:8 163:2 164:1,13 167:9 168:6 169:4 170:2 170:16 171:3,18 173:12 175:4,20	176:9 value 96:9 102:10 158:10 160:12 170:20 values 94:16,17 100:4 160:16 variable 70:1 101:5 variables 30:19 67:21,22 68:1,12 69:6,11,13,18 80:14 96:20 173:4 various 50:13 100:16 145:1 veer 83:5 veering 59:18 vehicles 103:5 venture 121:13 verges 90:19 92:4 verging 77:3 131:14 161:12 veritext 180:10,20 veritext.com 180:18 versus 147:12 vetted 159:12 viable 131:5,10 132:2 133:1 136:9 136:11,20 view 77:4,10,18 79:6 86:5 100:19 142:12 148:6 156:14 161:14 visa 73:15 112:22 visas 112:20 113:20 172:16,17 visit 39:20,22 visits 22:16 voters 152:1 voting 56:8,12,19 57:18 58:6,12,16 58:19 59:2,5 60:14
--	--	---	---

BC-DOC-0000033246

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.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

On Jan 17, 2020, at 8:52 AM, Rosenberg, Brad (CIV: [REDACTED]) wrote:

Mike, Sapna, and Stephanie:

b(5) - AC/WP

Thanks,

-Brad

From: Robert Jakupciak [REDACTED]

Sent: Thursday, January 16, 2020 7:40 PM

To: Rosenberg, Brad (CIV: [REDACTED])

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>

From: Rosenberg, Brad (CIV) [b(6)]
Sent: 1/17/2020 8:52:08 AM
To: Cannon, Michael (Federal) [MCannon@doc.gov]; Sharma, Sapna (Federal) [SSharma@doc.gov]; Olson, Stephanie (Federal) [SOlson@doc.gov]
CC: Sverdlov, Alexander V. [b(6)]
Subject: FW: Rough draft of Battle deposition
Attachments: AL-3846101-R.txt

Mike, Sapna, and Stephanie:

b(5) - AC/WP

Thanks,
-Brad

From: Robert Jakupciak [b(6)]
Sent: Thursday, January 16, 2020 7:40 PM
To: Rosenberg, Brad (CIV) [b(6)]
Subject: Rough draft of Battle deposition

Attached please find the rough draft of the Battle deposition.

Sent from [Mail](#) for Windows 10

ROUGH DRAFT

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF ALABAMA (Southern)

3 -----:

4 STATE OF ALABAMA, et al., :

5 Plaintiffs, :

6 vs. : Civil Docket No.:

7 UNITED STATES DEPARTMENT : 2:18-cv-00772-RDP

8 OF COMMERCE, et al., :

9 Defendants. :

10 -----:

11 ROUGH DRAFT

12
13 Rule 30(b)(6) Deposition of

14 U.S. DEPARTMENT OF COMMERCE

15 Washington, D.C.

16 Thursday, January 16, 2020

17 9:00 a.m.

18
19
20 Job No. AL-3846101

21 Pages 1 - NUMBER

22 Reported by: Robert M. Jakupciak, RPR

1
2 Deposition of KAREN R. BATTLE, held at the
3 offices of:

4 U.S. Department of Commerce
5 1401 Constitution Avenue, N.W.
6 Washington, D.C. 20230
7

8 Pursuant to Notice, before Robert Michael
9 Jakupciak, RPR, a Notary Public in and for the
10 District of Columbia, when were present on behalf of
11 the respective parties:
12
13
14
15
16
17
18
19
20
21
22

A P P E A R A N C E S

On behalf of Plaintiff State of Alabama:

JAMES W. DAVIS, ESQUIRE

BRENTON M. SMITH, ESQUIRE

Office of the Attorney General

501 Washington Avenue

P.O. Box 300152

Montgomery, Alabama 36130-0152

(334) 242-7300

jim.davis@alabamaag.gov

brenton.smith@alabamaag.gov

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)

b(6)

On behalf of the Intervenor Defendant Diana
Martinez:

ANDREA E. SENTENO, ESQUIRE

MALDEF

1016 16th Street, N.W., Suite 100

Washington, D.C. 20036

(202) 293-2828

b(6)

On behalf of Intervenor Defendant State of New York:

AMANDA MEYER, ESQUIRE

State of New York

Office of the Attorney General

28 Liberty Street

New York, New York 10005

(212) 416-6225

amanda.meyer@ag.ny.gov

On behalf of the Intervenor Defendant San Jose,

5
ROUGH DRAFT

1 California; King County, Washington; City of
2 Atlanta, Georgia:

3 DORIAN LAWRENCE SPENCE, ESQUIRE
4 Lawyers Committee for Civil Rights Under Law
5 1401 New York Avenue, N.W., Suite 400
6 Washington, D.C. 20019
7 (202) 663-8324
8 dspence@lawyerscommittee.org
9

10 On behalf of the Defendant:

11 ATTORNEY , ESQUIRE
12 FIRM
13 FIRM ADDRESS
14 CITY/STATE/ZIP
15 PHONE NUMBER
16 EMAIL
17
18
19
20

21 On behalf of the Defendant:

22 ATTORNEY , ESQUIRE

FIRM

FIRM ADDRESS

CITY/STATE/ZIP

PHONE NUMBER

EMAIL

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

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

(Exhibits attached to transcript.)

9
ROUGH DRAFT

1 P R O C E E D I N G S

2 Whereupon,

3 KAREN R. BATTLE,

4 called as a witness, and having been first duly
5 sworn, was examined and testified as follows:

6 EXAMINATION BY COUNSEL FOR PLAINTIFF

7 BY MR. DAVIS:

8 Q Good morning.

9 A Good morning.

10 Q Would you state your name, please?

11 A My name is Karen Battle.

12 Q Ms. Battle, my name is Jim Davis. First
13 off is, it Ms., Mrs., doctor?

14 A Mrs.

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

18 A Yes.

19 Q And you have been identified as a
20 representative of the Department of Commerce for
21 purposes of that deposition; correct?

22 A Yes.

1 Q Have you ever given a deposition before?

2 A Yes.

3 Q How many times? More than five?

4 A Once.

5 Q Once. Okay. How long ago was that?

6 A Three months ago.

7 Q What kind of case was that?

8 A A human resources case.

9 Q I have some questions about the lawsuit
10 today. If at any point you don't understand my
11 question, let me know. If you need a break, let me
12 know. Where do you work?

13 A I work in the Population Division at the
14 U.S. Census Bureau.

15 Q What is your title?

16 A Division Chief, Chief of the Population
17 Division.

18 Q How long have you held that position?

19 A I have been the Division Chief for five
20 years.

21 Q Did you have any positions in the Division
22 before you were Chief?

1 A Yes.

2 Q What were those, and approximately for
3 what term?

4 A Prior to becoming the Division Chief I
5 served as the Assistant Division Chief for Special
6 Populations Statistics, and I served in that
7 position from 2007 to 2014.

8 Prior to that I served as the Branch Chief
9 over the sex and age statistics branch, and I served
10 in that position from 2004 to 2007.

11 Prior to that at this served as the
12 special assistant to the division chief from
13 approximately 2004 -- 2000 to 2004. And prior to
14 that I served as a data analyst in the racial
15 statistics branch and the ethnicity and ancestry
16 branch. And prior to that I was a summer intern in
17 1998.

18 Q So have you been employed by the census
19 bureau since 1998?

20 A Yes.

21 Q Tell me about your education background,
22 please.

1 A I have a master's degree in sociology from
2 the western Michigan university.

3 Q Did you work -- did you have any
4 employment before you were employed by the bureau of
5 census?

6 A I held research positions at universities.

7 Q Which universities?

8 A The western Michigan university and after
9 leaving western Michigan university, I spent several
10 years working at the university of miss con sin in
11 mad son in a research position.

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

18 Would you look at tab 18 in the notebook,
19 please?

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

22 (WITNESS Exhibit Number #

1 was marked for identification.)

2 BY MR. DAVIS:

3 Q Have you reviewed this notice of
4 deposition that has been marked as Exhibit 1, Mrs.
5 Battle?

6 MR. SVERDLOV: Objection. Vague.

7 BY MR. DAVIS:

8 Q Have you seen it before this morning?

9 A Yes.

10 Q Are you familiar with the topics that are
11 listed?

12 A Yes.

13 Q And there have been discussions following
14 issuing of the dopings between counsel, some of
15 these topics have been narrowed. But are you
16 prepared today to speak on behalf of the Department
17 of Commerce for the topics listed on this deposition
18 notice as narrowed per the discussions by counsel?

19 MR. SVERDLOV: Objection. Misleading.
20 The deposition notice is for a representative of the
21 Census Bureau to testify, not the Department of
22 Commerce.

1 MR. DAVIS: You are correct. I misspoke.

2 BY MR. DAVIS:

3 Q Same question, except substitute census
4 bureau for commerce?

5 A Could you repeat that?

6 Q Yes, ma'am. Are you prepared today to
7 speak on behalf of the Census Bureau for the topics
8 listed on this deposition notice as those topics
9 have been narrowed between discussions with counsel?

10 MR. SVERDLOV: Objection. Compound.

11 A Yes. SA*EP.

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

14 A Yes.

15 Q And after each census the bureau of census
16 releases population statistics?

17 MR. SVERDLOV: Objection. Vague.

18 A Yes.

19 Q Okay. And part of the data the Census
20 Bureau releases population totals for the United
21 States and for each state; is that correct?

22 MR. SVERDLOV: Objection. Vague.

1 A Yes.

2 Q Are there known under counts in the
3 census?

4 MR. SVERDLOV: Objection. Vague.

5 A Yes.

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

9 A The Census Bureau does assess the coverage
10 on the population after the decennial census and
11 there are two methods that the census bureau uses to
12 do that and those methods have identified certain
13 sub populations that are under counted.

14 Q What subpopulations tend to be under
15 counted?

16 MR. SVERDLOV: Objection. Vague.

17 A We know from our analyses that young
18 children, children under the age of five, tend to be
19 under counted in the decennial census. In addition
20 there are other racial and ethnic population that is
21 may be under counted in the decennial census, for
22 example, young black males with Hispanic population

1 or the American nature or the last scan native
2 population. XXXXXXXXX

3 Q Are there over-counts in the census?

4 A Yes.

5 Q How does that work? Who is overcounted?

6 MR. SVERDLOV: Objection. Vague and
7 compound.

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

11 (Now joining the conference is Congressman
12 Brooks.)

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

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

21 MR. SVERDLOV: Objection. Vague,
22 misleading.

1 A The Census Bureau publishing numerous
2 population counts not estimates.

3 Q Okay. SP*EL SA*EP say after the 2010
4 census the population for the State of Alabama was
5 reported to be 4,779,736, is that as of a particular
6 date?

7 MR. SVERDLOV: Objection. Vague and
8 assumes facts not in evidence.

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

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

14 A Yes.

15 Q And there may be overcounties as well; is
16 that correct?

17 A Yes.

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

22 MR. SVERDLOV: Objection.

1 BY MR. DAVIS:

2 Q Would you agree with that?

3 MR. SVERDLOV: Objection. Compound and
4 argumentative.

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

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

12 A Yes.

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

15 A The census Bureau maintains what's called
16 a master address file which contains it the
17 addresses for all of the housing units and reporters
18 facilities in the United States.

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

21 A There are different types of enumeration
22 approaches for different areas within the United

1 States, but about 95 percent of the housing units do
2 receive a mailing to either instruct them to go
3 online to respond to the decennial census or they
4 can fill out a paper response. There are other
5 sections of the country where the Census Bureau may
6 go out and just enumerate those areas that may be
7 more rural or hard to enumerate, for example.

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

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

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

19 MR. SVERDLOV: Objection. Compound.

20 A That is correct.

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

1 particular household?

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

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

17 A Well, for the 2020 census the Census
18 Bureau is employing a new strategy or for the
19 non-response follow-up operation. And what we are
20 doing is using statistical models to determine if
21 the housing units within the non-response follow-up
22 universe are indeed occupied. And if we have

1 information that indicates that that housing unit is
2 indeed occupied, and we also have administrative
3 records available that are associated or linked to
4 that particular housing unit, then we would only
5 make one attempt to have an individual out there
6 knocking on the door to try to collect that
7 information. And if they are not successful, then
8 we would utilize the administrative records to
9 enumerate that household.

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

12 A We actually have a reference sheet.

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

16 A Yes.

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

19 A This one.

20 Q Okay.

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

1 (WITNESS Exhibit Number #

2 was marked for identification.)

3 BY MR. DAVIS:

4 Q Census all right. Mrs. Battle, as I
5 understand your testimony you say if there is a
6 household you send a questionnaire and you get no
7 response, if you have administrative records related
8 to that household that suggests that household is
9 occupied, you would send a enumerator only a single
10 time; is that correct?

11 A The Census Bureau will be using
12 statistical models that incorporate data from
13 administrative records to identify households in the
14 none response follow-up universe that are occupied,
15 and if we have administrative records that have
16 information on the characteristics of those
17 individuals, then we can use that to enumerate the
18 household after one attempt.

19 Q Okay. I want to come back to the
20 statistical models. But first deal with the
21 question I asked previously. If you get to the
22 point where you use administrative records to

1 enumerate that household, what administrative
2 records does the Census Bureau use? And at this
3 point you are referring to Exhibit 2.

4 A Yes. So what you'll see in this chart, in
5 the left column are data sources that are used. We
6 have administrative records from the Internal
7 Revenue Service, the 1040, 1099 returns, we have
8 data on the Medicare enrollment, we have data from
9 the census numident, which is actually the numerical
10 identification file that we receive from the Social
11 Security Administration that contains data on every
12 Social Security Number that's ever been issued.

13 We also have information from the census
14 household composition key, we have information from
15 HUD which reflects data on public and Indian
16 housing, as well as tenant rental assistance
17 information. We have data from the Indian Health
18 Service Patient Registration, we have data from the
19 United States Postal Service. They have information
20 on addresses that where they attempt to deliver but
21 they are undeliverable as addressed. That's the
22 UAA.

1 So for the NRFU or the none response
2 follow-up portion of things we focus on that
3 information. We also have data down below where it
4 says best rates and ethnicity, we have data on
5 Medicaid enrollment, as well as data from the TANF
6 program, the temporary assistance for needy
7 families.

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

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

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

20 A Well, the group quarters records, it's not
21 part of the none response follow-up universe, but we
22 have an operation to enumerate individuals who are

1 residing in group quarters, like prisons and college
2 dormitories and nursing homes.

3 And in those instances much of the data
4 that we collect for those residing in group quarters
5 come from the offices administrative records. As
6 opposed to the census going out to interview each.

7 Q Resident in a prison cell or someone who
8 might be in a nursing home bed that's not
9 cognitively functioning.

10 Q Okay.

11 A So we use administrative records in that
12 sense.

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

17 MR. SVERDLOV: Objection. Compound.

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

20 Q Okay.

21 A And that administrator will pull upon
22 their records from their office to provide us with a

1 listing of the residents and their demographic
2 characteristics, age, date of birth, sex and racing
3 and ethnicity if possible.

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

6 A Yes. So the first two columns describe
7 the none response follow-up administrative records
8 enumeration. So this is the instance where we have
9 used statistical models to determine that a housing
10 unit is occupied and if we are not able to get a
11 response via enumerator, then we are able to utilize
12 data from these administrative records to determine
13 how many people are in that household and then to
14 fill in their characteristics. So that's really
15 what the NRFU AR emulation columns reflect.

16 Next to that we've count imputation and
17 this may take into SP*ELG occur when we do not have
18 information that would allow us to do a NRFU actual
19 enumeration. So we don't have administrative
20 records that could provide necessarily at first
21 glance characteristics, so we have a special
22 operation for count imputation where we utilize

1 administrative records to help us determine the
2 count of people in that household, similar to the
3 NRFU. And then later in the processing we will work
4 to assign the characteristics. So it's a similar
5 process, but the count imputation takes place when
6 at first we don't know that we have the information,
7 the sticker takes characteristics for that household
8 but we do have information on the count.

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

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

17 Q Okay. And what further processing would
18 you do?

19 A That is when we have an operation called
20 the edit and -- edit and imputation characteristics
21 operation, and at that point we will make another
22 attempt to see if we have administrative records

1 that can be used to fill in the missing
2 characteristics. And if we are not able to, then we
3 utilize what's called a hot deck methodology where
4 you are basically looking for the nearest neighbor
5 and they will be donating their characteristics to
6 the household.

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

10 MR. SVERDLOV: Objection. Vague.

11 A So when I say statistical models, what I'm
12 basically saying is that there is a mathematical
13 broach where you are developing an equation that is
14 trying to assess the relationship amongst a group of
15 variables to help you predict an outcome. So in
16 this case the Census Bureau would be utilizing
17 administrative records for the NRFU, none response
18 follow-up, to assess different data sources to help
19 us predict whether that household is occupied. So
20 using data from the Postal Service, using data from
21 the IRS, using data from the Social Security
22 Administration to help us predict whether that

1 household is occupied.

2 Q We are talking about a household where,
3 that did not response to the questionnaire; correct?

4 A Yes.

5 MR. SVERDLOV: Objection. Vague.

6 BY MR. DAVIS:

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

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

21 Q And you mentioned IRS records if I
22 understood you correctly. What type of information

1 might be you receive from the Internal Revenue
2 Service to be a clue as to whether or not that
3 household is occupied?

4 MR. SVERDLOV: Objection. Compound.

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

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

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

15 (WITNESS Exhibit Number #
16 was marked for identification.)

17 BY MR. DAVIS:

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

20 A I believe I have seen this document.

21 Q Does it describe the process that we were
22 just discussing of the steps that the bureau goes

1 through?

2 MR. SVERDLOV: Objection. Vague.

3 A It does talk about the steps that we
4 follow for the 2018ened test in terms of
5 non-response follow-up, it talks about SA*EP
6 different administrative records that could be
7 utilized, it talks about the imputation of the count
8 of the household as well as the characteristics of
9 the household. So, yes, it is similar to what we
10 were just discussing.

11 Q Okay. What do you mean, Mrs. Battle, when
12 you discussed the editing process?

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

18 And so we begin by taking a look at an
19 individual record for a particular housing unit and
20 we assess are there missing responses? And, for
21 example, if there is a missing race response, the
22 first thing we would do is then look to the other

1 questions for that particular individual and see if
2 responses to those other questions might help us
3 fill in the race information.

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

9 Q Okay.

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

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

21 We also are going to it be checking
22 administrative records such as the numident file,

1 the Social Security Administration file. That file
2 might be able to provide data on age or date of
3 birth or sex for that individual. So but if we are
4 not able to match up with administrative records,
5 then the next attempt to try to fill in missing
6 information involves taking a look at others in that
7 same household.

8 So if there is a child of the householder
9 who is missing data, let's say race, and we know
10 that their parent is in that household and they do
11 have arrays, then we can use that and assign that to
12 their biological child. So the we are looking
13 within the household to see if there is anywhere
14 else with we can grab information to fill in. And
15 if that fails, then one of our last resorts is to
16 use this hot deck methodology where we then look for
17 the nearest neighbor and try to match up the
18 household on certain characteristics and then the
19 nearest neighbor can donate that missing
20 information. So there is a series of distoolses and
21 steps we go through.

22 Q I see. Let's say you got to the point

1 where you use the hot deck methodology. What does
2 hot deck mean?

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

13 Q Why is it called hot deck?

14 A Well, just that you are using live data on
15 the spot and you are trying to use as fresh of
16 information as possible to fill in the missing
17 information.

18 Q Okay. And give me an example of what type
19 of characteristic might be imputed using the hot
20 deck methodology.

21 A Race, ethnicity, and age and sex.

22 Q Would you use hot deck imputation to

1 assign a count to a household?

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

13 Q Okay. When if if the Census Bureau
14 believes that that would make the census more
15 accurate if you have no information about a
16 household to impute characteristics from a
17 neighboring household?

18 MR. SVERDLOV: Objection. Vague and
19 compound and beyond the notice.

20 A This has been a standard methodology that
21 the census bureau has relied on for a number of
22 decades and has relied on this methodology. This is

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

9 Q I assume that the census bureau use this
10 is methodology because it believes that to result in
11 a more accurate census?

12 MR. SVERDLOV: Same objection.

13 BY MR. DAVIS:

14 Q Do you agree?

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

19 Q Okay. And the if you get to a household
20 where even using administrative records and
21 questionnaires and enumerators the bureau just has
22 no information about that household, you will use

1 hot deck imputation and a neighbor will donate
2 characteristics to the household; correct?

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

5 Q Please.

6 A For the non-response follow-up operation
7 for those housing units where I mentioned earlier
8 where we determine that those housing units are
9 occupied and that we have administrative records
10 that we can use to assign their characteristics,
11 that's one type of housing unit outcome. However
12 there are going to be other housing units where
13 again we don't have that information and so the
14 census bureau will tip to visit that housing unit up
15 to six times trying to get the information.

16 For the 2020 census, after the third visit
17 if we still are not able to get information, then
18 the census bureau will tell the enumerator to
19 attempt to get a proxy interview, which means the
20 enumerator will then try to reach out to a neighbor
21 to see if they have information about how many
22 people are living there and if they have any

1 information on the characteristics. If a proxy
2 interviews are not possible, then we move to the
3 imputation aspect of it.

4 Q Okay. And how does the census bureau
5 determine what type of household to donate
6 characteristics to this other hypothetical household
7 about which you have no information?

8 MR. SVERDLOV: Objection. Vague.

9 A I would need to examine the detailed
10 methodology to answer that, but the general approach
11 is that the census bureau will rely on the nearest
12 neighbor, information that we have been collecting
13 from the nearest neighbor to try to fill in
14 information for that housing unit.

15 Q I'm thinking of my neighborhood and you
16 have an none household, wife and I are empty
17 nesters, I have an across the street neighbor who is
18 a single retired man, a next door neighbor who is a
19 very young single man another young African-American
20 woman who is living withing extended family
21 including both grandparents and young children, it's
22 a very diverse neighborhood. So if you went through

1 all these steps, the census bureau went through all
2 these steps ask could not get any information about
3 my household, who would donate characteristics to my
4 house how old?

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

7 BY MR. DAVIS:

8 Q It may be -- I'm just trying to
9 understand, Mrs. Battled. It may be that it would
10 be easier for you to simply describe the steps that
11 the bureau would go through under those
12 circumstances.

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

16 Q Okay. Where would you go to examine the
17 detailed methodology? Is there a particular manual
18 or document in the census bureau that you would uses
19 to educate yourself on that point?

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

1 Q What would that area be?

2 A That would be the decennial statistical
3 studies division.

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

7 A I would start with the division chief,
8 Patrick Cantwell.

9 Q And do you know, Mrs. Battle, why the
10 census bureau uses hot deck imputation to assign
11 characteristics to a household instead ever just
12 writing down a zero for that household?

13 MR. SVERDLOV: Objection. Vague.

14 A Well, the census bureau does determine
15 through the use of staff whether they believe a
16 household to be none existent it, the address, you
17 know, it's not a habit itable address and those, of
18 course, are deleted. But if we can tell that this
19 is a habitable address, the census bureau will then
20 want to take further steps to make sure that they
21 are, that household is included in the decennial
22 census.

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

3 MR. SVERDLOV: Objection. Vague.

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

9 Q And the goal of the census bureau is to
10 have as accurate a census as possible. Would you
11 agree?

12 MR. SVERDLOV: Objection. Form.

13 A The census bureau strives to have a
14 complete and accurate count.

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

19 MR. SVERDLOV: Objection. Argumentative.

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

1 Q Of course.

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

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

9 MR. DAVIS: And let's mark this as Exhibit
10 4, please.

11 (WITNESS Exhibit Number #
12 was marked for identification.)

13 BY MR. DAVIS:

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

20 Have you reviewed this document before
21 today?

22 A Yes.

1 Q A lot of these deal with apportionment.
2 And I want to understand the process of
3 apportionment and the role that the Census Bureau
4 plays apportionment. First, would you agree with
5 the first question and response there on the first
6 page that apportionment is the process of dividing
7 the 435 memberships or seats in the U.S. house of
8 representatives among the 50 states?

9 A Yes.

10 Q And who is included in the apportionment
11 counts?

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

18 The second component of the apportionment
19 population count includes the federally affiliated
20 overseas. These are military and civilian employees
21 of the federal government whose home state of record
22 is that particular state. So for a state you have

1 the resident population and then the federally
2 affiliated population and together that equals the
3 apportionment population counts.

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

7 A Yes.

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

10 MR. SVERDLOV: Objection. Vague.

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

19 Q Okay?

20 A All remaining data products from the
21 redistricting data file it, the PL94171, all the
22 replanning data products only include the resident

1 population not the federally affiliated.

2 Q And the Appeal 94 --

3 A 170.

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

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

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

11 A That is correct.

12 Q Okay. In the apportionment count, and
13 that's -- let me start over. Does the apportionment
14 count, for example, include residents of the
15 District of Columbia or Puerto Rico?

16 MR. SVERDLOV: Objection. Compound.

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

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

22 A Correct.

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

5 MR. SVERDLOV: Objection.

6 BY MR. DAVIS:

7 Q In the apportionment count?

8 A So the Census Bureau has an operation
9 that's called the federally affiliated Americans
10 operation. And that operation entails the Census
11 Bureau working with different federal agencies and
12 we first start by working with the U.S. office of
13 personnel management to get a list of those agencies
14 that have employees stationed overseas. And once we
15 have that list, the census bureau reaches out to
16 those agencies and establishes a contact and informs
17 them of the special federally affiliated overseas
18 operation. The Census Bureau works with these
19 agencies and explains what is needed and these
20 particular agencies will then go and through their
21 records provide counsel for everyone in their agency
22 whose stationed overseas or deployed overseas and

1 they will give us a count by state. And we ask that
2 they provide the information for employees home
3 state of record. So is the agencies find that
4 information and they deliver the state counts to us
5 for the employees.

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

8 A Yes.

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

14 MR. SVERDLOV: Objection.

15 BY MR. DAVIS:

16 Q Did I understand you correctly?

17 A Yes. The State Department will then
18 provide to us the home state of record, they will
19 take a look at for all of their employees the home
20 state of record and give us a count for all of their
21 employees who have a home state of record of
22 Alabama, a count for all who had a home state of

1 record of California and so on.

2 Q Okay. And the so for the state of Alabama
3 you have a count for residents of the state of
4 Alabama and you add in all of these other overseas
5 people who are reported by the various agencies as
6 having Alabama as their home state of record and you
7 add that had to Alabama's total for apportionment
8 purposes? Is that right?

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

13 Q And this apportionment population count is
14 something the Census Bureau provides to the
15 President; correct?

16 A Yes.

17 Q And when does that happen?

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

22 Q So that will be provided no later than

1 December 31st of 2020 to the President?

2 MR. SVERDLOV: Objection.

3 BY MR. DAVIS:

4 Q Is that right?

5 A That is correct.

6 Q Okay. Does the apportionment count
7 provided to the President include none U.S.
8 citizens?

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

14 Q Obviously then if it includes both
15 citizens and non-citizens, it includes non-citizens
16 who were lawfully present and non-citizens who were
17 not lawfully present?

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

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

22 Q Yes. It includes everyone regardless of

1 citizenship and regardless of lawful presence; is
2 that correct?

3 MR. SVERDLOV: Objection. Vague.

4 A Yes.

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

8 MR. SVERDLOV: Okay.

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

11 THE WITNESS: Yes.

12 (Recessed at TIME AMPM)

13 (Reconvened at TIME AMPM)

14 BY MR. DAVIS:

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

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

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

6 Q Okay.

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

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

20 MR. SVERDLOV: Objection. Vague.

21 A Again when it comes to the characteristic
22 imputation using a hot deck, there is this standard

1 approach, and I would have to look at the details of
2 the methodology to --

3 Q Okay --

4 A -- address that further.

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

9 MR. SVERDLOV: Objection. Compound.

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

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

18 A Yes.

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

1 A The idea is, yes, we want to count people
2 at their usual residence where they live and sleep
3 most of the time. Now, I need to say that the
4 residence criteria is based on three core
5 principles. So the first one is that of usual
6 residence where we want to count people where they
7 reside and live and sleep most of the time.
8 Secondly, there are people who are in certain types
9 of facilities on census day that will be counted at
10 that facility, such as prisons, et cetera.

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

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

18 MR. SVERDLOV: Objection. Vague.

19 A The Census Bureau is working to develop
20 what's called the citizen voting age population by
21 race and ethnicity special tabulation, which would
22 be based on data from the decennial census. And as

1 you can tell by the name, it will include citizen
2 information; citizenship, voting age, population.

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

7 MR. SVERDLOV: Objection. Vague.

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

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

16 MR. SVERDLOV: Same objection.

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

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

1 A Yes.

2 Q Okay. Of those who are under 18, is the
3 the Census Bureau's to attempt to determine how many
4 of those people are U.S. citizens?

5 MR. SVERDLOV: Objection. Vague.

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

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

20 MR. SVERDLOV: Objection. Vague.

21 A Well, the Census Bureau has not finalized
22 the specific methodology and approach or the final

1 table SHO*EPB, but of course the Census Bureau does
2 produce a citizen voting age population special
3 tabulation annually currently, but it's not based on
4 the decennial census, it's based on the American
5 community survey, so they are still determining that
6 final methodology for the citizen voting age
7 population product based on the decennial census.

8 Q So in the past the Census Bureau has
9 released citizen voting age population data that was
10 based on the American community survey; correct?

11 A Yes.

12 Q Okay. After the 2020 census do did I
13 understand you right that the Census Bureau
14 inattends to release citizen voting age population
15 based on the 2020 census itself?

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

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

1 A Yes.

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

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

11 Q The way I phrased the question is although
12 final methodology hasn't been determined, have you
13 determined that yes we will use this particular set
14 of administrative data?

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

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

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

6 MR. SVERDLOV: Objection. Vague.

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

10 Q For everyone regardless of age?

11 A For the purposes of developing the data
12 product in and of itself the methodology is not
13 finalized, but the Census Bureau will be collecting
14 information on, through administrative records and
15 that information will be utilized to help us produce
16 the final product which is focused on the population
17 18 years and older. It's because the methodology is
18 not determined, I cannot say for sure at this time
19 exactly to what extent we would be collecting the
20 data on citizenship.

21 Q Would you look at the document that is
22 behind tab number 8 in the notebook, please, Mrs.

1 Battle?

2 MR. SMITH: The tab number?

3 MR. DAVIS: Tab number 8.

4 MR. SMITH: Thank you.

5 MR. DAVIS: Can we mark this?

6 (WITNESS Exhibit Number 5
7 was marked for identification.)

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

10 MR. DAVIS: Yes. We've marked as Exhibit
11 5 this January 19, 2018 memorandum from John M.
12 Abowd to Wilbur Ross. And it's Bates marked as
13 P001.

14 BY MR. DAVIS:

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

17 A Yes.

18 Q Can you summarize the recommendations in
19 the memorandum? Let me see if I can make that
20 quicker. Do you understand the author to be
21 discussing three different methods for attempting to
22 determine citizenship or imputing citizenship for

1 the count and making a recommendation as to which of
2 those three methods would be better?

3 MR. SVERDLOV: Objection. Vague and
4 compound.

5 A Yes.

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

13 A Yes.

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

18 MR. SVERDLOV: Objection. Vague. SA*EP.

19 A Well, the Census Bureau would need to
20 obtain that information. While the CVAP data
21 product is focusing on the 18 and plus older
22 population, we do need the foundational information.

1 So, yes, the Census Bureau is trying to ascertain
2 from administrative records citizenship status for
3 the 2020 enumerated population.

4 Q This is a slightly different topic. There
5 are questions and answers towards the back of the
6 memorandum, Mrs. Battle. On the page that's Bates
7 numbered P-11.

8 There is a Q and A about the response
9 rates for the 2000 census long form and short form
10 and says the mail response rate was -- and 53.9
11 percent for the long forms. SA*EP do you know what
12 the response rate was for surveys for it the 2010
13 census?

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

15 Q Okay. And the 2010 census there was no
16 long and short form, there was just one form;
17 correct?

18 A Correct.

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

21 A Yes.

22 Q Do you know where I could go to look up

1 the response rate for the 2010 census?

2 MR. SVERDLOV: Objection. Vague.

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

5 Q Okay. Do you think there is likely to be
6 something that was publicly reported?

7 A Yes.

8 Q A few pages over on P-15, question 12
9 asked about other data that may be available, other
10 administrative data that may be available to impute
11 citizenship. The response says the Census Bureau is
12 in discussion with the U.S. citizen and immigration
13 services USCIS staff to acquire additional
14 citizenship data. Do you know the status test
15 discussions with the U.S. citizen and immigration
16 services to acquired administrative data?

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

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

22 A Uh-huh.

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

3 A Background sheet number 2. Background
4 sheet number 2.

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

9 (WITNESS Exhibit Number #
10 was marked for identification.)

11 MR. DAVIS: And.

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

14 A Well, the first page of the document lays
15 out the members of the enter agency working group
16 that the Census Bureau created per executive order
17 13880 and lists the departments who are participants
18 as well as the representatives.

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

1 Your question was about data from the
2 citizen and immigration services?

3 Q Correct?

4 A And so if you look on page 2, what you
5 will see is a listing of the types of data that we
6 have requested from the, received from the
7 Department of Homeland Security, and you will see it
8 mentions that the lawful permanent resident file and
9 naturalization data have been obtained from the
10 citizen and immigration services.

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

13 A Yes.

14 Q The source agency is the Department of
15 Homeland Security and you finalized an agreement
16 with the Department of Homeland Security on December
17 23, 2019. Am I reading that correctly?

18 A Yes.

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

21 A Yes.

22 Q And data type I see, they are the rows,

1 appears to be broken down into two rows. You have
2 the lawful permanent resident file and
3 naturalization data, citizen and immigration
4 services; correct?

5 A Yes.

6 Q Okay. And under variables it says 46
7 variables consisting of person identifiers and
8 citizenship status, all variables will potentially
9 be used for the citizenship project.

10 So do I understand this to mean that what
11 you receive is a database and for each person there
12 are 46 fields in that database?

13 MR. SVERDLOV: Objection. Vague.
14 Assumption facts not in evidence.

15 A We requested a data file from the
16 Department of Homeland Security and so the
17 expectation is that each of the records for
18 individuals will contain data and each of those 46
19 variables.

20 Q Okay?

21 A Yeah.

22 Q And understand status it says fitness for

1 use determination. What does that mean?

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

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

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

1 need to evaluate the kind of data that we have in
2 each of those variables.

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

9 Q Okay. And you are trying to -- if you --
10 if you get this database from Homeland Security,
11 just stick with that example, you are trying to link
12 it to some other database; is that correct, to
13 connect it so that you can compare the two
14 databases?

15 MR. SVERDLOV: Objection. Vague and
16 misleading.

17 A Yes.

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

20 A So the Census Bureau, number one, has
21 reference files, and the primary sores of these
22 reference files include the numident file, the

1 numerical identification file that we get from the
2 Social Security Administration. That's a huge
3 database that has all of these data, data an on all
4 Social Security numbers ever issued. In addition to
5 that we've a file that contains what's called ITI,
6 income tax identification numbers. These are unique
7 identifiers that are assigned by the Internal
8 Revenue Service to individuals who are not eligible
9 for a Social Security Number. So we have this
10 database that has all of this unique identifiable
11 information. So our goal is to see if these newly
12 acquired administrative records, if we can match
13 individuals up, where as we have in the Social
14 Security Administration information on citizenship.
15 So that's one way that we are doing linkages.

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

1 see how we can make linkages not only with our
2 internal reference files but across the newly
3 acquired data sets as well will.

4 Q If I look at this chart on Exhibit 6 and I
5 see the words fitness for use determination, does
6 that mean that the Census Bureau has already
7 determined that the data is usable?

8 MR. SVERDLOV: Objection.

9 BY MR. DAVIS:

10 Q Or that it has not made a determination
11 yet?

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

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

18 A Well, most of this work is going to be
19 done through the research and methodology
20 directorate, as well as utilizing staff from the
21 center for economic studies.

22 Q I'm sorry, Mrs. Battle. You said the

1 center of economic studies but you also said the
2 research?

3 A The research and methodology directorates.

4 Q And is the research and directorate a
5 division of the Census Bureau? SA*EP?

6 A It is an organizational unit that contains
7 multiple divisions.

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

10 A Yes.

11 Q Okay. And who heads the research and
12 methodology?

13 A John Abowd. Dr. John Abowd.

14 Q Now, back at Exhibit 6, and I see under
15 Department of Homeland Security that there is a
16 second data set, which is under data type it says
17 arrival departure information system and visa data.
18 And there under status it says awaiting data
19 transfer from DHS. I take that means you haven't
20 received the data yet from Homeland Security?

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

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

3 MR. SVERDLOV: Objection. Vague.

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

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

12 MR. SVERDLOV: Objection. Vague.

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

16 Q Yes.

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

22 MR. SVERDLOV: Counsel, can I pass for one

1 second? I want to go back to my prior objection.
2 The reason I objected is because it was unclear
3 whether the ask question asked for the witness to
4 testify on behalf of the Census Bureau or her
5 personal capacity when you said she is --

6 MR. DAVIS: Fair. But let me clear that
7 up. I could and almost certainly will get sloppy
8 with some of the language I use. That's not
9 intentionally national. I recognize she is produced
10 as a representative of the department. Unless I
11 state otherwise I'm intending to seek the
12 department's knowledge and information.

13 MR. SVERDLOV: Thank you.

14 BY MR. DAVIS:

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

20 A Correct.

21 Q Are you aware of any other data that the
22 Census Bureau has requested that is not listed on

1 this chart?

2 A The Census Bureau hassles reached out to
3 states to request data on WIC, and TANF and SNAP.
4 So that would be SNAP would be the supplemental
5 nutrition assistance program data, WIC is the women,
6 infants and children's program, and TANF is the
7 temporary assistance for needy families program. So
8 we are working to obtain those data from states as
9 well.

10 Q Do you know if any states have declined to
11 provide driver's license information, if they have
12 responded to the Census Bureau's request and said we
13 are not going to provide that?

14 A My understanding is that there have been a
15 number of states who have said no.

16 Q Do you know how many?

17 A Rough approximation, about a third.

18 Q Okay. Are you aware of any administrative
19 data that the Census Bureau has requested from
20 federal agencies and those federal agencies have
21 refused to provide the administrative data?

22 MR. SVERDLOV: Counsel, I'm going to

1 object here once again because we are verging very
2 close to on going negotiations and we would view
3 materials that this question potentially calls for
4 as subject to the deliberative process privilege.
5 So I think if the witness can answer in a general
6 way, that would be fine. But specific details about
7 agencies which have and are have have not responded
8 we would view as following within the privilege.

9 MR. DAVIS: Okay.

10 BY MR. DAVIS:

11 Q Tell me this. And I will direct this to
12 counsel just --

13 MR. DAVIS: If -- would the witness be
14 allowed to tell me whether, that if a hypothetical
15 federal agency had said no, would the Census Bureau
16 would consider the matter closed or whether that
17 issue would still be under negotiation?

18 MR. SVERDLOV: I think we would view that
19 issue as still under negotiations potentially.

20 MR. DAVIS: Okay. Let me try to ask it
21 this way and be sure to allow your counsel time to
22 lodge an objection. Mrs. Battle, if the Census

1 Bureau has requested administrative data from
2 another federal agency and that federal agency
3 initially said no, is it the intention of the
4 department of census to continue to seek that
5 information through negotiations.

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

8 BY MR. DAVIS:

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

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

17 BY MR. DAVIS:

18 Q How is -- this is a fact of something that
19 happened in the past, whether an agency has
20 responded with a yes or a no. That's not a
21 deliberation.

22 MR. SVERDLOV: I think if we can answer it

1 in a general wearings the witness can try to do so.
2 But I think we are very close, as I've indicate
3 canned, we are very close to the line of those, the
4 negotiations that the Department of Commerce and the
5 Census Bureau is having with other agencies, and we
6 would view that as subject to privilege. So if you
7 can answer in a general way, perhaps it would be
8 helpful to, for you to restate your question.

9 BY MR. DAVIS:

10 Q I'm not waving this issue but tell me what
11 you can.

12 MR. SVERDLOV: Objection. Vague.

13 A I would say that the Census Bureau has
14 established an enter agency working group and we do
15 have members from the, across the federal
16 government. And the purpose of that working group
17 is to facilitate the Census Bureau acquiring
18 administrative records to help us comply with the
19 executive order.

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

22 Now, this working group, that is what is

1 listed on the first page ever Exhibit 6; correct?

2 A Yes.

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

5 A Yes.

6 Q Are any further meetings planned?

7 MR. SVERDLOV: Objection. Vague.

8 A At this point the work that's happening is
9 really involving the points of contact. So the
10 Census Bureau has a point of contact who is working
11 with points of contacts at all of the member
12 agencies to work through any issues with enter
13 agency agreements, to talk through the data and the
14 variables that we are requesting to acquire. So
15 there is a lot of back and fourth. They are not in
16 formal meetings with full membership but there is a
17 lot of back and forth between the census and
18 individual agencies to continue working through
19 issues to make sure we can acquire the data that we
20 have requested.

21 Q Is there any administrative data that the
22 Census Bureau has determined that it will request

1 but it simply has not made that had request yet?

2 MR. SVERDLOV: Objection. Vague.

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

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

10 A All right.

11 Q Q & A20, which is on page 17, as I read
12 it, you tell me if I'm wrong, please, the question
13 posed is whether the alternative C approach, the use
14 of administrative data has been used before on other
15 data collection process and the response says the
16 approach that is been routinely used and processed
17 into economic census for several decades. First off
18 I read at that correctly; right?

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

20 Q Q & A 20 on page P-17.

21 A Okay. Okay.

22 Q Okay. First tell me what it means by

1 economic sense censuses.

2 A So the Census Bureau not only conducts a
3 census of the population, but it also conducts a
4 census of organizations, businesses, et cetera. And
5 so they are referring to those economic censuses.

6 Q Okay. Administrative data has been used,
7 was used in the 2010 census was it not to impute
8 characteristics and for other purposes?

9 A There were administrative records used to
10 impute characteristics used in the 2010 census.

11 Q Okay. So the use of administrative
12 records is not limited in the past to economic
13 censuses. Am I right about that?

14 A Correct.

15 Q Okay. And if you turn to the page of that
16 same exhibit with the Bates Number at the bottom is
17 P-30, please? Do you see the chart there that's
18 labeled Figure 1, Mrs. Battle?

19 A Yes.

20 Q Can you explain this to me what the terms
21 are, linked, ADREC, and then on the other side not
22 linked and model?

1 MR. SVERDLOV: Counsel, really quick, I'm
2 also going to raise an objection because I think
3 this line of questioning is starting to veer
4 somewhat outside of the topics that we have
5 negotiated.

6 MR. DAVIS: I believe this Figure 1
7 reference to the use of administrative data in
8 general and the memo is about citizenship. That
9 seems to follow under the umbrella.

10 MR. SVERDLOV: Yes. And as you will
11 recall, my yes was not me acceding to your member
12 price. As you recall, we narrowed those topics in
13 our December 27th, 2019 letter, which stated that we
14 will produce a witness who can testify about these
15 topics to the extent they concern the feasibility
16 and out of collecting and using administrative
17 records in the manner directed by executive order
18 13880 and I believe the document you are referring
19 to is part ever topic 5.

20 MR. DAVIS: Okay. Well, is the witness
21 allowed to explain to me, for example, what modeling
22 is.

1 MR. SVERDLOV: I think we can pursue some
2 general questions along those lines but I do want to
3 flag that, you know, questions about like the
4 general background of this document and it's
5 preparation was one of the things that we
6 specifically limited.

7 MR. DAVIS: I'm not asking about that. I
8 want to explain the terms. I asked her to explain
9 the terms.

10 BY MR. DAVIS:

11 Q First, Mrs. Battle, what is ADREC? Do you
12 know?

13 A Yes. That refers to administrative
14 records.

15 Q Okay. And what is model?

16 A Model refers to developing a statistical
17 model.

18 Q Okay. So after the 2020 census if you are
19 able to link records, you will use the
20 administrative records to impute citizenship for a
21 person? Is that correct?

22 MR. SVERDLOV: Objection. Vague. Calls

1 for speculation.

2 A The basic idea is that the Census Bureau
3 will combine multiple sources of citizenship from
4 different sources of administrative records and use
5 that information to determine citizenship status.

6 Q Okay.

7 A Linked records can then, we can then
8 utilize those administrative records to determine
9 citizenship.

10 Q Okay. And in the 2020 census if you are
11 not able to link administrative records, does the
12 Census Bureau intend to use statistical modeling to
13 impute citizenship?

14 MR. SVERDLOV: Objection. Vague.

15 A This diagram shows that initial thinking
16 is that if we are not able to link administrative
17 records to respondent's are individuals counted in
18 the census and we need to determine their
19 citizenship status, that a statistical model would
20 be utilized to determine that.

21 Q Okay. And how will that be performed?

22 MR. SVERDLOV: Objection. As you might

1 have surmised from the nature of that question, the
2 work in this area is still on going so we view the
3 specifics of that work to be covered by the
4 deliberative process privilege. I will instruct the
5 witness to answer in general terms if she can but
6 not the specifics.

7 MR. DAVIS: That's a fair question and if
8 the answer is that they don't know yet, then that's
9 the answer.

10 MR. SVERDLOV: Sure.

11 BY MR. DAVIS:

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

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

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

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

1 BY MR. DAVIS:

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

6 MR. SVERDLOV: Objection. Vague and
7 compound.

8 A The Census Bureau staff who are evaluating
9 the administrative records that the Census Bureau
10 acquires are going to be involved in the process of
11 working with Dr. John Abowd to determine the
12 statistical modeling. So --

13 Congress PHA*PB PH*EL PWRAO*BGS.

14 A So the first step is really to evaluate
15 the incoming data and then we can turn to
16 specifically how to develop the modeling.

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

20 MR. SVERDLOV: Objection. Vague.

21 A I believe recommendations will come from
22 those involved in this research and those

1 recommendations will be presented to executive
2 leadership at the Census Bureau and the department.

3 Q Okay. We touched on this but I'm not sure
4 it's clear in one spot, Mrs. Battle. Can you
5 describe for me the difference between statistical
6 modeling and imputation?

7 MR. SVERDLOV: Objection. Vague.

8 A Well, I would say that statistical
9 modeling is a form of imputation, whereas imputation
10 might involve imputing data from someone else in the
11 same household or using a hot deck or using a
12 statistical model. So to me statistical modeling
13 for this purpose is a form of imputation.

14 Q Okay. Let's say for the 2020 census
15 through linking databases you learn from the
16 administrative records you receive from the social
17 security records that a particular person is a
18 United States citizen. That's imputation because
19 you are taking, is it not because you are taking
20 information you received directly from
21 administrative records that says that this person
22 with this Social Security Number somebody a citizen?

1 MR. SVERDLOV: Objection. Vague, compound
2 and calls for speculation.

3 A So information on citizenship status from
4 these administrative records will be used in
5 combination to help us determine the citizenship
6 status, so we are going to take multiple sources
7 into account to help us determine the Z citizenship
8 status. It may not necessarily be taking one
9 specific source and then imputing it. We are going
10 to take all of that into account and then determine.

11 Q Okay. You wouldn't look then at a single
12 agency's administrative records but at the universe
13 of the administrative records you receive in this
14 process in order to impute citizenship? Did I hear
15 you correctly?

16 MR. SVERDLOV: Objection. Vague.

17 A The general idea at this point is to pool
18 as many different sources on citizenship for an
19 individual as possible and to utilize those multiple
20 sources to help us determine what the citizenship
21 status is.

22 Q Does the Census Bureau have a goal or a

1 deadline for determining, number one, what of this
2 data is usable? Ask by this data I mean the
3 administrative records that are listed on exhibit C?

4 MR. SVERDLOV: Objection. Vague and
5 compound.

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

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

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

21 MR. DAVIS: That's what I asked. Are
22 there plans to publicly report the decisions as to,

1 the determinations as to whether the data is usable.

2 A I know the Census Bureau does plan to
3 share publicly the approach, the statistical
4 modeling approach and the data sources to be
5 utilized.

6 Q Okay. And you said that there is a goal
7 of making the decision by, making the determination
8 by spring of 2020 as to whether the data is usable
9 or to release the statistical modeling process?

10 MR. SVERDLOV: Objection. Compound.

11 A The goal for spring of 2020 is to be able
12 to determine as specifically which sources of
13 administrative records could be used and the
14 methodology.

15 Q Both?

16 A Yes.

17 Q Okay. While I understand there is no
18 final determination of the specific processes to it
19 be used, has a decision been made on what to do if
20 there is conflicting information being citizenship
21 among different administrative records?

22 MR. SVERDLOV: I think that this very much

1 verges into the on going deliberation of the agency.
2 To the extent that the witness can answer in general
3 terms about whether there is or is not a plan, that
4 would be fine. But otherwise I will instruct the
5 witness not to answer.

6 MR. DAVIS: That's what I asked, Aleks. I
7 asked has a determination been made on what to do.
8 I didn't ask what that determination is. I don't
9 want to know. I asked if a decision has been made.

10 BY MR. DAVIS:

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

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

17 Q Thank you.

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

20 THE WITNESS: I'm good.

21 BY MR. DAVIS:

22 Q You tell me at any time if it you need a

1 break.

2 A Okay.

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

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

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

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

15 (WITNESS Exhibit Number #
16 was marked for identification.)

17 MR. SVERDLOV: Just to be clear on the
18 record, this is a document that was not one of the
19 ones identified in your list of topics. So to the
20 extent that it falls within some other category, we
21 believe it falls within some other categories that
22 you haven't identified, obviously we will let you

1 pursue those questions but otherwise specific
2 questions about this document I think would be
3 outside the scope.

4 MR. DAVIS: I know you will object if I
5 ask a question outside the topics and I know this
6 wasn't listed.

7 BY MR. DAVIS:

8 Q On the executive summary, which is the
9 page that's Bates numbered 6315 --

10 A Yes.

11 Q -- it says characteristics imputation in
12 the 2010 census coverage measurement program imputed
13 values when missing values occurred per rages shall
14 race, spin, age, sex and tenure. I want to know do
15 you know what the 2010 census coverage measurement
16 program is?

17 A Yes. SA*EP this is the program that is
18 conducted after the decennial census to assess the
19 coverage of the population. It's one of two methods
20 the Census Bureau uses to assess the coverage in the
21 decennial census, whether there is an overcount or
22 under count.

1 Q Okay. And do I understand this memo
2 correctly that characteristic imputation is a part
3 of that process?

4 A Yes.

5 Q Okay. So you are using imputation when
6 you are assessing the coverage of a past census?

7 A Uh-huh. So with the census coverage
8 measurement program they actually go out and conduct
9 a survey. And so what they are doing is collecting
10 the same information that was collected in the
11 decennial census. And not everyone answers all of
12 those questions even in this survey.

13 So this is, the same method, the same
14 approach is used to fill in the missing data.

15 Q Okay. And -- no. Never mind.

16 On page 3, the first full paragraph begins
17 as follows: It says editing was a fundamental part
18 plaintiff census characteristics imputation system.

19 I'm not sure I understood what, what the
20 difference is between editing and imputation.

21 MR. SVERDLOV: Objection. Assumes
22 hypothetical evidence.

1 A So the difference here is that editing is
2 when you are trying to resolve inconsistencies that
3 may result between the data or utilize data to help
4 you determine a value. SA*EP so, for example, if
5 someone only provides their data date of birth but
6 they don't provide their age, what we will do then
7 is calculate age based on the date confidence birth.
8 So that's the editing.

9 Q Okay?

10 A As opposed to using administrative records
11 to bring in and fill in missing information. So
12 that's, you know, another example of editing would
13 be if we have a situation where a household response
14 that there is a same sex couple household, but then
15 when we look at the sex data for the variables, they
16 are opposite sex. So we have to figure out how do
17 we handle this inconsistency. So we are using
18 reported data but we have to resolve
19 inconsistencies.

20 Another example would be if someone
21 reported their date of birth and gave an age but
22 when you calculate age and date of birth it doesn't

1 match. Some people like to report their age around
2 zeros and five cents, you know. 40 instead of 41.
3 So there are things like that that involve editing
4 of the data to try to resolve inconsistencies and
5 that's different from imputation where you have
6 let's say missing data and you need to find a way to
7 bring in other sources to fill in the gaps.

8 Q Okay. And let's say that different, a
9 person reports an age and a date of birth that don't
10 match up. Are there rules that at the Census Bureau
11 has that when that happens, these are the steps we
12 will go through?

13 A Yes. There are business rules for that,
14 yes.

15 Q Where are those reported?

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

18 A So --

19 Q Are they reported?

20 A The business rules are how to conduct the
21 editing and imputation procedures, they are
22 contained in a specifics.

1 Q Okay. Where are the specifications? Are
2 those something that's publicly reported?

3 A Those specifications typically are not put
4 out to the public.

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

9 MR. SVERDLOV: Objection. Vague and
10 compound.

11 A Yes. For the characteristics related to
12 age, sex, race and Hispanic origin, my division, the
13 population division, is responsible for those
14 specifications.

15 For editing and imputation rules, business
16 rules related to relationship and tenure, our sister
17 division, the social economic and household
18 statistics division produces those specifications.
19 Yes.

20 Q Okay. And related to the methods that the
21 Bureau is developing for citizenship, does the
22 Census Bureau intend to develop business rules that

1 will address those issues?

2 MR. SVERDLOV: Objection to vague and
3 compound.

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

9 Q I've seen references, Mrs. Battle, to
10 developing repeating the best citizenship status?

11 A Yes.

12 Q What is best citizenship as opposed to
13 just citizenship?

14 MR. SVERDLOV: Objection. Vague. And
15 misleading, assumes facts not in evidence.

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

19 Q Okay.

20 A There will potentially be different
21 citizenship values reported across different
22 administrative records so the Census Bureau needs to

1 develop a methodology that will help them take those
2 multiple sources of information into account and
3 then determine what the best citizenship status is
4 for an individual.

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

13 MR. SVERDLOV: Objection. Misleading and
14 calls for information that I believe is protected by
15 the deliberative process privilege.

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

18 BY MR. DAVIS:

19 Q So this was directly related to her past
20 response. Did I understand you correctly, Mrs.
21 Battle, that when the bureau is referring to best
22 citizenship variable, that you are trying to

1 reconcile which conflicting pieces of information is
2 correct?

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

8 A One example that might help is mentioned
9 in a number of the memos is that for instance our
10 primary source of citizenship data comes from the
11 Social Security Administration and we know that if
12 the sources ever data from the Social Security
13 Administration, for example, may list that an
14 individual is not a citizen, but we don't know if
15 that individual's citizenship's status has changed
16 over time and just didn't update the Social Security
17 Administration, and so, again as listed in some of
18 the memos, that's one of the reasons for trying to
19 acquire administrative records on naturalizations,
20 for example, that may have more current information
21 or updated information that may not be reflected in
22 our reference file. So we are trying to gather

1 multiple sources and look at them together to help
2 us determine the best citizenship.

3 Q Okay.

4 A Value.

5 Q Mrs. Battle, have we discuss canned all of
6 the records that have been requested for state
7 governments? As I recall, we have discussed driver
8 license data, SNAP, WIC and TANF four categories.
9 Are there any other pieces of data or administrative
10 records that have been requested from state
11 governments by the Census Bureau?

12 MR. SVERDLOV: Objection. Vague and
13 compound.

14 A I'm not aware of any additional state
15 level records that have been requested at this time.

16 Q Let's say for a request for delivers
17 license data, how would that request be made?

18 MR. SVERDLOV: Objection. Vague.

19 A The Census Bureau staff reached out to the
20 heads of the states department of motor vehicles to
21 request, have a discussion about obtaining those
22 data.

1 Q Okay. So somebody from the Census Bureau
2 would call like in Alabama there is the Alabama law
3 enforcement agency which is part of, is the agency
4 which issues driver's licenses. They would likely
5 reach out to the head of that department in the
6 State of Alabama?

7 MR. SVERDLOV: Objection. Vague and
8 compound.

9 BY MR. DAVIS:

10 Q Is that right?

11 MR. SVERDLOV: Object.

12 A Yes.

13 Q Is there any particular person in the
14 Census Bureau who is responsible for making the
15 request for administrative records to the state
16 governments?

17 A There is, but I do not recall the name off
18 the top of my head.

19 Q Okay. Do you know what that person's
20 title or what division that person likely works in?

21 A That person likely works in the section of
22 the Census Bureau that is responsible for acquiring

1 administrative records and ingesting those
2 administrative records.

3 Q And what would that be?

4 MR. SVERDLOV: Objection. Vague.

5 A That -- it's the -- within the economic
6 directorate there is a division called I believe
7 economic reimbursable surveys division, and that
8 houses the staff that are responsible for acquiring
9 and ingesting administrative records.

10 Q I'm sorry, Mrs. Battle. Did you say
11 economic reimbursable survey?

12 A That is my -- I would need to double check
13 on the specific name, but I believe that's correct.

14 Q I understand you are not sure. But I did
15 understand you correctly? The word was
16 reimbursable, if you are remembering correctly?

17 A Yes.

18 Q Would you look, please, Mrs. Battle, at
19 the document behind tab 3 of the notebook?

20 MR. DAVIS: And for the record, I have no
21 doubt we have the original of this in what you
22 produced. There simply wasn't time to get that in

1 every case. So the format of this particular memo
2 was as it was reformed for purposes of the United
3 States supreme court record. So let's mark that.

4 (WITNESS Exhibit Number #
5 was marked for identification.)

6 BY MR. DAVIS:

7 Q Are you familiar with this memorandum,
8 Mrs. Battle?

9 A Yes.

10 Q Okay. And this is a reproduction of a
11 memorandum dated December 22, 2017 prepared for John
12 M. Abowd prepared by Michael Berning and others?

13 A Uh-huh.

14 Q So look at page, it will say 304 at the
15 top. This has been marked as Exhibit 8.

16 A Uh-huh.

17 Q This was a couple years ago, but it talks
18 about under Table 2 data that is currently in census
19 inventory unless Social Security Administration
20 numident did it, and bureau of prisons; correct?

21 A Yes. SA*EP.

22 Q This is potentially in acquisitions.

1 A Uh-huh.

2 Q Now the U.S. CIS citizen data, we talked
3 about that because it was listed on one of the other
4 documents we reviewed; right?

5 A Yes.

6 Q Okay. And real ID at data, is that data,
7 Mrs. Battle, that states would have?

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

10 BY MR. DAVIS:

11 Q Drivers license data for example?

12 A I think we would need to turn to a
13 memorandum of understanding regarding exactly what
14 the Census Bureau is requesting from the states
15 regarding the delivers license data.

16 Q Okay. And in order document listed under
17 potential acquisitions is FHA loan applications. Do
18 you know if those have been requested?

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

21 BY MR. DAVIS:

22 Q Do you know if those have been requested?

1 A I am not aware of this being requested.

2 Q Okay. Do you know if there is any
3 intention that the Census Bureau has to request FHA
4 loan application data?

5 A I cannot say at this time --

6 Q Okay.

7 A -- if there is an intention to collect
8 that.

9 Q Who would know?

10 A I think we would turn to the organization
11 within the economic directorate who is responsible
12 for acquiring administrative records to make that
13 final determination.

14 Q And that's a person who you can't remember
15 their name at this moment; right?

16 A Well, actually the supervisor, I know his
17 name, but I'm sure his staff -- the supervisor's
18 name is Michael Berning.

19 Q Okay.

20 A So.

21 Q But there might be someone on his staff
22 who is better able to answer that question; is that

1 right?

2 MR. SVERDLOV: Objection. Vague.

3 A Well, Michael would know the answer,
4 because his staff would be involved in this.

5 Q Okay. And back to this Exhibit 8, under
6 FHA loan applications, still under the part of the
7 table that lists potential new acquisitions, the
8 next item is State Department SPA*BG KWRA*EUTS. Do
9 you know of any requests for that information?
10 SP*ELG?

11 A I am not aware of the request, but we
12 would need to talk to Michael Berning's staff to
13 confirm that.

14 Q All right. And what about the next item
15 list willed, Medicare, Medicaid loan applications?

16 A Well, we do have on our first reference
17 sheets that the Census Bureau has -- both Medicare
18 enrollment data and Medicaid enrollment data. I
19 know this says specifically loan applications, so we
20 would needed to talk with Michael Berning to ensure
21 that there is a distinction there or not.

22 Q Okay. I'm sorry, Mrs. Battle. Let's go

1 back. You said the reference sheet -- would you
2 refer to that by Exhibit Number, please?

3 A Exhibit Number 2.

4 Q Would you point to me where there is
5 information about Medicare and Medicaid?

6 A The third row down says CNSEDBE. That's
7 the Medicare enrollment database. And then where
8 towards the bottom where it says best race and
9 ethnicity, the first sub bullet with, CMS, MSIC is
10 the Medicaid enrollment.

11 Q Okay. Does suggest to you this is data on
12 people who are in fact enrolled in Medicare or
13 Medicaid? (This)?

14 A The information in Exhibit 2 reflects data
15 on those who are enrolled. Where as I know on 304
16 it mentions loan application, so if these are the
17 same things or different things I need to --

18 Q I understand. When you said 304, you are
19 referring to page 304 of Exhibit 8?

20 A Yes.

21 Q Okay. And it's Mr. Berning or his group
22 who could tell us to the best of your knowledge?

1 A Yes.

2 Q Okay. Would you look now at tab 4, the
3 document behind tab 4, the executive order 13880?
4 And let's mark that as the next exhibit, please.

5 (WITNESS Exhibit Number #
6 was marked for identification.)

7 BY MR. DAVIS:

8 Q Okay. Do you see this is Exhibit 9;
9 right? And it's a copy of the executive order
10 13880. Have you reviewed this executive order
11 before, Mrs. Battle?

12 A Yes.

13 MR. SVERDLOV: Objection. Vague.

14 Q Have you reviewed this executive order
15 before?

16 MR. SVERDLOV: Vague as to time. Go
17 ahead.

18 BY MR. DAVIS:

19 Q Would you look at the page -- it's Bates
20 Number P-169 at the bottom. Do you see that?

21 A Yes.

22 Q Page? Under Section 3, the executive

1 order says that, that section is titled assistance
2 to the Department of Commerce in maximizing
3 citizenship data. Do you understand this to be a
4 list of data that agencies quote shall Exhibit
5 relatively authorities and to the maximum extent
6 consistent with law pry access to the following
7 records? These are documents the President wants
8 the agencies to review and study and see if they can
9 provide to the Department of Commerce; correct?

10 MR. SVERDLOV: Objection. Compound.

11 A Yes.

12 Q Okay. Walk me through this, Mrs. Battle.
13 Has the department requested all of this information
14 listed? And we can refer to the different documents
15 we've been reviewing? I just want to be able to
16 match them up?

17 A So if we go back to Exhibit Number 6 --

18 Q Yes.

19 A So back be in Exhibit Number 9 on page
20 169, the first item under Section 3 calls for
21 Department of Homeland Security, United States
22 citizenship and immigration services national file

1 of lawful permanent residence and naturalization,
2 and so if we refer back to Exhibit 6 on page 2, you
3 will see that that request was made for lawful
4 permanent resident file and naturalization data.

5 Q Yes. That's data that in fact we discuss
6 canned earlier?

7 A Yes.

8 Q Okay.

9 A And back in Exhibit 9 the second bullet
10 under Section 3 calls for Department of Homeland
11 Security, immigration and customs enforcement,
12 non-immigrant visas, and that is reflected on page 2
13 back in Exhibit 6, the last row where it talks about
14 arrival, departure information system and visa data,
15 customs and border protection. That is the data on
16 temporary lawful residence.

17 Q And for that data according to Exhibit 6
18 it's been requested, you are awaiting transfer from
19 DHS; right?

20 A Yes. Yes.

21 Q Got it it.

22 A Okay.

1 Q And going back to the executive order,
2 bullet 3 says Department of Homeland Security
3 national level file of customs and border
4 arrival/departed tour transaction data?

5 A And that will be fulfilled through the
6 same role we just talked about.

7 Q Okay. Arrival/departure information?

8 A Yes.

9 Q And on the executive order bullet 4,
10 Department of Homeland Security and Department of
11 State, worldwide revenue and asylum processing
12 system, revenues gee and asylum visas?

13 A In Exhibit 6 on page 3, at the very top
14 you'll see the Department of State and the request
15 was for a worldwide rev gee admission processing
16 system data.

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

19 A Yes.

20 Q All right. So item 5 on the executive
21 record lists Department of State, national level
22 passport application data.

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

5 Q Okay. Back to the executive order, Mrs.
6 Battle, item 6, Social Security
7 Administration-master beneficiary record, is that
8 what I see on page 3 of Exhibit 6?

9 A On page 3 of Exhibit 6, yes. The master
10 beneficiary record, yes. That has been requested
11 and received.

12 Q Great. And the last item on that
13 particular list on the executive order is the, the
14 Department of Health and Human Services, CMS med
15 cared and CMICP system. Is that on Exhibit 6?

16 A Yes. Exhibit 6, page 4. They reference
17 the Medicaid children's health insurance program
18 there. And that we are awaiting transfer.

19 Q Okay. SA*EP then with your and your
20 counsel's permission, I would like to take just a
21 couple minutes for you to tell me in very general
22 terms what some of these other documents are that

1 you brought today and then we will break for lunch
2 and that will give us a chance to look at them and
3 decide what we need to ask about them. Does that
4 work?

5 A Yes.

6 MR. DAVIS: Let's mark these as exhibits.
7 We have got three more it seems.

8 (WITNESS Exhibit Number #
9 was marked for identification.)

10 BY MR. DAVIS:

11 Q So, Mrs. Battle, first I'm marking one of
12 these as Exhibit 10. Would you tell me what this
13 document is?

14 A This document is a memorandum of
15 understanding between the Census Bureau and the
16 Department of State.

17 Q Okay.

18 A And it is requesting passport data.

19 Q And is this a memorandum that has been
20 executed? Is it in place?

21 A This memorandum was signed earlier this
22 week, January 13th.

1 Q Great?

2 A When it was executed. This is new.

3 Q Okay.

4 (WITNESS Exhibit Number #
5 was marked for identification.)

6 BY MR. DAVIS:

7 Q And what about the one I'm marking as
8 Exhibit 11?

9 A Exhibit 11 is another memorandum of
10 agreement between the Census Bureau and the
11 Department of Homeland Security regarding data on
12 immigration and citizenship.

13 (WITNESS Exhibit Number #
14 was marked for identification.)

15 BY MR. DAVIS:

16 Q And the last one I'll mark as Exhibit 12.
17 This appears to be a chart. Would you tell me what
18 this indicates, please?

19 A Exhibit.

20 MR. SVERDLOV: Objection. Vague.

21 A Exhibit 12 is a chart that shows you the
22 existing administrative records that the Census

1 Bureau has and has obtained over the years, long
2 history of obtaining these data from the Social
3 Security Administration, the Internal Revenue
4 Service and the department of housing and urban
5 development.

6 Q Okay. So some of this stuff like from DHS
7 that we've been talking about just a couple minutes
8 ago, those are kind of new requests. This is data
9 that you've had for a while? Is that right?

10 A Yes.

11 Q Okay.

12 MR. DAVIS: Very good. I think this is a
13 good stopping point. What time would you like to
14 come back?

15 MR. SVERDLOV: We are at noon now. Let's
16 take about an hour.

17 MR. DAVIS: Sounds good. See you then.

18 (Recessed at TIME AMPM)

19 (Reconvened at TIME AMPM)

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

22 Voice voice: Yes.

1 BY MR. DAVIS:

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

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

13 Q Okay. Taking the Alaska natives as an
14 example, if I understand you correctly, research
15 after the census suggestion to the Census Bureau
16 that there is likely an under count of Alaskan
17 Natives in the census; correct?

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

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

22 A The Census Bureau does publish after the

1 decennial census their assessment of coverage of the
2 decennial census and those reports would have that
3 information.

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

7 MR. SVERDLOV: Objection. Vague. Calls
8 for a legal conclusion.

9 A Yes.

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

13 MR. SVERDLOV: Objection. Vague.

14 A Yes.

15 Q Would you give me an example of efforts
16 that the Census Bureau has planned to reach a
17 population that it believes to be more difficult to
18 count than other populations?

19 A So the Census Bureau has an advertising
20 campaign and the Census Bureau develops advertising
21 directed towards particular hard to count
22 populations in order to help make awareness more

1 broad of the decennial census and to encourage
2 participation. The Census Bureau also has a network
3 of partner -- it's called the national partnership
4 program, and the idea there is to partner with
5 particular organizations, local areas, to try to
6 develop ways and approaches to reach the hard to
7 count to get participation improved in the decennial
8 census.

9 Q Okay. Are there any efforts by the Census
10 Bureau or any planned efforts to reach as many
11 undocumented immigrants as possible for the count?

12 MR. SVERDLOV: Objection. Vague. Calls
13 for a legal conclusion.

14 A I am not aware of any activities or
15 programs or advertising that would be focused on
16 that population.

17 Q Would you turn, please, Mrs. Battle, to
18 the document behind tab 5 of the notebook?

19 A Uh-huh.

20 MR. SVERDLOV: Counsel, for the record,
21 I'm just going to note here this is also not a
22 document that was identified in the topics and given

1 its date as noted on the first page of September 18,
2 1985, we have concerns that questions about this
3 document would venture far outside the scope of the
4 topics negotiated.

5 MR. DAVIS: Well, it could, but you might
6 listen to my question first and then you could
7 decide whether or not it's within the topics. It
8 would save us a bit of time.

9 MR. SVERDLOV: I'm noting a concern. I'm
10 happy to give you an opportunity to prove me wrong.

11 MR. DAVIS: Let's mark this as Exhibit 13,
12 please.

13 (WITNESS Exhibit Number #
14 was marked for identification.)

15 BY MR. DAVIS:

16 Q Mrs. Battle, this is a statement of the
17 director of the Bureau row of the census before the
18 sub commit on energy TPHAO*UBG pro live KWRAEUGS et
19 cetera dated 1985. I'm going to turn to the page
20 SA*EP, the first page is Bates numbered 1820
21 produced by the Department of Commerce and I'm
22 looking at the page that's Bates numbered 1827.

1 And here I'm going to represent to that if
2 you see a paragraph towards the bottom that begins
3 because undocumented aliens, et cetera? On that
4 page as I read this and you can tell me if you
5 disagree the former director is talking about
6 efforts addressed to count as many undocumented
7 aliens as possible. And I just want to see if this
8 refreshes your recollection if you review the steps
9 that he says were taken in the past, I ask you to
10 look at those and see if this refreshes your
11 recollection, if you are aware of any such effort
12 that the census Bureau intends to make as part of
13 the 2020 census?

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

17 A On page 1828 --

18 Q Yes, ma'am?

19 A It mentions enumerating my grant farm
20 camps.

21 Q Yes.

22 A And I will say that in the course of the

1 decennial census the Census Bureau does have a group
2 quarters in PHO*R rages operation that would include
3 workers dormitories which may be similar to this
4 type of facility. SP*ELG.

5 Q Okay.

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

9 Q Okay. Yes. Because this statement, the
10 former director said that they discussed with law
11 enforcement agencies about curtailing law
12 enforcement on census days to ensure maximum
13 participation?

14 MR. SVERDLOV: Objection. Lack of
15 personal knowledge and foundation and scope. SA*EP
16 the document says what the document says and the
17 witness was neither prepared on this document nor is
18 this document something that you indicated you were
19 interested in pursuing testimony on.

20 BY MR. DAVIS:

21 Q Are you aware of any conversations the
22 Census Bureau has had with law enforcement agencies

1 seeking perhaps a curtailment of law enforcement
2 with related to immigration absence us day to
3 ensure, to help ensure maximum participation by
4 undocumented immigrants?

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

11 BY MR. DAVIS:

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

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

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

22 Q Okay. Who would you check with if you

1 wanted to find out the answer to that question?

2 A I would talk with the deputy director of
3 the Census Bureau.

4 Q And who would that be?

5 A Ron Jarmin.

6 Q Okay. SP*ELG has the Census Bureau made
7 any decision of whether or not to reach out to
8 clergy, for example, the conference of Catholic
9 bishops, to solicit their support in spreading the
10 word about the census and the importance of
11 participating in the census?

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

15 A Well, in it the national partnership
16 program that I mentioned earlier there is a faith
17 based component there, so I do know that the census
18 bureau has partnered with members of the different
19 religious communities to help get the word out about
20 the decennial census.

21 Q The date of the census is April 1, did you
22 say, 2020? That's the date that you are targeting

1 trying to measure the population on that date?

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

5 A Yes.

6 Q Okay. That doesn't mean though that
7 everyone who fills out a form fills it out on April
8 1 though, does it?

9 A No.

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

16 A Well --

17 MR. SVERDLOV: Objection. Vague.

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

20 Q Okay.

21 A It could be we collect their data early,
22 earlier than that or even after that but we always

1 reference it back to we need your information as of
2 census day, the reference date.

3 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.

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

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

19 MR. SVERDLOV: Same objection.

20 A I think what would happen is that the data
21 would be collected from that original form and if
22 that individual did not fill out another form in

1 Nebraska, with that that information would be
2 held -- in the sense -- I don't know that the Census
3 Bureau would know this this person has moved if they
4 never engaged with the Census Bureau in addition
5 time.

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

9 MR. SVERDLOV: Objection. Compound and
10 misleading.

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

15 Q Okay?

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

18 Q Okay. What if, just any random person
19 fills out their census form on March 15th, males it
20 in and the next day passes away. Does the Census
21 Bureau have any way that you are aware of to know
22 that someone who filled out a census form in fact

1 was deceased before census day?

2 MR. SVERDLOV: Objection. Compound.

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

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

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

13 A The Census Bureau would have access to the
14 information that that family provided on their
15 questionnaire, yes.

16 Q In that case there may be an additional
17 resident of that household that the Census Bureau
18 just has no way of counting; is that correct?

19 MR. SVERDLOV: Objection. Misleading.

20 A If that household provided their
21 information, they responded to the decennial census,
22 completed the questionnaire and submitted it, then

1 that would be their record for the census.

2 Q Would you turn back, please, Mrs. Battle
3 to the document behind tab 8? It's been previously
4 marked as an exhibit, but I didn't write down for
5 this one which Exhibit Number that was.

6 A Five.

7 Q Exhibit 5. And going back to the Q and As
8 at the back on the page numbered P-15, I'm going to
9 refer you to question number 13 at the bottom. The
10 question in this question and answer section reads
11 as follows: Is census confident that administrative
12 data will be able to it be used to determine
13 citizenship for all persons EG not all citizens have
14 Social Security numbers. And the response given is
15 we are confident that alternative C, use of
16 administrative data, is viable and that we have
17 already ingested enough high quality citizenship
18 administrative data from SSA and IRS. Does the --
19 is the Census Bureau still confident that the use of
20 administrative data to impede citizenship is viable
21 and that you have enough high quality citizenship
22 data to perform those functions?

1 MR. SVERDLOV: Objection. Well second.
2 Objection. SA*EP I think this is verging into the
3 deliberative process privilege. The question by its
4 terms calls upon the witness to testify about
5 efforts that are ongoing, so I will direct the
6 witness not to answer that question.

7 MR. DAVIS: Okay.

8 BY MR. DAVIS:

9 Q This memo is dated January 19, 2018. Was
10 it true on January 19, 2018 that the Census Bureau
11 was confident that alternative C in this memo, quote
12 is, viable and that we, meaning the Census Bureau,
13 have already ingested enough high quality
14 citizenship data from SSA and IRS?

15 A The Census Bureau knows that, yes, the
16 Social Security Administration data and the Internal
17 Revenue Service data are of high quality but there
18 are still some gaps.

19 Q Okay. The next sentence of the response
20 says the U.S. CIS data are not required. They would
21 however make the citizenship voting page tabulations
22 page better. Was that is true in 2018?

1 MR. SVERDLOV: Objection. Vague.

2 A What I can tell you is that there are gaps
3 in the Social Security Administration data and
4 acquiring information from the citizenship and
5 immigration services agency may be helpful in
6 filling in those gaps.

7 Q Okay. Then I apologize for this but I
8 want to make sure what I need to ask, Ms. Mrs.
9 Battle, I want to try this another way. The
10 statement that alternative C is viable, that was
11 statement true when it was made?

12 MR. SVERDLOV: Objection. Vague.

13 A Alternative C was put forward as an option
14 that the Census Bureau thought should be pursued,
15 additional research would need to be done,
16 additional data would need to be collected to see
17 how that alternative could be then developed to
18 produce information on citizenship status.

19 Q Well, on this day does the Census Bureau
20 know whether the use of administrative data will
21 allow it to produce citizen voting age population
22 after the 2020 census?

1 MR. SVERDLOV: Objection. Vague as to
2 time to the extent that this question concerns a
3 date other than the date on the memorandum or dates
4 subsequent to it I will direct the witness not to
5 answer based on deliberative process privilege.

6 BY MR. DAVIS:

7 Q The question is as of today's date does
8 the Census Bureau know whether it will be able to
9 use the 2020 census to produce citizen voting age
10 population data using administrative data? I'm not
11 asking about deliberations, I'm asking if it knows?

12 MR. SVERDLOV: As of today's date?

13 MR. DAVIS: As we sit here right now.

14 MR. SVERDLOV: So to the extent the
15 question can be answered without going into
16 deliberation and answered in a general way the
17 witness with answer. Otherwise I will direct the
18 witness not to answer.

19 A The Census Bureau is pursuing and has
20 obtained additional administrative records that will
21 be evaluated to see how those data can be used in
22 conjunction with the Social Security Administration

1 data and the Internal Revenue Service data to help
2 us develop the citizenship status information for
3 the purposes of CVAP. So we are ingesting data, we
4 are evaluating data and we need to continue that
5 evaluation, in order to make a final determination
6 on what data do we need to help us develop
7 citizenship status.

8 Q So do I understand that the Census Bureau
9 does not know yet whether it can use administrative
10 data to produce citizen voting age population data?

11 A The Census Bureau is pursuing that but we
12 need to continue to evaluate all of the data that we
13 have requested and then make sure we have developed
14 the appropriate methodology that will allow us to do
15 that. So we are still evaluating the data.

16 Q Okay. Are you aware of any memorandum or
17 reports from the Census Bureau or perhaps from prior
18 litigation where the Census Bureau or a
19 representative said in effect we don't know whether
20 we can use administrative to do this but we are
21 going to look at it and see?

22 MR. SVERDLOV: Objection. Vague and

1 misleading. To the extent that -- strike the last
2 part.

3 A I am aware of memos that instruct the
4 Census Bureau to acquire additional administrative
5 records and with the purpose of developing
6 methodology to determine citizenship status with the
7 CVAP data product.

8 Q Does the Census Bureau expect to know the
9 answer to that question by spring of 2020?

10 MR. SVERDLOV: Objection. Vague.

11 A Base the Census Bureau has stated that in
12 the spring of 2020 its goal is to have identified
13 specific administrative record data source asks
14 methodology that will permit it to develop the CVAP
15 data product.

16 Q When this report or memo dated January 19,
17 2018 contains the statement that we are confident
18 that alternative C is viable, has anything happened
19 since that date to make the Census Bureau less
20 confident that alternative C is viable?

21 MR. SVERDLOV: Objection on the basis of
22 deliberative process privilege. To the extent the

1 witness can answer in general terms, she may try to
2 do so. But I will direct the witness not to answer
3 the question to the extent it calls for the internal
4 deliberative rations and the somebody stance of
5 those deliberative rations of the Census Bureau.

6 A I am not aware of any conversations that
7 concluded that administrative records are not viable
8 to help us with those efforts.

9 Q Has the Census Bureau made a decision as
10 to whether any sampling will be involved to measure
11 or impute citizenship as part of the 2020 census?

12 MR. SVERDLOV: Objection. Vague and
13 compound.

14 A The Census Bureau has not determined its
15 final methodology for producing the CVAP yet.

16 Q Has the Census Bureau determined whether
17 CVAP data will be released as part of the P-4, what
18 was the data file? Dash 171?

19 MR. SVERDLOV: Objection. Vague and
20 compound.

21 A You are asking me if the CVAP is intended
22 to it be a part of the redistricting data file, the

1 PL.

2 Q Right. PL?

3 A PL17491.

4 Q That's it. Thank you?

5 A The Census Bureau intends for the CVAP
6 data product to be a separate special tabulation.

7 Q Okay. What form will it be released in?

8 MR. SVERDLOV: Objection. Vague.

9 A The Census Bureau is working to finalize
10 the format of the CVAP. I expect that information
11 to be read in the spring of 2020.

12 Q Okay. So you don't know yet what -- is
13 that correct? SA*EP?

14 A The specific format, no. SA*EP.

15 Q Okay. Would you turn now, please, Mrs.
16 Battle, to the document behind tab nine?

17 A Uh-huh.

18 (WITNESS Exhibit Number #
19 was marked for identification.)

20 BY MR. DAVIS:

21 Q That, for the record, is a March 1, 2018
22 memorandum for Wilbur Ross to John Abowd and others.

1 Let's mark the first page of that, please, Mrs.

2 Battle, as Exhibit 14.

3 Are you familiar with that document, Mrs.
4 Battle?

5 A Yes.

6 Q And one of the sections is, it begins on
7 the page that's Bates numbered P-38. There is a
8 heading what are the witness in alternative C. What
9 was the authorize's response to that question, if
10 you could just summarize it for me?

11 A So one of the key issues with the numident
12 is whether or not there, the information regarding
13 individuals who are not citizen is up to date.
14 Where as it could be the case that at the time that
15 someone applied for a Social Security Number they
16 were not a citizen, but subsequently they have
17 achieved naturalization but then never updated the
18 Social Security Administration.

19 So there is a weakness there, there is a
20 gap there.

21 The -- another issue, a weakness with the
22 Social Security Administration that's listed is that

1 some people are not required to have a Social
2 Security Number and so then they would not appear in
3 the numident data from the Social Security
4 Administration.

5 Q So, I want you to continue but what you
6 have described so far are groups of people for whom
7 you may not have citizenship information in the
8 administrative data; is that correct?

9 MR. SVERDLOV: I'm sorry. Hold on one
10 second. I want to read the question. Objection.
11 Vague.

12 A So with the key issue regarding
13 individuals who are not citizens at the time that
14 they obtained the Social Security Number, that
15 information may not be update inned that particular
16 source of data, but the idea is to search other
17 administrative records to use in conjunction to then
18 have more updated information.

19 Q Okay. So it's a population who may not be
20 included in the citizenship information in a
21 particular set of administrative records? Did I
22 understand you correctly?

1 A Yes.

2 Q Okay. But there could be other
3 administrative records that do contain citizenship
4 information about that individual?

5 A Yes.

6 MR. SVERDLOV: Objection. Calls for
7 speculation.

8 Q And it lists one, two, three, search
9 people starting on -- not people, groups, starting
10 on page P-39. One is U.S. citizens from birth with
11 no Social Security Number or U.S. passport. The
12 second is U.S. citizens from birth born outside the
13 U.S. who do not have a passport and I'm not reading
14 the whole description but you see where I'm talking
15 about?

16 A Yes.

17 Q Is the Census Bureau making any efforts to
18 seek particular data to fill the so-called
19 citizenship data gaps?

20 MR. SVERDLOV: Objection. This question
21 calls for information that is protected by the
22 deliberative process privilege. So to the extent

1 the witness can answer it in a general way, she may
2 do so but I will direct her not to go into the
3 details regarding any efforts that may or may not be
4 taking place.

5 A So the Census Bureau has recently acquired
6 and will acquire additional administrative records
7 and in the course of evaluating the data the Census
8 Bureau can assess how many of these gaps we might be
9 able to fill.

10 Q And was it in seeking this information,
11 was it one of the goals of the Census Bureau to fill
12 as many of these gaps as possible?

13 MR. SVERDLOV: Objection. That question
14 calls for information protected by the deliberative
15 process privilege.

16 BY MR. DAVIS:

17 Q It was a goal of the citizen to fill a
18 goal?

19 MR. SVERDLOV: It precisely does. SA*EP
20 it calls for revealing the rationale by which the
21 Census Bureau has been acting on a matter in which
22 the Census Bureau has not yet completed deliberative

1 rations. So our view is that it is protected by
2 deliberative process privilege.

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

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

9 BY MR. DAVIS:

10 Q Is it the goal of the Census Bureau to
11 refrain from something for data that it believes
12 would be helpful?

13 MR. SVERDLOV: Objection. Argumentative.

14 A Can you please restate that.

15 Q Sure. Is it a goal of the census
16 department to purposefully refuse to ask for
17 administrative data from another agency that it
18 believes would be helpful in producing a more
19 accurate citizen voting age population count in the
20 2020 census?

21 MR. SVERDLOV: In addition to being
22 argumentative that question seeks to discover the

1 deliberations of the Census Bureau. I will direct
2 the witness not to answer that question.

3 BY MR. DAVIS:

4 Q You can refer to this document if you
5 wish. It's the executive order, Mrs. Battle. What
6 do you understand the executive order behind tab
7 4 -- what do you understand this executive order to
8 direct the census department to do?

9 A My understanding is that the Census Bureau
10 is directed to establish an enter agency working
11 group with the purpose of meeting with federal
12 departments to discuss acquiring their
13 administrative records that may be helpful in
14 helping the Census Bureau meet and comply with the
15 executive order.

16 Q And does the Census Bureau intend to do
17 that?

18 A Yes.

19 Q Is there in any respect that the Census
20 Bureau does not intend to comply with executive
21 order 13880?

22 A The Census Bureau is working to comply

1 with executive order 13880.

2 Q And you are not aware of any area or any
3 requirement of the executive order that the Census
4 Bureau intends to refuse?

5 MR. SVERDLOV: Objection. Vague. Calls
6 for a legal conclusion. Calls for speculation.

7 A I am not aware of any part of the
8 executive order that the Census Bureau intends to
9 refuse.

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

16 MR. SVERDLOV: Objection. Calls for
17 speculation.

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

21 Q Okay. Well, I have to be clear because of
22 the objections. Has there been a decision made that

1 the Census Bureau is going to take no further steps
2 if a state has declined to provide requested data?

3 MR. SVERDLOV: Objection to the extent it
4 calls for deliberative information. To the extent
5 the went can answer whether or not there has been a
6 decision made she may answer.

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

9 A I am not aware of the Census Bureau making
10 any decisions about whether or not next steps need
11 to be taken.

12 Q Okay. Look back, please, Mrs. Battle, at
13 the document behind tab 9. And remind me for the
14 record what Exhibit Number is?

15 A 14.

16 Q 14. Thank you. And look back at the list
17 of 1 through 7.

18 MR. SVERDLOV: For the record, this is the
19 page that's Bates numbered P39.

20 THE WITNESS: Yes.

21 BY MR. DAVIS:

22 Q Does the Census Bureau know how many

1 individuals are in any of these categories one
2 through seven?

3 MR. SVERDLOV: Objection. Vague.

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

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

10 MR. SVERDLOV: Objection. Vague.

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

14 (WITNESS Exhibit Number #
15 was marked for identification.)

16 BY MR. DAVIS:

17 Q Would you turn now, please, Mrs. Battle,
18 to it the document that is behind tab 14 of the
19 notebook? And let's mark the first page as Exhibit
20 15, please. And I'll represent to it you that these
21 are excerpts of a deposition in other litigation.
22 These are excerpts of a deposition taken in other

1 litigation. The deposition of Dr. John Abowd on
2 Wednesday, August 29th in the lawsuit New York
3 immigration collision ET Al versus U.S. K*FZ.

4 MR. SVERDLOV: Just for the record I will
5 note this this is another document that has to the
6 been identified for purposes of the topics that the
7 parties negotiated. So to the extent that the
8 witness can answer in general terms, she may do so.

9 MR. DAVIS: Not helpful because I don't
10 have to tell you what the exhibits are going to be
11 when we negotiate topics. And it --

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

15 MR. DAVIS: Exactly. You don't know. So
16 it's a waste of time. You can still ways the
17 objection after a question if it's objectionable
18 instead of taking up our time flagging potential
19 objections.

20 BY MR. DAVIS:

21 Q I will tell you, Mrs. Battle, I find some
22 of the coloring hard to read. This is the form we

1 were able to receive it in. I think it is because
2 different parties designated different portions of
3 the deposition in other litigation.

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

8 A Yes.

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

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

19 A Yes. The Census Bureau has determined
20 that it will use a procedure or methodology called
21 differential privacy that will be used to infuse
22 noise into all estimates that come out from the CVAP

1 as well as all census counts that come out from the
2 decennial census. So all data products from the
3 decennial census will have this noise infusion to
4 protect the privacy of those who are included.

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

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

17 Q Okay. I'm sure I'm just slow but I don't
18 understand that. Let me try to give you an example.
19 Let's say the Census Bureau reports for a particular
20 census block that there are 100 people living here,
21 there are 90 citizens and ten non citizens. Is that
22 going to be true or will this noise mean that you

1 are reporting some different number?

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

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

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

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

15 Q Do I understand you can't look at the CVAP
16 data for a census block and tell from that who
17 individually is a citizen and who is not? But will
18 the totals for that census block be reported
19 accurately?

20 MR. SVERDLOV: Objection. Vague.
21 Compound.

22 A The Census Bureau has determined that the

1 only population data coming out of the decennial
2 census that will not have differential privacy or
3 noise injection will be the state level population
4 totals. All other totals will have this
5 differential privacy applied to it, at least that's
6 as of today. The Census Bureau's position.

7 Q And when states are using this CVAP data
8 to draw districts, and it looks at a census block
9 and it says we add your census block to this
10 district, we are adding 100 additional white vote
11 urges, white voting age citizens and 42 additional
12 African-American voting age citizens, are those
13 numbers going to be true?

14 MR. SVERDLOV: I'm going to object based
15 on scope and I'm also going to object -- first I'm
16 going to object to the question as vague and I will
17 also object to it on the basis of scope because
18 redistricting is explicitly not one of the things
19 that we have agreed to proffer a witness to testify
20 about nor is it something that the census bureau
21 performed.

22 Q This is not about redistricting, it's

1 about the accuracy of the CVAP data that will be
2 important and I'm having trouble understanding what
3 injecting noise does to accuracy?

4 MR. SVERDLOV: Is that a question?

5 MR. DAVIS: Yes.

6 Q What does injecting noise have to do with
7 accuracy? How does it effect it?

8 MR. SVERDLOV: Objection. Compound.

9 A So the Census Bureau has talked publicly
10 about the differential privacy methodology and the
11 fact that the data will become more accurate as you
12 aggregate levels of geographic. So data at the
13 block level may have SA*EP noise in it that's more
14 pronounced but as you group those blocks into block
15 groups and take those block groups and create census
16 tracts and take those census tracts and build up to
17 counties, the accuracy improves as you aggregate data
18 and build larger geographic areas.

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

1 MR. SVERDLOV: Objection. Calls for
2 speculation.

3 A You are referring to a statement on page
4 67 about randomness?

5 Q Right.

6 A Let's see.

7 Q And that's in Exhibit 15. I'm trying to
8 understand if you and this witness are describing
9 the same procedure.

10 A Because on the top of page 67 the
11 testimony talks about differential privacy, then we
12 are talking about the same thing.

13 Q Okay.

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

20 MR. DAVIS: I do not know the answer to
21 that question. And if I intended -- if I
22 represented this as being the testimony of the

1 department itself, that was not intentional.

2 MR. SVERDLOV: Okay.

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

8 MR. SVERDLOV: That makes sense.

9 MR. DAVIS: Thank you, Mrs. Battle.

10 (Recessed at TIME AMPM)

11 (Reconvened at TIME AMPM)

12 BY MR. DAVIS:

13 Q Mrs. Battle, the executive order -- you
14 are free to turn to it if you want -- but it is
15 behind tab 4. In executive order 13880 says on the
16 page that's been marked, that's Bates numbered
17 P-169, it says, before it lists the different
18 categories of administrative records it says the
19 following agencies shall examine relevant legal
20 authorities and to the maximum extent consistent
21 with law provide access to the following records.

22 MR. SVERDLOV: I'm sorry, counsel. Can

1 you detect me.

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

5 MR. SVERDLOV: Okay.

6 BY MR. DAVIS:

7 Q My question to you, Mrs. Battle, is this:
8 Are you aware of any federal agencies that have said
9 we cannot provided requested information because the
10 law couldn't permit us to share it with you?

11 A I am not aware of agencies stating that
12 they cannot share or send to us their data because
13 of law.

14 Q Okay. And for the data that you received
15 or that thief agreed to share are you aware of any
16 circumstance where the law would not permit you to
17 use the data in order to impute citizenship?

18 MR. SVERDLOV: Objection. Calls for a
19 legal conclusion and to the extent it pertains to
20 the ongoing deliberations about the use of data,
21 that this information we would view as protected
22 under the deliberative process privilege so I will

1 instruct the witness not to answer that portion.

2 BY MR. DAVIS:

3 Q Let's start over. Are you aware of any
4 circumstance where the Census Bureau has determined
5 that it is unable to use a set of administrative
6 data because of some impediment of the law?

7 MR. SVERDLOV: Objection, vague.

8 MR. DAVIS: Or some legal requirement.

9 MR. SVERDLOV: Objection. Compound.

10 A I am not aware of that.

11 Q Would you look at the document, one of the
12 ones that you brought with you today, that's marked
13 as Exhibit 11? And this, for the record, is a
14 memorandum of agreement between the United States
15 Department of Commerce and the United States
16 Department of Homeland Security. And I will refer
17 you to page 17 of that document, Mrs. Battle.

18 Do you see that page with the heading
19 attachment one, description of approved research
20 project?

21 A Yes. Yes.

22 Q With the first paragraph says the Census

1 Bureau plans to use several administrative data
2 sources of citizenship status in a statistical model
3 that will produce a probability of being a U.S.
4 citizen on April 1, 2020 for each person in the 2020
5 census.

6 First, is that in fact the Census Bureau's
7 plans?

8 A The Census Bureau is acquiring
9 administrative records that it will evaluate and the
10 Census Bureau will then finalize their plans about
11 how they specifically will determine citizenship for
12 those enumerated in the census.

13 Q Okay. What does it mean to produce a
14 probability of being a U.S. citizen?

15 A In this general approach the probability
16 would be a value between zero and one.

17 Q Okay. Well, what if the probability is
18 .5; is that person counted as a citizen or a non
19 citizen?

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

22 A The final methodology for how the Census

1 Bureau will use administrative records and to
2 actually develop the citizenship status for
3 individuals in the census has not been finalized yet
4 to be able to tell it you that information.

5 Q Okay. Let me make sure I understand you
6 by asking you a different way. Has the Census
7 Bureau yet decided how high the probability must be
8 of citizenship before a person is counted as a U.S.
9 citizen?

10 A I am not aware of the Census Bureau making
11 that decision yet.

12 Q Okay. And who would be making that
13 decision?

14 MR. SVERDLOV: Objection. Vague. And,
15 okay.

16 A The final methodology that the Census
17 Bureau will use to create the CVAP file will need to
18 be vetted and approved by executive leadership at
19 the Census Bureau as well as at the Department of
20 Commerce.

21 Q Okay. So executive leadership has to
22 approve it it. I assume that there are employees of

1 the Census Bureau who will be working on answers to
2 these questions to recommend to executive
3 leadership. Is that true?

4 MR. SVERDLOV: Objection. Vague.

5 A Yes.

6 Q Okay. And do you know who within the
7 Census Bureau will be working on recommendations to
8 make to executive leadership?

9 MR. SVERDLOV: Objection. Vague and
10 assumes facts not in evidence.

11 A The Census Bureau will look to an internal
12 expert team that includes leadership from John Abowd
13 and the development of the recommendation about how
14 to develop the statistical models, how to use
15 probability data if that indeed will be part of the
16 final methodology.

17 Q Mrs. Battle, when you talk about in terms
18 of probability of citizenship and the value between
19 zero and one, what does zero mean?

20 MR. SVERDLOV: Objection. Vague.

21 A The methodology that needs to be finalized
22 will determine what the values of the range of the

1 probabilities actually means.

2 Q Okay. I guess you would give me the same
3 answer if I asked what one means in that scenario?

4 A Yes. All of that has to be finalized in
5 the methodology.

6 Q Okay. Let's say, Mrs. Battle, that after
7 the 2020 census the Census Bureau counts in a
8 particular census block 100 voting age white
9 citizens, 40 voting age African-American citizens
10 and ten non-citizens. Are those numbers going to be
11 reported for that census block?

12 MR. SVERDLOV: Objection. Vague. And
13 compound. To the extent it concerns ongoing
14 deliberations that question would, the answer to
15 that question would be protected by the glib process
16 privilege. I think more percent right now is that
17 this question is verging outside the scope of the
18 negotiated topics and I think we would benefit from
19 you explaining how you view the, that type of count
20 you described as following within one of the topics
21 we negotiated.

22 MR. DAVIS: I'm making the numbers up. I

1 don't care what the numbers are. I just want to
2 know if you count particular numbers in the census
3 block. This is going back to the injecting noise
4 and I just want to understand that as well as I can
5 while with I have the opportunity to speak with you.
6 So the first step is if you measure X number of,
7 let's just stick with X number of Caucasian voting
8 age citizens in a census block, is that X in fact
9 going to be release Ford that census block or
10 because of noise will it be changed to some other
11 number?

12 MR. SVERDLOV: Objection. Vague.

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

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

20 MR. SVERDLOV: Objection. Calls for
21 speculation.

22

1 BY MR. DAVIS:

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

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

7 MR. SVERDLOV: Objection. Vague.

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

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

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

22 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,
4 voting age population at the state level will be
5 correct?

6 MR. SVERDLOV: Objection. Vague. SA*EP.

7 A The state population totals will will be
8 as enumerated in the decennial census.

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

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

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

18 MR. SVERDLOV: Objection. Vague.

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

22 Q Does the Census Bureau have any intention

1 that you are aware of to seek information concerning
2 deferred action for childhood arrives programs?

3 MR. SVERDLOV: Objection. I will direct
4 the witness not to answer both on the basis of scope
5 and deliberative process privilege.

6 MR. DAVIS: Have you made a decision as to
7 whether or not to seek that data.

8 MR. SVERDLOV: Objection. Assumes facts
9 not in evidence. And outside the scope. But if --
10 I.

11 BY MR. DAVIS:

12 Q I feel like the administrative data that
13 may be available to address citizenship is well
14 within the scope of the topics. So I will ask
15 again. Has the Census Bureau made any decision as
16 to whether it will seek information related to the
17 deferred action for childhood arrivals program?

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

20 A I am not aware of any decision that's been
21 made regarding that topic.

22 Q Okay. I am almost positive that at times

1 today I have referred to the census department when
2 it's really the Census Bureau. If I have done that,
3 will we understood each other had? You knew who I
4 was talking about, that I meant the Census Bureau,
5 did you not?

6 MR. SVERDLOV: Objection. Misleading.

7 A Yes.

8 MR. DAVIS: Do you all need a break?

9 PWRA*D PWRA*D are you done?

10 MR. DAVIS: Not quite. But close.

11 BY MR. DAVIS:

12 Q Would you look at tab 17 of your notebook,
13 please, Mrs. Battle?

14 MR. SVERDLOV: I'm sorry? What tab?

15 MR. DAVIS: Tab 17.

16 (WITNESS Exhibit Number #
17 was marked for identification.)

18 BY MR. DAVIS:

19 Q And, Mrs. Battle, take all the time you
20 want. I really just want to know if you can
21 identify that document for me just so I can get on
22 the record if you know what that document is.

1 Let's mark it as exhibit?

2 MR. DAVIS: For the record, I made a
3 mistake. This document will be marked as Exhibit 16
4 to Mrs. Battle's deposition.

5 (WITNESS Exhibit Number #
6 was marked for identification.)

7 BY MR. DAVIS:

8 Q Can you identify the document that's been
9 marked as Exhibit 16, Mrs. Battle?

10 A This is the Department of Homeland
11 Security immigration related information sharing
12 with U.S. Census Bureau, December 20th, 2019.

13 Q And how is you that different from the
14 document we marked as Exhibit 11, the memorandum of
15 agreement between the Department of Commerce and the
16 U.S. Department of Homeland Security?

17 MR. SVERDLOV: Objection. Vague and
18 misleading and assumes facts not in evidence and to
19 it the extent you are asking the witness to testify
20 about the Department of Homeland Security document
21 that you have marked as Exhibit 16, it is outside
22 the scope of this deposition because the witness is

1 testifying on behalf of the U.S. Census Bureau, not
2 the Department of Homeland Security.

3 BY MR. DAVIS:

4 Q Have you reviewed the document that's been
5 marked Exhibit 16 before?

6 A I am not familiar with this particular
7 document.

8 Q That's all. That's fine. Then I will
9 have no other questions about it.

10 Mrs. Battle, does the Census Bureau know
11 yet whether it is feasible to produce high quality
12 citizen voting age population data using
13 administrative records?

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

16 A The Census Bureau will need to continue
17 evaluating the administrative records that we have
18 recently acquired before being able to make that
19 statement.

20 Q So the answer is the bureau just doesn't
21 know yet? Is that true?

22 A Yes.

1 Q Okay. If it didn't know now, then it
2 didn't know the answer to that question in 2019 or
3 2018 or 2017, did it?

4 MR. SVERDLOV: Objection. Argumentative.

5 A The Census Bureau needs to get access to
6 the data and be able to evaluate that to make that
7 final decision.

8 Q So if someone said in 2019 that, yes, the
9 Census Bureau can use administrative data and use
10 that to produce high quality citizen voting age
11 population data, that would have been incorrect?

12 MR. SVERDLOV: Objection. Vague and
13 misleading.

14 A The goal of the Census Bureau is to use
15 administrative records to produce high quality data
16 on citizenship for the population. But we need to
17 access the data that we believe may be helpful to us
18 and just make sure that it will be of the quality
19 that we need for the purposes that we need.

20 Q After the 2020 census, Mrs. Battle, does
21 the Census Bureau intend to release a total
22 population count for each state?

1 A After the decennial census the Census
2 Bureau intends to publish a, an apportionment
3 population count for the state, which would include
4 a resident population count for the state as well as
5 the federal fill rated overseas population for the
6 state.

7 Q Okay. Will it produce as a part of any
8 product a count of the number of U.S. citizens
9 residing in each state?

10 MR. SVERDLOV: Objection. Vague.

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

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

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

21 Q But does the Census Bureau also intend to
22 count each person, even those not of voting age as a

1 citizen or a non-citizen?

2 MR. SVERDLOV: Objection. Vague. And
3 misleading.

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

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

11 MR. SVERDLOV: Objection. Vague and
12 misleading.

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

17 Q Do you know and does the Census Bureau
18 know whether any of the administrative data that it
19 has sought or obtained would contain administrative
20 data on lawful residents? Let me say by that I mean
21 do you know whether any of the data from any of
22 these other agencies will contain information to let

1 you impute whether or not a person counted is a non
2 citizen counted is a lawful resident of the United
3 States?

4 MR. SVERDLOV: Objection. Vague and
5 misleading.

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

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

18 A So in Exhibit 6 on page 2, in the bottom
19 part of the table we see data that either has been
20 acquired or we are waiting to acquire from the
21 Department of Homeland Security which would include
22 information on lawful permanent residences and

1 natural lyzed citizens as well as prior lawful my
2 grants, people with student visas or temporary work
3 visas, et cetera.

4 And page 3 -- at the top the Department of
5 State, we are waiting to acquire those records on
6 data regarding the rev gee population.

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

10 A I would need to defer back to the
11 memorandum of understanding withing all of these
12 agencies which lists the variables specifically that
13 are being requested to determine that.

14 Q If a state agrees to release information
15 to the Census Bureau, and by information I mean
16 administrative data requested as part of the effort
17 to comply with the executive order, is the Census
18 Bureau interesting into agreements with those states
19 or memorandums ever understanding?

20 MR. SVERDLOV: Objection. Vague.

21 A The Census Bureau will need to have a
22 memorandum of understanding or enter, transfer

1 agreement to document exactly what the Census Bureau
2 is requesting, yes.

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

5 A Yes.

6 Q Does that mean that Nebraska has entered
7 into a memorandum of understanding with the Census
8 Bureau?

9 A In order for the Census Bureau to acquire
10 those data there needs to be a memorandum of
11 understanding.

12 Q Gotcha.

13 MR. DAVIS: This is off the record.

14 - - -

15 (Discussion off the Record.)

16 - - -

17 BY MR. DAVIS:

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

1 that?

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

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

11 MR. SVERDLOV: Objection, vague and
12 compound, assumes facts not in evidence. SA*EP.

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

17 Q We discussed earlier, Mrs. Battle, the
18 different steps that the Census Bureau goes through
19 when it's attempting to make an enumeration, you
20 send out the form, sometimes enumerator, sometime in
21 certain case cans you might ask a neighbor,
22 sometimes the hot deck interpretations. My question

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

4 MR. SVERDLOV: Objection. Vague. Calls
5 for a legal conclusion.

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

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

15 MR. SVERDLOV: Objection. Vague.

16 A Yes.

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

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

22 (Recessed at TIME AMPM)

1 (Reconvened at TIME AMPM)

2 MR. DAVIS: I think I'm up and I can say
3 we have no further questions. We really appreciate
4 counsel hosting Mrs. Battle. We thank you for
5 taking time to speak to us and helping with these
6 issues. Before I close I would say that there is
7 still documents to be produced or documents that
8 through unavoidable technical difficulties we just
9 received a new copy of today. If in the course ever
10 reviewing those documents there is something that we
11 need additional testimony about, I reserve the right
12 to speak with counsel and seek additional testimony.
13 Although, we would in those circumstances most
14 certainly try to exhaust other ways of getting the
15 information.

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

20 MR. DAVIS: Thank you.

21 MR. SVERDLOV: We don't have -- I don't
22 have any questions for Mrs. Battle. We will reserve

1 the right to read and sign the transcript.

2 MR. DAVIS: Certainly.

3 MR. SVERDLOV: And other wise we have
4 nothing further.

5 MR. DAVIS: Thank you all.

6 (Whereupon, at TIME , the
7 deposition of WITNESS NAME
8 was concluded.)

9 * * * * *

**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**

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
BACKGROUND	2
I. Constitutional and statutory framework.....	2
II. The Presidential Memorandum.....	4
III. Events precipitating the Presidential Memorandum.....	5
ARGUMENT.....	7
I. Standard of review.....	7
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.....	8
III. Defendants’ decision to exclude undocumented immigrants from the apportionment base violates Article I and the Fourteenth Amendment.....	10
A. The Constitution explicitly requires the population base for apportionment to include the whole number of persons in each State.....	10
B. Apportioning Representatives based on numbers other than the actual enumeration from the decennial census is also unconstitutional.....	24
IV. The Memorandum is <i>ultra vires</i> under the statutory scheme Congress enacted to implement the required decennial census and reapportionment of House seats.....	27
A. The Memorandum violates the statutory requirements to count the total population, and to report and use that total for apportionment purposes.....	27
B. The Memorandum violates the Census Act by producing apportionment figures that are not based solely on the decennial census.....	33
C. The Memorandum violates 2 U.S.C. § 2a by producing apportionment figures that are not based solely on a ministerial calculation.....	36
D. This Court has equitable authority to correct the Presidential Memorandum’s <i>ultra vires</i> mandates.....	38

V. Alternatively, a preliminary injunction is warranted to prevent irreparable harm. 40

 A. The Presidential Memorandum will deter immigrants and their households
 from responding to the 2020 census. 42

 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..... 47

 C. Plaintiffs will be irreparably harmed by Defendants’ efforts to reallocate
 political power away from their jurisdictions. 49

 D. The balance of equities and public interest favor a preliminary injunction..... 50

CONCLUSION..... 52

TABLE OF AUTHORITIES

	Page(s)
Constitutional Provisions	
U.S. Const. amend. XIV	24
U.S. Const. amend. XIV, § 2	<i>passim</i>
U.S. Const. art I, § 2.....	<i>passim</i>
U.S. Const. art. II, § 1	3
Cases	
<i>ACLU v. Ashcroft</i> , 322 F.3d 240 (3d Cir. 2003).....	51
<i>Am. Sch. of Magnetic Healing v. McAnnulty</i> , 187 U.S. 94 (1902).....	38
<i>Armstrong v. Exceptional Child Center</i> , 575 U.S. 320 (2015).....	38, 40
<i>Bowen v. Mich. Acad. of Family Physicians</i> , 476 U.S. 667 (1986).....	38
<i>Carey v. Klutznick</i> , 637 F.2d 834 (2d Cir. 1980).....	49
<i>Carroll v. Safford</i> , 44 U.S. 441 (1845).....	38
<i>Chamber of Commerce v. Reich</i> , 74 F.3d 1322 (D.C. Cir. 1996)	39
<i>Dalton v. Specter</i> , 511 U.S. 462 (1994).....	40
<i>Dart v. United States</i> , 848 F.2d 217 (D.C. Cir. 1988)	39
<i>Dep't of Commerce v. Montana</i> , 503 U.S. 442, 1992 WL 672929 (1992).....	29, 30, 36, 37
<i>Dep't of Commerce v. New York</i> , 139 S. Ct. 2551 (2019).....	5, 18, 34, 40

<i>Dep't of Commerce v. U.S. House of Representatives</i> , 525 U.S. 316 (1999).....	<i>passim</i>
<i>Evenwel v. Abbott</i> , 136 S. Ct. 1120 (2016).....	<i>passim</i>
<i>Faiveley Transport. Malmö AB v. Wabtec Corp.</i> , 559 F.3d 110 (2d Cir. 2009).....	41
<i>Fed'n for Am. Immigration Reform (FAIR) v. Klutznick</i> , 486 F. Supp. 564 (D.D.C. 1980).....	12, 13, 19, 20
<i>Franklin v. Massachusetts</i> , 505 U.S. 788 (1992).....	<i>passim</i>
<i>Garza v. County of Los Angeles</i> , 918 F.2d 763 (9th Cir. 1990)	14
<i>Greene v. United States</i> , 79 F.3d 1348 (2d Cir. 1996).....	30
<i>Haim v. Islamic Republic of Iran</i> , 784 F. Supp. 2d 1 (D.D.C. 2011)	41
<i>Hake v. Citibank, N.A.</i> , No. 19-MC-125 (JGK), 2020 WL 1467132 (S.D.N.Y. Mar. 26, 2020)	41
<i>Hawaii v. Trump</i> , 878 F.3d 662 (9th Cir. 2017), <i>rev'd on other grounds</i> , 138 S. Ct. 2392 (2018).....	39
<i>Lamar, Archer & Cofrin, LLP v. Appling</i> , 138 S. Ct. 1752 (2018).....	30
<i>League of Women Voters of Fla. v. Browning</i> , 863 F. Supp. 2d 1155 (N.D. Fla. 2012).....	46
<i>Leedom v. Kyne</i> , 358 U.S. 184 (1958).....	38
<i>Lorillard v. Pons</i> , 434 U.S. 575 (1978).....	31
<i>Make the Road N.Y. v. Cuccinelli</i> , 419 F. Supp. 3d 647 (S.D.N.Y. 2019).....	50
<i>Mittleman v. Postal Regulatory Comm'n</i> , 757 F.3d 300 (D.C. Cir. 2014).....	39

<i>Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela</i> , 863 F.3d 96 (2d Cir. 2017).....	30
<i>Mountain States Legal Found. v. Bush</i> , 306 F. 3d. 1122 (D.C. Cir. 2002).....	38, 39
<i>Mullins v. City of New York</i> , 626 F.3d 47 (2d Cir. 2010).....	41
<i>New York Progress & Prot. PAC v. Walsh</i> , 733 F.3d 483 (2d Cir. 2013).....	51
<i>New York v. U.S. Dep’t of Commerce</i> , 351 F. Supp. 3d 502 (S.D.N.Y. 2019), <i>aff’d</i> 139 S. Ct. 2551 (2019)	<i>passim</i>
<i>New York v. U.S. Dep’t of Homeland Sec.</i> , --- F.3d --- , 2020 WL 4457951 (2d Cir. Aug. 4, 2020)	30
<i>Plyler v. Doe</i> , 457 U.S. 202 (1982).....	12
<i>Ramos v. Nielsen</i> , 336 F. Supp. 3d 1075 (N.D. Cal. 2018)	7
<i>Saget v. Trump</i> , 345 F. Supp. 3d 287 (E.D.N.Y. 2018)	7
<i>Sale v. Haitian Ctrs. Council</i> , 509 U.S. 155 (1993).....	39
<i>U.S. House of Representatives v. U.S. Dep’t of Commerce</i> , 11 F. Supp. 2d 76 (D.D.C. 1998)	50
<i>Utah v. Evans</i> , 536 U.S. 452 (2002).....	24, 25, 27
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964).....	14, 15, 17
<i>Whitmore v. Arkansas</i> , 495 U.S. 149 (1990).....	49
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	8, 50
<i>Wisconsin v. City of New York</i> , 517 U.S. 1 (1996).....	18, 24

<i>XL Specialty Ins. Co. v. Level Glob. Inv'rs, L.P.</i> , 874 F. Supp. 2d 263 (S.D.N.Y. 2012).....	41
--	----

Statutes

2 U.S.C. § 2(a)	5
2 U.S.C. § 2a	<i>passim</i>
2 U.S.C. § 2a(a).....	<i>passim</i>
2 U.S.C. § 2a(b)	3
2 U.S.C. § 141	30
3 U.S.C. § 3	3
13 U.S.C. § 2	3
13 U.S.C. § 4	3
13 U.S.C. § 141	3, 28, 36
13 U.S.C. § 141(a)	2, 3, 27, 28
13 U.S.C. § 141(b)	<i>passim</i>
Act of June 18, 1929, § 2	28
Act of June 18, 1929, § 22	28, 31
Indian Citizenship Act of 1924, Pub. L. No. 68 -175, 43 Stat. 253	13
Pub. L. No. 71-962, § 6(b)	30
Pub. L. No. 76-481	19
Pub. L. No. 77-291, § 1	29

Rules & Regulations

83 Fed. Reg. at 5533	23, 25
Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).....	7
Exec. Order No. 13,880, 84 Fed. Reg. 33,821 (July 11, 2019).....	51
Fed. R. Civ. P. 56(a)	8

<i>Final 2020 Census Residence Criteria and Residence Situations</i> , 83 Fed. Reg. 5525 (Feb. 8, 2018).....	21, 32
<i>Final 2020 Census Residence Criteria and Residence Situations</i> , 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018).....	32
Letter from Assistant Attorney Gen. Carol T. Crawford to Honorable Jeff Bingaman (Sept. 22, 1989), 135 Cong. Rec. S22,521 (daily ed. Sept. 29, 1989).....	20
<i>Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census</i> , 85 Fed. Reg. 44,679, 44,680 (July 23, 2020).....	<i>passim</i>
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
<i>1980 Census: Counting Illegal Aliens: Hearing Before the S. Subcomm. on Energy, Nuclear Proliferation, & Fed. Services of the Comm. on Gov'tal Affairs (1980 Census)</i> , 96th Cong. 10 (1980).....	20
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
<i>Hearing Before the H. Comm. on Oversight & Reform</i> , 116th Cong. 31 (Mar. 14, 2019).....	21

<i>Hearing Before the H. Comm. on Oversight & Reform</i> , 116th Cong. 12 (Feb. 12, 2020)	21
S. Rep. No. 2, 71st Cong., 1st Sess.	36
<i>Statement from the President Regarding Apportionment</i> (July 21, 2020), https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/	6
Other Authorities	
1 The Records of the Federal Convention of 1787 (Max Farrand ed., 1911)	14
Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/inhabitant	22
The Federalist No. 36.	25
The Federalist No. 54.	14
The Founders' Constitution 102-03 (P. Kurland & R. Lerner eds. 1987)	25
<i>Full Transcript: Trump's 2020 State of the Union Address</i> , N.Y. Times (Feb. 5, 2020)	7
Joseph T. Sneed III, <i>Footprints on the Rocks of the Mountain: An Account of the Enactment of the Fourteenth Amendment</i> 28 (1997)	15, 41
Julie Hirschfeld Davis, <i>Trump Calls Some Unauthorized Immigrants 'Animals' in Rant</i> , N.Y. Times (May 16, 2018)	7
Nick Miroff, <i>Trump suspends Global Entry, traveler programs for New York residents over 'sanctuary' policies</i> , Wash. Post (last updated Feb 6, 2020)	7
<i>Remarks by President Trump at Signing of H.R. 3401</i> (July 1, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-3401/	6
<i>Remarks by President Trump Before Marine One Departure</i> (July 5, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/	6
<i>Remarks by President Trump on Citizenship and the Census</i> (July 11, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/	6, 51

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>.....46

U.S. Census Bureau, *2020 Census: Nonresponse Followup*, (June 19, 2020), <https://www.census.gov/newsroom/press-kits/2020/nonresponse-followup.html>.....45

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.*

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

⁴ *N.Y. Immig. Coal. Pls.' Mot for Sanctions*, 18-CV-2921 (JMF), ECF No. 635-1 at 124–31 (July 16, 2019); *Defs.' Opp. to Ltr. Mot. to Compel*, 18-CV-2921 (JMF), ECF No. 451 at 3 (Oct. 30, 2018); *Pls.' Jt. Proposed Post-Trial Findings of Fact*, 18-CV-2921 (JMF), ECF No. 545 at 52–53 (Nov. 21, 2018) (citing exhibits).

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/>.

⁶ *Remarks by President Trump Before Marine One Departure* (July 5, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/>.

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.”¹⁰

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).

federal grants. *See* Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017). In his 2020 State of the Union address, Defendant Trump denounced “the sanctuary city of New York,” and the next day, the Acting Secretary of Homeland Security announced that New York State residents would be prohibited from enrolling or re-enrolling in Trusted Traveler programs in retaliation for New York’s sanctuary laws. Transcript, *Trump’s 2020 State of the Union Address*, N.Y. Times (Feb. 5, 2020), <https://www.nytimes.com/2020/02/05/us/politics/state-of-union-transcript.html>; Nick Miroff, *Trump suspends Global Entry, traveler programs for New York residents over ‘sanctuary’ policies*, Wash. Post (Feb. 5, 2020), https://www.washingtonpost.com/immigration/trump-suspends-global-entry-traveler-programs-for-new-york-residents-over-sanctuary-policies/2020/02/05/e2755790-4890-11ea-9475-535736e48788_story.html.

¹⁰ Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant*, N.Y. Times (May 16, 2018), <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>.

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, Plaintiffs’ 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 Plaintiffs 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 Plaintiffs 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

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, ““*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).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.

Cong. Globe, 39th Cong., 1st Sess. 2767, at 359 (1866).

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.

Cong. Globe, 39th Cong., 1st Sess. 2766–67 (1866).

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 plaintiffs 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

aggregate number of inhabitants, which includes aliens, legal and illegal.” *1980 Census: Counting Illegal Aliens: Hearing Before the S. Subcomm. on Energy, Nuclear Proliferation, & Fed. Services of the Comm. on Gov’tal Affairs (1980 Census)*, 96th Cong. 10 (1980).

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)).¹⁴

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.

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).¹⁵ 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>.

nothing in the [Presidential Memorandum] alters that counting process.” Joint Letter 9, *New York v. Trump*, 20-CV-5770 (JMF), ECF No. 37 (S.D.N.Y. filed Aug. 3, 2020).¹⁶

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.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 797.²¹

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”).

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. McAnnulty*, 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. Malmö 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); 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

²³ U.S. Census Bureau, *2020 Census: Nonresponse Followup*, <https://www.census.gov/newsroom/press-kits/2020/nonresponse-followup.html> (June 19, 2020).

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 (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 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

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

Steven C. Wu
Deputy Solicitor General
 Judith N. Vale
Senior Assistant Solicitor General
 Eric R. Haren, *Special Counsel*
Of Counsel

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: /s/ Matthew Colangelo
 Matthew Colangelo
Chief Counsel for Federal Initiatives
 Morenike Fajana, *Special Counsel*
 Elena Goldstein
Deputy Chief, Civil Rights Bureau
 Fiona J. Kaye, *Assistant Attorney General*
 Office of the New York State Attorney
 General
 28 Liberty Street
 New York, NY 10005
 Phone: (212) 416-6057
 Matthew.Colangelo@ag.ny.gov

Attorneys for the Plaintiffs in 20-CV-5770

/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
acepedaderieux@aclu.org
jtopaz@aclu.org
slakin@aclu.org

/s/ Sarah Brannon* ***

Ceridwen Cherry*
American Civil Liberties Union
Foundation
915 15th Street, NW
Washington, DC 20005-2313
(202) 675-2337
sbrannon@aclu.org
ccherry@aclu.org

Julia A. Gomez
Peter Eliasberg**
ACLU Foundation of Southern California
1313 West 8th Street
Los Angeles, CA 90017
(213) 977-9500
jgomez@aclusocal.org
peliasberg@aclusocal.org

/s/ John A. Freedman

John A. Freedman
R. Stanton Jones**
Daniel F. Jacobson**
Chase Raines**
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 942-5000
John.Freedman@arnoldporter.com
Stanton.Jones@arnoldporter.com
Daniel.Jacobson@arnoldporter.com
Chase.Raines@arnoldporter.com

/s/ Perry Grossman

Perry Grossman
pgrossman@nyclu.org
New York Civil Liberties Union
Foundation
125 Broad Street
New York, NY 10004
Phone: (212) 607-3329
Andre Segura**
Edgar Saldivar**
Thomas Buser-Clancy**
ACLU Foundation of Texas, Inc.
P.O. Box 8306
Houston, TX 77288
Telephone: (713) 942-9146
Fax: (713) 942-8966
asegura@aclutx.org
esaldivar@aclutx.org
tbuser-clancy@aclutx.org

Attorneys for the Plaintiffs in 20-CV-5781

* 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).

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.

3. Throughout my career, I have taught courses on Immigration Policy, Racial and Ethnic Politics, Electoral Politics, Public Opinion, Voting Rights, Chicano/Latino History, Introduction to Statistical Analysis, and Advanced Statistical Analysis to Ph.D. students.

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 Telemundo¹ 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

¹ Telemundo. “Trump Ordena Al Censo Que No Incluya a Los Indocumentados En El Recuento Que Determina El Reparto De Escaños Del Congreso,” July 21, 2020. <https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-tmna3823616>.

² https://latinodecisions.com/wp-content/uploads/2019/06/NALEO_AV_Undoc_Results.pdf

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 immigrant³ 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 uncouned.

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

⁴ 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/>

⁵ 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/>

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

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

⁸ <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)⁹. 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.¹⁰ Major Spanish-language media and

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)

¹⁰ Alex Daughery, *Florida Could Lose Power in Washington if Trump's New Immigration Order is Enacted*, MIAMI HERALD (July 21, 2020), <https://www.miamiherald.com/news/politics-government/article244382462.html>; Alexandra Alper and Nick Brown, *Trump Issues Memo To Stop Counting Undocumented Migrants In Next Round Of Redistricting*, HUFFINGTON POST (July 21, 2020), https://www.huffpost.com/entry/trump-executive-order-immigrants-redistricting_n_5f1709e0c5b615860bb7f415; Chris Megerian, *Trump Tries New Move to Restrict Census, Could Cut California's Seats in Congress*, L.A. TIMES (July 21, 2020), <https://www.latimes.com/politics/story/2020-07-21/trump-new-tack-restrict-immigrants-census>; David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA

Barreto Declaration – Census 2020 Presidential Memorandum

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

TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002/>; Jill Colvin and Kevin Freking, *Trump to Exclude Those in US Illegally From Congressional Reapportionment Count*, CHICAGO SUN-TIMES (July 21, 2020), <https://chicago.suntimes.com/2020/7/21/21333076/trump-to-illegally-from-congressional-reapportionment-count>; Katie Rogers and Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Kevin Freking and Mike Schneider, *Trump's New Immigration Fight: How to Redraw House Districts*, HOUSTON CHRONICLE (July 21, 2020), <https://www.chron.com/news/article/Trump-seeks-to-bar-illegal-alien-from-15423258.php>; Kevin Liptak et al., *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html>; Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants From a Portion of the 2020 Census*, SEATTLE TIMES (July 21, 2020), <https://www.seattletimes.com/nation-world/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/>

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), <https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-reparto-de-esca%C3%B1os-del-congreso>; *Trump Firma Decreto Para Excluir a Indocumentados del Censo 2020*, TELEMUNDO SAN ANTONIO (July 21, 2020), <https://www.telemundosanantonio.com/noticias/la-casa-blanca/presidente-trump-decreto-indocumentados-2020/2068275/>.

¹² *Trump Ordena al Censo No Contar a Los Indocumentados en un Memo de Dudosa Legalidad y Difícil de Cumplir*, UNIVISION (July 21, 2020), <https://www.univision.com/noticias/elecciones-en-eeuu-2020/trump-ordena-al-censo-no-contar-a-los-indocumentados-en-un-memo-de-dudosa-legalidad-y-dificil-de-cumplir>.

¹³ Ju Carpy, *Trump Firma Memo Para Excluir a Migrantes del Censo*, AZTECA AMERICA (July 21, 2020), <https://aztecaamerica.com/2020/07/21/trump-firma-memo-para-excluir-a-migrantes-del-censo/>.

¹⁴ Maria Teresa Sarabia, *Inmigrantes Indocumentados No Serán Contados*, ESTRELLA TV (July 21, 2020), <http://noticiario.estrellatv.com/noticias/inmigrantes-indocumentados-no-seran-contados-noticiario-estrella-tv/>

¹⁵ *Owned Stations*, TELEMUNDO, <https://www.nbcumv.com/owned-stations/telemundo-station-group/about?network=5266626> (last visited July 31, 2020); *Local Media*, UNIVISION COMMUNICATIONS INC., <https://corporate.univision.com/partner-with-us/local/> (last visited July 31, 2020); *TV*, ESTRELLA TV, <http://www.estrellamedia.com/programming/tv> (last visited July 31, 2020); *Azteca America*, GRUPO SALINAS, <https://www.gruposalinas.com/en/aztecaUS> (last visited July 31, 2020).

¹⁶ Jesús García, *Trump Firma Memorando Para Excluir a Inmigrantes Indocumentados del Censo*, La Opinión (July 21, 2020), <https://laopinion.com/2020/07/21/trump-firma-memorando-para-excluir-a-inmigrantes-indocumentados-del-censo/>; Jesús García, *Trump Firma Memorando Para Excluir a Inmigrantes Indocumentados del Censo*, El Diario (July 21, 2020), <https://eldiario.com/2020/07/21/trump-firma-memorando-para-excluir-a-inmigrantes-indocumentados-del-censo/>; Kevin Freking and Mike Schneider, *Trump Firma Memo Que Afectaría Conteo de Migrantes*, El Nuevo Herald (July 21, 2020), <https://www.elnuevoherald.com/noticias/estados-unidos/article244382772.html>; <https://www.msn.com/es-nix/noticias/mundo/ordena-trump-excluir-a-indocumentados-del-censo-en-eu/ar-BB171eMI>; <https://cnnespanol.cnn.com/video/centro-elecciones-indocumentados-migrantes-trump-memorando-constitucion-estados-unidos-dusa-vo/>; <https://cnnespanol.cnn.com/2020/07/21/trump-firma-orden-para-excluir-inmigrantes-indocumentados-en-el-censo-2020/>; <https://es-us.noticias.yahoo.com/trump-firma-memorandum-excluir-indocumentados-193912301.html>; <https://www.dallasnews.com/espanol/al-dia/estados-unidos/2020/07/21/donald-trump-pedira-al-censo-2020-que-no>

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.¹⁷ 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.¹⁸

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 si, fomenta el miedo en nuestras comunidades. Una vez más, le dice a nuestra comunidad inmigrante, no se cuentan, no los necesitamos.”* “This memo obviously causes fear among this particular population, I ask you, could fear be one of the reasons

[cuente-a-los-indocumentados-segun-funcionario-de-la-casa-blanca/](https://www.cuente-a-los-indocumentados-segun-funcionario-de-la-casa-blanca/) ; <https://laoferta.com/2020/07/21/trump-ordena-excluir-a-indocumentados-de-distribucion-electoral-tras-censo/> ; <https://www.lavanguardia.com/trump-firma-memorandum-que-busca-excluir-a-indocumentados-del-censo-2020/> ; <https://www.excelsiorcalifornia.com/2020/07/22/trump-abre-nueva-polemica-al-ordenar-enxcluir-a-indocumentados-de-censo/>

¹⁷ <https://www.telemundo62.com/videos/videos-noticias/implicaciones-de-remover-a-los-indocumentados-del-censo-2020/2063236/> ; <https://www.univision.com/local/los-angeles-knmx/que-implicaciones-tiene-la-orden-de-trump-que-busca-excluir-a-los-indocumentados-del-censo-2020-video> ; <https://www.univision.com/local/philadelphia-wuwp/lideres-reaccionan-ante-peticion-de-trump-para-excluir-a-personas-indocumentadas-del-censo-2020-video>

¹⁸ <https://www.chron.com/news/article/Orden-de-Trump-afecta-censo-en-California-15434405.php> ; <https://eldiariouny.com/2020/07/21/enorme-oposicion-a-orden-de-trump-que-afectaria-a-millones-de-inmigrantes-y-que-califican-de-ilegal/> ; Mike Schneider, Orden de Trump afecta censo en California, Florida y Texas, El Nuevo Herald (July 25, 2020), <https://www.elnuevoherald.com/article244496782.html>

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 eliminarnos 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

¹⁹ Telemundo 62. “Implicaciones De Remover a Los Indocumentados Del Censo 2020.” Telemundo 62. Telemundo 62, July 22, 2020. <https://www.telemundo62.com/videos/videos-noticias/implicaciones-de-remover-a-los-indocumentados-del-censo-2020/2063236/>.

²⁰ Univision. “Líderes Reaccionan Ante Petición De Trump Para Excluir a Personas Indocumentadas Del Censo 2020.” Univision, July 22, 2020. <https://www.univision.com/local/philadelphia-wuwp/lideres-reaccionan-ante-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! Yahoo! Accessed July 29, 2020. <https://es-us.noticias.yahoo.com/coalici%C3%B3n-fiscales-demanda-presidente-trump-230425578.html>.

²² Mike Schneider. “Orden De Trump Afecta Censo En California, Florida y Texas.” Houston Chronicle. Associated Press, July 29, 2020. <https://www.chron.com/news/article/Orden-de-Trump-afecta-censo-en-California-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 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

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

²⁷ Barreto, Matt. Garcia-Rios, Sergio. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012." RSF: The Russell Sage Foundation Journal of the Social Sciences. January 06, 2016

²⁸ Barreto, Matt. Garcia-Rios, Sergio. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012." RSF: The Russell Sage Foundation Journal of the Social Sciences. January 06, 2016, p. 78.

²⁹ Subervi-Vélez, Federico A., ed. 2008. The Mass Media and Latino Politics: Studies of U.S. Media Content, Campaign Strategies and Survey Research: 1984–2004. New York: Routledge.

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 2020³⁰ 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.³¹ Over the course of 2018, USCIS reported 287,709 total requests for DACA renewal were made by undocumented immigrants.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 2019.³³ 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.³⁴ A research paper

³¹ Approximate Count of DACA Receipts: Since January 10, 2018, As of Mar. 31, 2018

https://www.uscis.gov/sites/default/files/document/data/DACA_Receipts_Since_Injunction_Mar_31_2018.pdf

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

https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2020_qtr2.pdf

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

https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2020_qtr2.pdf

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.

90. Table 7: Percent of Non-Responders Who Change to Responders at Q7 / Q8

	Total	White	Latino	Black	AAPI	Other
Q8 Yes – with citizenship	45.2	49.5	38.9	62.2	0.2	17.2
Q7 Yes – without citizenship	84.3	89.3	80.1	78.6	53.3	94.9
Difference	-39.1	-39.7	-41.2	-16.5	-53.1	-77.7

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.

³⁵ Jacome, Elisa. "The Effect of Immigration Enforcement on Crime Reporting: Evidence from the Priority Enforcement Program." *Available at SSRN 3263086* (2018).

³⁶ See Tr. 687-89; Trial Ex. 677, *NY v. Dep't Commerce*, 351 F. Supp. 3d 502 (S.D.N.Y. 2019), *aff'd* 139 S. Ct. 2551 (2019). Barreto expert declaration *NY v. Dept Commerce*, September 7, 2018.

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. Menjívar 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

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

Barreto Declaration – Census 2020 Presidential Memorandum

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.

A handwritten signature in black ink, reading "Matt A. Barreto", written over a horizontal line.

Matthew A. Barreto

Barreto Declaration – Census 2020 Presidential Memorandum

August 7, 2020

p42

References

- Abrego, L. J. (2011). Legal consciousness of undocumented Latinos: Fear and stigma as barriers to claims-making for first-and 1.5-generation immigrants. *Law & Society Review*, 45(2), 337-370.
- Amuedo-Dorantes, C., & Arenas-Arroyo, E. (2019). Immigration enforcement, police trust, and domestic violence. *Unpublished manuscript. Retrieved on October, 28, 2019.*
- Arbona, C., Olvera, N., Rodrigues, N., Hagan, J., Linares, A., & Wiesner, M. (2010). Acculturative stress among documented and undocumented Latino immigrants in the United States. *Hispanic Journal of Behavioral Sciences*, 32 (3), 362-384. doi: 10.1177/0739986310373210
- Asad, Asad L. (2020). “On the Radar: System Embeddedness and Latin American Immigrants’ Perceived Risk of Deportation”. In: *Law & Society Review* 54.1. Publisher: Wiley Online Library, pp. 133–167.
- Bhaskar, Renuka, Leticia E. Fernandez, and Sonya R. Porter (2018). “Assimilation and coverage of the foreign-born population in administrative records”. In: *Statistical Journal of the IAOS* 34.2. Publisher: IOS Press, pp. 191–201.
- Desai, Sarah, Jessica Houston Su, and Robert M. Adelman (2019). “Legacies of Marginalization: System Avoidance among the Adult Children of Unauthorized Immigrants in the United States”. In: *International Migration Review*. Publisher: SAGE Publications Sage CA: Los Angeles, CA, p. 0197918319885640.
- Dreby, Joanna (2015). *Everyday illegal: When policies undermine immigrant families*. University of California Press.
- Félix, A., González, C., & Ramírez, R. (2008). Political protest, ethnic media, and Latino naturalization. *American Behavioral Scientist*, 52(4), 618-634.
- Gee, Lisa Christensen, Matthew Gardner, and Meg Wiehe (2016). “Undocumented immigrants’ state & local tax contributions”. In: *The Institute on Taxation and Economic Policy*.
- Kissam, Edward (Jan. 1, 2019). “How low response among Latino immigrants will lead to differential undercount if the United States’ 2020 census includes a question on sensitive citizenship”. In: *Statistical Journal of the IAOS* 35.2. Publisher: IOS Press, pp. 221–243. issn: 1874-7655. doi: 10.3233/SJI-190505.
- Kissam, Edward et al. (2019). “San Joaquin Valley Latino Immigrants: Implications of Survey Findings for Census 2020”. In: *San Joaquin Valley Health Fund*.
- Levine, Sam (2020). Trump orders undocumented immigrants excluded from key census count. *the Guardian*. Library Catalog: www.theguardian.com Section: US news.

Barreto Declaration – Census 2020 Presidential Memorandum

Liptak, Kevin et al. (2020). Trump signs order targeting undocumented immigrants in the US census. CNN. Library Catalog: www.cnn.com. url: <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html>

Smith, Mike (2020). Community groups vow to help undocumented immigrants count in 2020 census in New Mexico. Carlsbad Current-Argus. Library Catalog: www.currentargus.com.

Torres-Ardila, Fabian, Daniela Bravo, and Franklin Ortiz (2020). “Increasing Latino Participation Rates in the 2020 Census in Chelsea, MA”.

Vargas, Edward D. (2015). “Immigration enforcement and mixed-status families: the effects of risk of deportation on Medicaid use”. In: *Children and youth services review* 57. Publisher: Elsevier, pp. 83–89.

Wang, Hansi Lo (2020). Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen. NPR.org. Library Catalog: www.npr.org.

Watson, Tara (2014). “Inside the refrigerator: Immigration enforcement and chilling effects in Medicaid participation”. In: *American Economic Journal: Economic Policy* 6.3, pp. 313–38.

Yoshikawa, Hirokazu (2011). *Immigrants raising citizens: Undocumented parents and their children*. Russell Sage Foundation.

Abowd, John, Depositions on August 15, 2018 (hereinafter Abowd Deposition) and August 29, 2018 (Abowd 30(b)(6)).

Andridge, Rebecca R. and Little, Roderick J. 2010. “A Review of Hot Deck Imputation for Survey Non-Response.” *International Statistical Review* 78(1): 40-64.

Ball, John C. 1967. “The Reliability and Validity of Interview Data Obtained from 59 Narcotic Drug Addicts.” *American Journal of Sociology* 72(6): 650–654.

Berk, Marc L., and Claudia L. Schur. 2001. “The Effect of Fear on Access to Care among Undocumented Latino Immigrants.” *Journal of immigrant health* 3(3): 151–156.

Bradburn, Norman M., Seymour Sudman, Ed Blair, and Carol Stocking. 1978. “Question Threat and Response Bias.” *Public Opinion Quarterly* 42(2): 221–234.

Casey Foundation. 2018. “2018 Kids Count Data Book.”

Center for Survey Measurement. 2017. “MEMORANDUM FOR Associate Directorate for Research and Methodology (ADRM).”

Claes-Magnus Cassell et al., 1977. *Foundations of inference in survey sampling*.

De La Puente, Manuel. 1995. “Using Ethnography to Explain Why People Are Missed or Erroneously Included by the Census: Evidence from Small Area Ethnographic Studies.” *Center for Survey Methods Research, US Census Bureau*.

———. 2004. *Census 2000 Ethnographic Studies*. Bureau of the Census.

Barreto Declaration – Census 2020 Presidential Memorandum

- Ericksen, Eugene P., and Teresa K. Defonso. 1993. “Guest Commentary: Beyond the Net Undercount: How to Measure Census Error.” *Chance* 6(4): 38–14.
- Federal Committee on Statistical Methodology. 1990. Statistical Working Paper 17 – Survey Coverage. <http://www.fcsm.gov/working-papers/wp17.html>
- Frost, Amanda. 2017. “Can the Government Deport Immigrants Using Information It Encouraged Them to Provide?”
- García, A. S. (2019). *Legal passing: Navigating undocumented life and local immigration law*. University of California Press.
- Groves, Robert M. And Mick P. Couper. 1998. Nonresponse in Household Interview Surveys. New York, NY: John Wiley and Sons
- Groves, Robert . 2004. Survey Errors and Survey Costs, 2nd ed.
- Groves, Robert, Floyd J. Fowler Jr., Mick P. Couper James M. Lepkowski, Eleanor Singer, and Roger Tourangeau. 2004. Survey Methodology. New York, NY: John Wiley and Sons. (Cites 3873)
- Hagan, J. M., Rodriguez, N., & Castro, B. (2011). Social effects of mass deportations by the United States government, 2000–10. *Ethnic and Racial Studies*, 34(8), 1374-1391
- Kalton, Graham. 1983. “Compensation for Missing Survey Data.” University of Michigan Survey Research Center Research Report Series.
- Lohr, Sharon L. 1999. Sampling: Design and Analysis. New York, NY: Brooks/Cole.
- Kissam, Edward. 2017. “Differential Undercount of Mexican Immigrant Families in the US Census.” *Statistical Journal of the IAOS* 33(3): 797–816.
- Krysan, Maria. 1998. “Privacy and the Expression of White Racial Attitudes: A Comparison across Three Contexts.” *Public Opinion Quarterly*: 506–544.
- Lajevardi, Nazita, and Kassra AR Oskooii. 2018. “Old-Fashioned Racism, Contemporary Islamophobia, and the Isolation of Muslim Americans in the Age of Trump.” *Journal of Race, Ethnicity and Politics* 3(1): 112–152.
- National Research Council. 2002. *The 2000 Census: Interim Assessment*. National Academies Press.
- . 2004. *The 2000 Census: Counting under Adversity*. National Academies Press.
- Menjívar, C. (2011). The power of the law: Central Americans’ legality and everyday life in Phoenix, Arizona. *Latino Studies*, 9(4), 377-395
- Meyers, Mikelyn. 2017. “Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census.”

- Michelson, Melissa R., and Jessica L. Lavariega Monforti. 2018. "Back in the Shadows, Back in the Streets." *PS, Political Science & Politics* 51(2): 282
- Montoya, Martin. 1992. "Ethnographic Evaluation of the Behavioral Causes of Undercount: Woodburn, Oregon." *Ethnographic Evaluation of the 1990 Decennial Census Report #25*. Prepared under Joint Statistical Agreement 90-06 with the University of Oregon. Bureau of the Census, Washington D.C.
- Cruz Nichols, Vanessa, Alana MW LeBrón, and Francisco I. Pedraza. 2018. "Spillover Effects: Immigrant Policing and Government Skepticism in Matters of Health for Latinos." *Public Administration Review* 78(3): 432–443.
- O'Hare, William, Yeris Mayol-Garcia, Elizabeth Wildsmith, and Alicia Torres. 2016. "The Invisible Ones: How Latino Children Are Left Out of Our Nation's Census Count."
- Oskooii, Kassra AR. 2016. "How Discrimination Impacts Sociopolitical Behavior: A Multidimensional Perspective." *Political Psychology* 37(5): 613–640.
- Pedraza, Francisco I., and Maricruz Ariana Osorio. 2017. "Courtied and Deported: The Salience of Immigration Issues and Avoidance of Police, Health Care, and Education Services among Latinos." *Aztlan: A Journal of Chicano Studies* 42(2): 249–266.
- Rubin, Donald B. 1976. "Inference and Missing Data." *Biometrika* 63(3): 581-592.
- Raines, Marvin D. 2001. "Gaining Cooperation from a Multi-Cultural Society of Respondents: A Review of the US Census Bureau's Efforts to Count the Newly Immigrated Population." *Statistical Journal of the United Nations Economic Commission for Europe* 18(2, 3): 217–226.
- Rao, Krishna. 2017. "Discussion of 2018 End-to-End Census Test: Nonresponse Follow-up" Census Scientific Advisory Committee. Fall 2017 Meeting.
- Sanchez, Gabriel R., and Barbara Gomez-Aguinaga. 2017. "Latino Rejection of the Trump Campaign." *Aztlan: A Journal of Chicano Studies* 42(2).
- Rodriguez, N., & Hagan, J. M. (2004). Fractured families and communities: Effects of immigration reform in Texas, Mexico, and El Salvador. *Latino Studies*, 2(3), 328-351.
- Stepick, Alex. 1992. "Ethnographic Evaluation of the 1990 Decennial Census Report Series." *Ethnographic Evaluation of the 1990 Decennial Census Report #8*. Prepared under Joint Statistical Agreement #90-08 with Florida International University. Bureau of the Census, Washington D.C.
- Szkupinski Quiroga, S., Medina, D. M., & Glick, J. (2014). In the belly of the beast: Effects of anti-immigration policy on Latino community members. *American Behavioral Scientist*, 58(13), 1723-1742
- Terry, Rodney L. et al. 2017. "Exploring Inconsistent Counts of Racial/Ethnic Minorities in a 2010 Census Ethnographic Evaluation." *Bulletin of Sociological Methodology/Bulletin de Méthodologie Sociologique* 135(1): 32–49.

Barreto Declaration – Census 2020 Presidential Memorandum

Tourangeau, Roger, and Tom W. Smith. 1996. “Asking Sensitive Questions: The Impact of Data Collection Mode, Question Format, and Question Context.” *The Public Opinion Quarterly* 60(2): 275–304.

Tourangeau, Roger, and Ting Yan. 2007. “Sensitive Questions in Surveys.” *Psychological bulletin* 133(5): 859.

U. S. Government Accountability Office. 2003. “Decennial Census: Lessons Learned for Locating and Counting Migrant and Seasonal Farm Workers.” (GAO-03-605). <https://www.gao.gov/products/GAO-03-605> (April 18, 2018).

U.S. Census Bureau. 2013. "U.S. Census Bureau Statistical Quality Standards" July 2013.

<https://www.census.gov/about/policies/quality/standards.html>

———. 2017b. “Investigating the 2010 Undercount of Young Children – Analysis of Census Coverage Measurement Results.”

Velasco, Alfredo. 1992. “Ethnographic Evaluation of the Behavioral Causes of Undercount In The Community of Sherman Heights, San Diego, California.” Ethnographic Evaluation of the 1990 Decennial Census Report #22. Prepared under Joint Statistical Agreement 89-42 with the Chicano Federation of San Diego County. Bureau of the Census, Washington, D.C.

Wines, Michael. 2018. “Census Bureau’s Own Expert Panel Rebukes Decision to Add Citizenship Question.” *New York Times*. March 30

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:

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*

Barreto, Matt and Gary Segura. 2014. Latino America: How America's Most Dynamic Population is Poised to Transform the Politics of the Nation. Public Affairs Books. (Sept)

Barreto, Matt and David Leal, editors. 2018. Race, Class, and Precinct Quality in American Cities. Springer Press.

Christopher Parker and Matt Barreto. 2013. Change They Can't Believe In: The Tea Party and Reactionary Politics in America. Princeton University Press. *Winner: APSA Best Book Award for Race, Ethnicity, Politics, 2014*

Barreto, Matt. 2010. Ethnic Cues: The Role of Shared Ethnicity in Latino Political Participation. University of Michigan Press

PEER-REVIEWED ARTICLES

73. Reny, Tyler and Matt A. Barreto. 2020. "Xenophobia in the time of pandemic: othering, anti-Asian attitudes, and COVID-19 " *Politics, Groups, and Identities*. 8(2).

72. Flores, Lucy and Matt A. Barreto. 2020. "Latina Voters: The key electoral force" *Journal of Cultural Marketing Strategy*. 4(2).

71. Frasure-Yokley, Lorrie, Janelle Wong, Edward Vargas and Matt A. Barreto 2020. "THE COLLABORATIVE MULTIRACIAL POST-ELECTION SURVEY (CMPS): BUILDING THE ACADEMIC PIPELINE THROUGH DATA ACCESS, PUBLICATION, AND NETWORKING OPPORTUNITIES" *PS: Political Science & Politics*. 53(1)

70. Barreto, Matt, Loren Collingwood, Sergio Garcia-Rios and Kassra Oskooii. 2019. "Estimating Candidate Support: Comparing Iterative EI and EI-RxC Methods" *Sociological Methods and Research*. 48(4).

69. Gonzalez-O'Brien, Benjamin, Matt Barreto and Gabriel Sanchez. 2019. "They're All Out to Get Me! Assessing Inter-Group Competition Among Multiple Populations." *Politics, Groups and Identities*. 7(4).

68. Oskooii, Kassra, Karam Dana and Matt Barreto. 2019. "Beyond generalized ethnocentrism: Islam-specific beliefs and prejudice toward Muslim Americans." *Politics, Groups and Identities* 7(3)

67. Vargas, Edward, Gabriel Sanchez, Barbara Gomez-Aguinaga, and Matt Barreto. 2019. "How Latinos' Perceptions of Environmental Health Threats Impact Policy Preferences." *Social Science Quarterly*. 101(1).

66. Walker, Hannah, Marcel Roman and Matt Barreto. 2019. "The Direct and Indirect Effects of Immigration Enforcement on Latino Political Engagement." *UCLA Law Review*. 67.

65. Gutierrez, Angela, Angela Ocampo, Matt Barreto, and Gary Segura. 2019. "Somos Más : How Racial Threat and Anger Mobilized Latino Voters in the Trump Era" *Political Research Quarterly*. 72(4)

64. Chouhoud, Youssef, Karam Dana, and Matt Barreto. 2019. "American Muslim Political Participation: Between Diversity and Cohesion." *Politics and Religion*. 12(S3).

63. Barreto, Matt, Stephen Nuño, Gabriel Sanchez, and Hannah Walker. 2019. "Race, Class and Barriers to Voting in the 21st Century: The Unequal Impact of Voter ID Laws." *American Politics Research*

62. Barreto, Matt. 2018. "The cycle of under-mobilization of minority voters: A comment on 'Selective recruitment of voter neglect?'" *Journal of Race, Ethnicity, and Politics*. 3(1).
61. Ocampo, Angela, Karam Dana and Matt Barreto. 2018. "The American Muslim Voter: Community Belonging and Political Participation." *Social Science Research*. 69(4).
60. Barreto, Matt, Lorrie Frasure-Yokley, Edward Vargas, Janelle Wong. 2018. "Best practices in collecting online data with Asian, Black, Latino, and White respondents: evidence from the 2016 Collaborative Multiracial Post-election Survey." *Politics, Groups & Identities*. 6(1).
59. Barreto, Matt, Tyler Reny and Bryan Wilcox-Archuleta. 2017. "A debate about survey research methodology and the Latina/o vote: why a bilingual, bicultural, Latino-centered approach matters to accurate data." *Aztlán: A Journal of Chicano Studies*. 42(2).
58. Barreto, Matt and Gary Segura. 2017. "Understanding Latino Voting Strength in 2016 and Beyond: Why Culturally Competent Research Matters." *Journal of Cultural Marketing Strategy*. 2:2
57. Dana, Karam, Bryan Wilcox-Archuleta and Matt Barreto. 2017. "The Political Incorporation of Muslims in America: The Mobilizing Role of Religiosity in Islam." *Journal of Race, Ethnicity & Politics*.
56. Collingwood, Loren, Kassra Oskooii, Sergio Garcia-Rios, and Matt Barreto. 2016. "eiCompare: Comparing Ecological Inference Estimates across EI and EI: RxC." *The R Journal*. 8:2 (Dec).
55. Garcia-Rios, Sergio I. and Matt A. Barreto. 2016. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012" *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 2(3): 78-96.
54. Barreto, Matt, Collingwood, Loren, Christopher Parker, and Francisco Pedraza. 2015. "Racial Attitudes and Race of Interviewer Item Non-Response." *Survey Practice*. 8:3.
53. Barreto, Matt and Gary Segura 2015. "Obama y la seducción del voto Latino." *Foreign Affairs Latinoamérica*. 15:2 (Jul).
52. Barreto, Matt and Loren Collingwood 2015. "Group-based appeals and the Latino vote in 2012: How immigration became a mobilizing issue." *Electoral Studies*. 37 (Mar).
51. Collingwood, Loren, Matt Barreto and Sergio Garcia-Rios. 2014. "Revisiting Latino Voting: Cross-Racial Mobilization in the 2012 Election" *Political Research Quarterly*. 67:4 (Sep).
50. Bergman, Elizabeth, Gary Segura and Matt Barreto. 2014. "Immigration Politics and Electoral Consequences: Anticipating the Dynamics of Latino Vote in the 2014 Election" *California Journal of Politics and Policy*. (Feb)
49. Barreto, Matt and Sergio García-Rios. 2012. "El poder del voto latino en Estados Unidos en 2012" *Foreign Affairs Latinoamérica*. 12:4 (Nov).
48. Collingwood, Loren, Matt Barreto and Todd Donovan. 2012. "Early Primaries, Viability and Changing Preferences for Presidential Candidates." *Presidential Studies Quarterly*. 42:1(Mar).
47. Barreto, Matt, Betsy Cooper, Ben Gonzalez, Chris Towler, and Christopher Parker. 2012. "The Tea Party in the Age of Obama: Mainstream Conservatism or Out-Group Anxiety?." *Political Power and Social Theory*. 22:1(Jan).
46. Dana, Karam, Matt Barreto and Kassra Oskooii. 2011. "Mosques as American Institutions: Mosque Attendance, Religiosity and Integration into the American Political System." *Religions*. 2:2 (Sept).
45. Barreto, Matt, Christian Grose and Ana Henderson. 2011. "Redistricting: Coalition Districts and the Voting Rights Act." *Warren Institute on Law and Social Policy*. (May)
44. Barreto, Matt and Stephen Nuño. 2011. "The Effectiveness of Co-Ethnic Contact on Latino Political Recruitment." *Political Research Quarterly*. 64 (June). 448-459.

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

43. Garcia-Castañón, Marcela, Allison Rank and Matt Barreto. 2011 “Plugged in or tuned out? Youth, Race, and Internet Usage in the 2008 Election.” *Journal of Political Marketing*. 10:2 115-138.
42. Barreto, Matt, Victoria DeFrancesco, and Jennifer Merolla. 2011 “Multiple Dimensions of Mobilization: The Impact of Direct Contact and Political Ads on Latino Turnout in the 2000 Presidential Election.” *Journal of Political Marketing*. 10:1
41. Barreto, Matt, Loren Collingwood, and Sylvia Manzano. 2010. “Measuring Latino Political Influence in National Elections” *Political Research Quarterly*. 63:4 (Dec)
40. Barreto, Matt, and Francisco Pedraza. 2009. “The Renewal and Persistence of Group Identification in American Politics.” *Electoral Studies*. 28 (Dec) 595-605
39. Barreto, Matt and Dino Bozonelos. 2009. “Democrat, Republican, or None of the Above? Religiosity and the Partisan Identification of Muslim Americans” *Politics & Religion* 2 (Aug). 1-31
38. Barreto, Matt, Sylvia Manzano, Ricardo Ramírez and Kathy Rim. 2009. “Immigrant Social Movement Participation: Understanding Involvement in the 2006 Immigration Protest Rallies.” *Urban Affairs Review*. 44: (5) 736-764
37. Grofman, Bernard and Matt Barreto. 2009. “A Reply to Zax’s (2002) Critique of Grofman and Migalski (1988): Double Equation Approaches to Ecological Inferences.” *Sociological Methods and Research*. 37 (May)
36. Barreto, Matt, Stephen Nuño and Gabriel Sanchez. 2009. “The Disproportionate Impact of Voter-ID Requirements on the Electorate – New Evidence from Indiana.” *PS: Political Science & Politics*. 42 (Jan)
35. Barreto, Matt, Luis Fraga, Sylvia Manzano, Valerie Martinez-Ebers, and Gary Segura. 2008. “Should they dance with the one who brung ‘em? Latinos and the 2008 Presidential election” *PS: Political Science & Politics*. 41 (Oct).
34. Barreto, Matt, Mara Marks and Nathan Woods. 2008. “Are All Precincts Created Equal? The Prevalence of Low- Quality Precincts in Low-Income and Minority Communities.” *Political Research Quarterly*. 62
33. Barreto, Matt. 2007. “*Si Se Puede!* Latino Candidates and the Mobilization of Latino Voters.” *American Political Science Review*. 101 (August): 425-441.
32. Barreto, Matt and David Leal. 2007. “Latinos, Military Service, and Support for Bush and Kerry in 2004.” *American Politics Research*. 35 (March): 224-251.
31. Barreto, Matt, Mara Marks and Nathan Woods. 2007. “Homeownership: Southern California’s New Political Fault Line?” *Urban Affairs Review*. 42 (January). 315-341.
30. Barreto, Matt, Matt Streb, Fernando Guerra, and Mara Marks. 2006. “Do Absentee Voters Differ From Polling Place Voters? New Evidence From California.” *Public Opinion Quarterly*. 70 (Summer): 224-34.
29. Barreto, Matt, Fernando Guerra, Mara Marks, Stephen Nuño, and Nathan Woods. 2006. “Controversies in Exit Polling: Implementing a racially stratified homogenous precinct approach.” *PS: Political Science & Politics*. 39 (July) 477-83.
28. Barreto, Matt, Ricardo Ramírez, and Nathan Woods. 2005. “Are Naturalized Voters Driving the California Latino Electorate? Measuring the Impact of IRCA Citizens on Latino Voting.” *Social Science Quarterly*. 86 (December): 792-811.
27. Barreto, Matt. 2005. “Latino Immigrants at the Polls: Foreign-born Voter Turnout in the 2002 Election.” *Political Research Quarterly*. 58 (March): 79-86.
26. Barreto, Matt, Mario Villarreal and Nathan Woods. 2005. “Metropolitan Latino Political Behavior: Turnout and Candidate Preference in Los Angeles.” *Journal of Urban Affairs*. 27(February): 71-91.
25. Leal, David, Matt Barreto, Jongho Lee and Rodolfo de la Garza. 2005. “The Latino Vote in the 2004 Election.” *PS: Political Science & Politics*. 38 (January): 41-49.
24. Marks, Mara, Matt Barreto and Nathan Woods. 2004. “Harmony and Bliss in LA? Race and Racial Attitudes a Decade After the 1992 Riots.” *Urban Affairs Review*. 40 (September): 3-18.

23. Barreto, Matt, Gary Segura and Nathan Woods. 2004. "The Effects of Overlapping Majority-Minority Districts on Latino Turnout." *American Political Science Review*. 98 (February): 65-75.
22. Barreto, Matt and Ricardo Ramírez. 2004. "Minority Participation and the California Recall: Latino, Black, and Asian Voting Trends 1990 – 2003." *PS: Political Science & Politics*. 37 (January): 11-14.
21. Barreto, Matt and José Muñoz. 2003. "Reexamining the 'politics of in-between': political participation among Mexican immigrants in the United States." *Hispanic Journal of Behavioral Sciences*. 25 (November): 427-447.
20. Barreto, Matt. 2003. "National Origin (Mis)Identification Among Latinos in the 2000 Census: The Growth of the "Other Hispanic or Latino" Category." *Harvard Journal of Hispanic Policy*. 15 (June): 39-63.

Edited Volume Book Chapters

19. Barreto, Matt and Gary Segura. 2020. "Latino Reaction and Resistance to Trump: Lessons learned from Pete Wilson and 1994." In Raul Hinojosa and Edward Telles (eds.) Equitable Globalization: Expanding Bridges, Overcoming Walls. Oakland: University of California Press.
18. Barreto, Matt, Albert Morales and Gary Segura. 2019. "The Brown Tide and the Blue Wave in 2018" In Larry Sabato, Kyle Kondik, Geoffrey Skelley (eds.) The Blue Wave. New York: Rowman & Littlefield.
17. Gutierrez, Angela, Angela Ocampo and Matt Barreto. 2018. "Obama's Latino Legacy: From Unknown to Never Forgotten" In Andrew Rudalevige and Bert Rockman (eds.) The Obama Legacy. Lawrence, KS: University of Kansas Press.
16. Barreto, Matt, Thomas Schaller and Gary Segura. 2017. "Latinos and the 2016 Election: How Trump Lost Latinos on Day 1" In Larry Sabato, Kyle Kondik, Geoffrey Skelley (eds.) Trumped: The 2016 Election that Broke All the Rules. New York: Rowman & Littlefield.
15. Walker, Hannah, Gabriel Sanchez, Stephen Nuño, Matt Barreto 2017. "Race and the Right to Vote: The Modern Barrier of Voter ID Laws" In Todd Donovan (ed.) Election Rules and Reforms. New York: Rowman & Littlefield.
14. Barreto, Matt and Christopher Parker. 2015. "Public Opinion and Reactionary Movements: From the Klan to the Tea Party" In Adam Berinsky (ed.) New Directions in Public Opinion. 2nd edition. New York: Routledge Press.
13. Barreto, Matt and Gabriel Sanchez. 2014. "A 'Southern Exception' in Black-Latino Attitudes?." In Anthony Affigne, Evelyn Hu-Dehart, Marion Orr (eds.) Latino Politics en Ciencia Política. New York: New York University Press.
12. Barreto, Matt, Ben Gonzalez, and Gabriel Sanchez. 2014. "Rainbow Coalition in the Golden State? Exposing Myths, Uncovering New Realities in Latino Attitudes Towards Blacks." In Josh Kun and Laura Pulido (eds.) Black and Brown in Los Angeles: Beyond Conflict and Coalition. Berkeley, CA: University of California Press.
11. Barreto, Matt, Loren Collingwood, Ben Gonzalez, and Christopher Parker. 2011. "Tea Party Politics in a Blue State: Dino Rossi and the 2010 Washington Senate Election" In William Miller and Jeremy Walling (eds.) Stuck in the Middle to Lose: Tea Party Effects on 2010 U.S. Senate Elections. Rowman & Littlefield Publishing Group.
10. Jason Morin, Gabriel Sanchez and Matt Barreto. 2011. "Perceptions of Competition Between Latinos and Blacks: The Development of a Relative Measure of Inter-Group Competition." In Edward Telles, Gaspar Rivera-Salgado and Mark Sawyer (eds.) Just Neighbors? Research on African American and Latino Relations in the US. New York: Russell Sage Foundation.
9. Grofman, Bernard, Frank Wayman and Matt Barreto. 2009. "Rethinking partisanship: Some thoughts on a unified theory." In John Bartle and Paolo Bellucci (eds.) Political Parties and Partisanship: Social identity and individual attitudes. New York: Routledge Press.
8. Barreto, Matt, Ricardo Ramírez, Luis Fraga and Fernando Guerra. 2009. "Why California Matters: How California Latinos Influence the Presidential Election." In Rodolfo de la Garza, Louis DeSipio and David Leal (eds.) Beyond the Barrio: Latinos in the 2004 Elections. South Bend, ID: University of Notre Dame Press.

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

7. Francisco Pedraza and Matt Barreto. 2008. "Exit Polls and Ethnic Diversity: How to Improve Estimates and Reduce Bias Among Minority Voters." In Wendy Alvey and Fritz Scheuren (eds.) Elections and Exit Polling. Hoboken, NJ: Wiley and Sons.
6. Adrian Pantoja, Matt Barreto and Richard Anderson. 2008. "Politics *y la Iglesia*: Attitudes Toward the Role of Religion in Politics Among Latino Catholics" In Michael Genovese, Kristin Hayer and Mark J. Rozell (eds.) Catholics and Politics. Washington, D.C: Georgetown University Press..
5. Barreto, Matt. 2007. "The Role of Latino Candidates in Mobilizing Latino Voters: Revisiting Latino Vote Choice." In Rodolfo Espino, David Leal and Kenneth Meier (eds.) Latino Politics: Identity, Mobilization, and Representation. Charlottesville: University of Virginia Press.
4. Abosch, Yishaiya, Matt Barreto and Nathan Woods. 2007. "An Assessment of Racially Polarized Voting For and Against Latinos Candidates in California." In Ana Henderson (ed.) Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation, and Power. Berkeley, CA: UC Berkeley Public Policy Press.
3. Barreto, Matt and Ricardo Ramirez. 2005. "The Race Card and California Politics: Minority Voters and Racial Cues in the 2003 Recall Election." In Shaun Bowler and Bruce Cain (eds.) Clicker Politics: Essays on the California Recall. Englewood-Cliffs: Prentice-Hall.
2. Barreto, Matt and Nathan Woods. 2005. "The Anti-Latino Political Context and its Impact on GOP Detachment and Increasing Latino Voter Turnout in Los Angeles County." In Gary Segura and Shawn Bowler (eds.) Diversity in Democracy: Minority Representation in the United States. Charlottesville: University of Virginia Press.
1. Pachon, Harry, Matt Barreto and Frances Marquez. 2004. "Latino Politics Comes of Age in the Golden State." In Rodolfo de la Garza and Louis DeSipio (eds.) Muted Voices: Latino Politics in the 2000 Election. New York: Rowman & Littlefield

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

RESEARCH AWARDS AND FELLOWSHIPS

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

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

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	Brenan Center for Justice, New York University [with Stephen Nuño 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: Donald Trump, Race, and the Crisis of American Politics. Under Contract, University of Chicago Press, *expected 2020*

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]

Gutierrez, Angela, Angela Ocampo, Matt Barreto and Gary Segura. "From Proposition 187 to Donald Trump: New Evidence that Anti-Immigrant Threat Mobilizes Latino Voters." [Under Review]

Collins, Jonathan, Matt Barreto, Gregory Leslie and Tye Rush. "Racial Efficacy and Voter Enthusiasm Among African Americans Post-Obama" [Under Review]

Oskooii, Kassra, Matt Barreto, and Karam Dana. "No Sharia, No Mosque: Orientalist Notions of Islam and Intolerance Toward Muslims in the United States" [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
- New York, 2018, Expert for Plaintiffs in Census Citizenship Lawsuit, New York v. U.S. Dept of Commerce (also an expert related cases: *California v. Ross* and *Kravitz v. Dept of Commerce*)
- 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
- Kansas, 2016, Expert for Plaintiffs in Kansas voter registration lawsuit, Fish v. Kobach 2:16-cv-02105-JAR
- North Dakota, 2015, Expert for Plaintiffs in North Dakota voter ID lawsuit, Brakebill v. Jaeger 1:16-cv-00008-CSM
- Alabama, 2015, Expert for Plaintiffs in Alabama voter ID lawsuit, Birmingham Ministries v. State of Alabama 2:15-cv-02193-LSC
- Texas, 2014, Testifying Expert for Plaintiffs in Texas voter ID lawsuit, Veasey v. Perry 2:13-cv-00193
- 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
- Pennsylvania, 2012, Testifying Expert for ACLU Foundation of Pennsylvania in voter ID lawsuit, Applewhite v. Commonwealth of Pennsylvania No. 330 MD 2012
- Milwaukee County, WI, 2012, Testifying Expert for ACLU Foundation of Wisconsin in voter ID lawsuit, Frank v. Walker 2:11-cv-01128(LA)
- 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
- Los Angeles County Redistricting Commission, 2011, Consulting Expert for Supervisor Gloria Molina, Racially Polarized voting analysis within L.A. County
- State of California, Citizens Redistricting Commission, 2011, Consulting Expert, Racially Polarized Voting analysis throughout state of California
- 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

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

- 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
- ACLU of Washington, 2008, preliminary analysis of voting patterns in Eastern Washington, related to electability of Latino candidates
- 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:**

UCLA & UW

2005 – Present

- 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**

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 Lanijonu – University of Toronto (UCLA Ph.D. 2018)
- Adria Tinin – *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 Bozonelos – 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.

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)

Expert Declaration of Mr. John Thompson

I. 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.

² Albert E. Fontenot, Jr., 2020 Census Residence Criteria and Residence Situations, 2020 Census Program Memorandum Series: 2018.04, February 5, 2018.

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 deadlines⁴ 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

³ US Census Bureau 2020 Census daily response rate tracker, <https://2020census.gov/en/response-rates.html> (last accessed August 6, 2020).

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

⁵ Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count, <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>, August 3, 2020.

⁶ P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

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.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 them⁹. 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 testimony¹¹ 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

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.

¹¹ Trial Testimony of Dr. John Abowd, Nov. 13, 2018, *New York Immigration Coalition, et al. v. United States Department of Commerce, et al.*, 18-CV-5025-JMF (S.D.N.Y.), at 926-27.

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.”

¹² Committee on National Statistics, Principles and Practices for a Federal Statistical Agency 2 (6th ed. 2017).

- 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

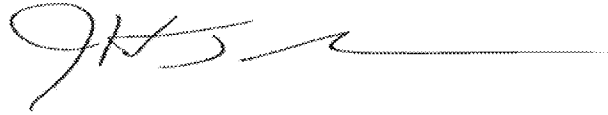
In conclusion, it is my opinion that the issuance of the Memorandum will significantly increase the risk of much larger undercounts for the 2020 Census than measured in previous censuses, including undercounts of immigrant communities. In addition, there is no transparency or documentation of how the 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.

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).

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.

A handwritten signature in black ink, appearing to read 'JH', followed by a long horizontal line.

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;
-

John H. Thompson
Page 2

- 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,
-
-

John H. Thompson
Page 3

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.

John H. Thompson
Page 4

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, Silver Medal, U.S. Bureau of the Census, 1998

Department of Commerce, Bronze Medal, U.S. Bureau of the Census, 1988

John H. Thompson
Page 5

PAPERS AND PUBLICATIONS

- 2018 Thompson, John H and Yablon, Robert. Issue Brief: "Preparing for the 2020 Census Considerations for State Attorneys General". American Constitution Society., October 10, 2018
- 2012 Thompson, John H. (Panel Member). "Panel Discussion: Considering Changing Sectors in the Research Industry?: Advice From Those Who Have Done It!" AAPOR 67th Annual Conference, Orlando, Florida, May 19, 2012
- 2012 Thompson, John H. (Discussant). "Future is Now: Realignment of Current Survey Management and Operations at the Census Bureau". Population Association of America 2012 Annual Meeting, San Francisco, California, May 4, 2012.
- 2012 Thompson, John H. (Discussant). "Use of Administrative Records in the 2020 Census." Federal Committee on Statistical Methodology, Washington, DC., January 10, 2012
- 2011 Weinberg, Daniel H. and Thompson, John H., "Organization and Administration of the 2010 U.S. Census." In Margo J. Anderson, Constance F. Citro, and Joseph J. Salvo (eds.) *Encyclopedia of the U.S. Census*, Second Edition, CQ Press., July 2011
- 2010 Thompson, John H., "Challenges, Innovation and Quality for the 21st Century" Keynote Speech at the 2010 FCSM Statistical Policy Seminar, Washington, DC, December 14, 2010.
- 2010 Thompson, John H., "The Future of Survey Research: Opportunities and Challenges" Paper presented at the Applied Demography Conference, San Antonio, Texas., January 11, 2010 and at the Population Association of America 2010 Annual meeting, Dallas, Texas, April 15, 2010.
- 2008 Thompson, John H. (Panel Member). "Panel Discussion: The American Community Survey: Promise, Products and Perspectives." Population Association of America Annual Meeting, New Orleans, Louisiana, April 17, 2008.
- 2006 Thompson, John H. (Discussant). "Census 2010: A New Census for the 21st Century." Population Association of America Annual Meeting, Los Angeles, California, March 30, 2006.
- 2004 Thompson, John H., "Interviewer Falsification of Survey Data." Paper presented at the Joint Meetings of the American Statistical Association, Toronto, Canada, August 11, 2004.
- 2003 Thompson, John H., "Is Interviewer Falsification Scientific Misconduct?" Roundtable paper presented at the American Association for Public Opinion Research 58th Annual Conference, Nashville, Tennessee, May 16, 2003.
- 2002 Thompson, John H. (Discussant). "Eliminating the 2010 Census Long Form? – Current Status of the American Community Survey." Population Association of America Annual Meeting, Atlanta, Georgia, May 9, 2002.

John H. Thompson
Page 6

- 2001 Thompson, John H., "Decision on Release of Statistically Corrected Redistricting Data." Invited paper presented at the Joint Meetings of the American Statistical Association, Atlanta Georgia, August 6, 2001.
- 1999 Thompson, John H., "Census 2000 – Innovations and New Technology." Paper presented at the Economic Commission for Europe's Conference of European Statisticians Meeting, Geneva, Switzerland, February 15-17, 1999.
- 1998 Thompson, John H. and Robert E. Fay, "Census 2000: The Statistical Issues." Paper presented at the Joint Meetings of the American Statistical Association, Dallas, Texas, August 9-13, 1998.
- 1996 Thompson, John H. and Karen Mills, "Census 2000 Content: Tradeoffs on Cost, Quality, and Quantity." Paper presented at the Annual Meeting of the Population Association of America, New Orleans, Louisiana, May 9-11, 1996.
- 1995 Thompson, John H., Mary H. Mulry, Susan M. Miskura, "Census 2000: Statistical Issues in Reengineering the Decennial Census." Paper presented at the Annual Meeting of the American Statistical Association, Orlando, Florida, August 13-17, 1995.
- 1992 Fay, Robert E. and John H. Thompson, "The 1990 Post-Enumeration Survey: Statistical Lessons in, Hindsight." Paper presented at the Annual Research Conference, March 22-25, 1992, Arlington, Virginia.
- 1989 Edson, Robert G. and John H. Thompson, "1990 Decennial Census Coverage Improvement Program." Paper presented at the Annual Winter Meetings of the American Statistical Association, San Diego, California, January, 1989.
- 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.
- 1987 Griffin, Richard A. and John H. Thompson, "Confidentiality Techniques for the 1990 Census." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, October, 1987.

U.S. Bureau of the Census, "Programs to Improve Coverage in the 1980 Census," by John H. Thompson. Evaluation and Research Reports, PHC80-E3.
- 1986 Thompson, John H. and David Franklin, "Test Census Results and Applications for the 1990 Planning." Paper presented at the Census Bureau Second Annual Research Conference, Reston, Virginia, March, 1986.
- 1984 Miskura, Susan M., John H. Thompson, Henry F. Woltman, "Uses of Sampling for the Census Count." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

Fan, Milton C., Martha L. Sutt, and John H. Thompson, "Evaluation of the 1980 Census Precanvass Coverage Improvement Program." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

Keeley, Catherine and John H. Thompson, "The 1980 Census Nonhousehold Sources Program." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

John H. Thompson
Page 7

- 1983 Miskura, Susan M. and John H. Thompson, "1980 Census Findings and Their Implications for 1990 Census Planning." Presented at the Joint Statistical Meetings, Toronto, Canada, August, 1983.

Taeuber, Cynthia and John H. Thompson, "1980 Census Data: The Quality of the Data and Some Anomalies." Paper presented at the Annual Meeting of the Population Association of America, April, 1983.
- 1982 Fan, Milton C., John H. Thompson, Jay Kim, and Henry F. Woltman, "Sample Design, Estimation and Presentation of Sampling Errors for the 1980 Census Early Publications National Sample." Paper presented at the Annual Meetings of the American Statistical Association, Chicago, Illinois, August, 1982.
- 1981 Woltman, Henry F., Susan M. Miskura, John H. Thompson, and Peter A. Bounpane, "1980 Census Weighting and Variance Estimation Studies, Design and Methodology." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.

Kim, Jay, John H. Thompson, Henry F. Woltman, and Stephen M. Vajs, "Empirical Results from the 1980 Census Sample Estimation Study." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.

Fan, Milton, C., John H. Thompson, and Susan M. Miskura, "1980 Census Variance Estimation Procedure." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.

Thompson, John H., "Convergence Properties of the Iterative 1980 Census Estimator." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.
- 1978 Thompson, John H., "The Nonhousehold Sources Program." Paper presented at the Annual Meetings of the American Statistical Association, San Diego, California, August, 1978.

Exhibit 58

**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)

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.”

8. I have also previously provided expert reports in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, No. 159 MM 2017 (PA 2018); *League of Women Voters of Michigan v. Johnson*, No. 2:17-cv-14148 (E.D. 2019); and *PRI et al v. Smith et al.*, No. 18-cv-357 (S.D. Ohio 2018).
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

¹ See <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>.

² For the state populations from 2010-2019, I used the file ‘nst-est2019-01.xlsx’ which I obtained from <https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html>. For the 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>. For the population counts from 1990-1999, I used the data available at <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-1990-2000-state-and-county-totals.html>.

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.³ My population projections are based on these official population estimates for each state for the period from 1990-2019.⁴

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

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.

⁴ For the state populations from 2010-2019, I used the file 'nst-est2019-01.xlsx' which I obtained from <https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html>. For the 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>. For the population counts from 1990-1999, I used the data available at <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-1990-2000-state-and-county-totals.html>.

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

	Model	ME	RMSE	MAE	MPE	MAPE
(1):	Linear model (decade)	-20,821	71,748	32,448	-0.29%	0.57%
(2):	Linear model (4 years)	-12,219	33,933	14,513	-0.11%	0.21%
(3):	Delta in last two years	-2,940	12,129	6,073	-0.02%	0.09%
(4):	State space model	-4,034	12,623	6,766	-0.04%	0.13%

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

State	2010 Population	2019 Population	2020 Population Projection
Alabama	4,779,736	4,903,185	4,918,700
Alaska	710,231	731,545	728,000
Arizona	6,392,017	7,278,717	7,399,400
Arkansas	2,915,918	3,017,804	3,025,900
California	37,253,956	39,512,223	39,724,500
Colorado	5,029,196	5,758,736	5,833,000
Connecticut	3,574,097	3,565,287	3,565,300
Delaware	897,934	973,764	982,000
District of Columbia	601,723	705,749	710,000
Florida	18,801,310	21,477,737	21,706,500
Georgia	9,687,653	10,617,423	10,723,200
Hawaii	1,360,301	1,415,872	1,411,500
Idaho	1,567,582	1,787,065	1,823,600
Illinois	12,830,632	12,671,821	12,622,100
Indiana	6,483,802	6,732,219	6,769,900
Iowa	3,046,355	3,155,070	3,168,400
Kansas	2,853,118	2,913,314	2,915,500
Kentucky	4,339,367	4,467,673	4,474,200
Louisiana	4,533,372	4,648,794	4,650,500
Maine	1,328,361	1,344,212	1,349,400
Maryland	5,773,552	6,045,680	6,071,200
Massachusetts	6,547,629	6,892,503	6,904,900
Michigan	9,883,640	9,986,857	9,986,900
Minnesota	5,303,925	5,639,632	5,676,100
Mississippi	2,967,297	2,976,149	2,972,300
Missouri	5,988,927	6,137,428	6,152,400
Montana	989,415	1,068,778	1,077,400
Nebraska	1,826,341	1,934,408	1,946,500
Nevada	2,700,551	3,080,156	3,132,200
New Hampshire	1,316,470	1,359,711	1,363,300
New Jersey	8,791,894	8,882,190	8,894,300
New Mexico	2,059,179	2,096,829	2,100,400
New York	19,378,102	19,453,561	19,377,200
North Carolina	9,535,483	10,488,084	10,594,600
North Dakota	672,591	762,062	766,100
Ohio	11,536,504	11,689,100	11,706,400
Oklahoma	3,751,351	3,956,971	3,971,200
Oregon	3,831,074	4,217,737	4,260,000
Pennsylvania	12,702,379	12,801,989	12,803,100
Rhode Island	1,052,567	1,059,361	1,059,400
South Carolina	4,625,364	5,148,714	5,213,000
South Dakota	814,180	884,659	891,700
Tennessee	6,346,105	6,829,174	6,886,700
Texas	25,145,561	28,995,881	29,432,600
Utah	2,763,885	3,205,958	3,259,800
Vermont	625,741	623,989	624,100
Virginia	8,001,024	8,535,519	8,570,600
Washington	6,724,540	7,614,893	7,707,400
West Virginia	1,852,994	1,792,147	1,780,000
Wisconsin	5,686,986	5,822,434	5,836,800
Wyoming	563,626	578,759	578,700

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.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.⁷ For the 2020 Census, however, all overseas federal personnel will be counted at their usual residential address in the United States.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.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, 2020.¹⁰
- Second, I allocated these personnel to each state in proportion to the number of service members in each branch based in each state.¹¹ This approach implicitly assumes that each

⁶ “Overseas” is defined as anywhere outside the 50 U.S. States and the District of Columbia.

⁷ See the Census Bureau’s FAQ on Congressional Apportionment in the 2010 Census.

<https://webcache.googleusercontent.com/search?q=cache:WTXwriFql5AJ:https://www.census.gov/population/apportionment/about/faq.html+&cd=2&hl=en&ct=clnk&gl=us&client=safari> and <https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/>.

⁸ See <https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/>.

⁹ See <https://www.doi.gov/sites/doi.gov/files/uploads/oia-02052020-census-and-the-military.pdf>.

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.

¹² 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.

¹³ See 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.

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.¹⁵ It is important to note that the federal overseas population is down by nearly 50% since the 2010 Census.¹⁶ This likely reflects the reduction in the nation's military deployments in conflict areas over the past decade.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."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.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.

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/>.

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>.

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/>.

¹⁸ See <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>.

¹⁹ See <https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/>.

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:

$$\text{Unauthorized Immigrants (U)} = \text{Survey, Total Foreign Born (F)} - \\ \text{Estimated Lawful Immigrant Population (L)}$$

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 Statistics²¹ 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 2017.²² 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.²³ 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-methodology/>.

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 2020.²⁴ 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).²⁵ 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

Model	ME	RMSE	MAE	MPE	MAPE
(1): Linear model (decade)	-21,998.25	90,634.40	31,639.51	-3.34	14.56
(2): Linear model (4 years)	-10,944.23	50,403.96	25,971.15	-3.95	17.59
(3): Delta in last two years	-12,884.62	58,005.64	28,961.54	-0.40	19.24
(4): State space model	-13,688.05	55,204.49	22,794.32	-3.46	15.48

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 6: Estimates of Effect on State Population Enumerations in 2020

State	Baseline 2020 Apportionment Population	Undocumented Immigrants (Pew)	Undocumented Percentage
	(1)	(2)	(3)
Alabama	4,926,400	71,900	1.5%
Alaska	735,700	8,400	1.1%
Arizona	7,410,500	274,400	3.7%
Arkansas	3,028,800	65,300	2.2%
California	39,799,200	2,066,000	5.2%
Colorado	5,846,100	190,100	3.3%
Connecticut	3,568,100	148,300	4.2%
Delaware	984,300	29,700	3%
Florida	21,736,600	796,000	3.7%
Georgia	10,749,300	375,700	3.5%
Hawaii	1,428,900	43,800	3.1%
Idaho	1,825,700	38,300	2.1%
Illinois	12,633,400	409,300	3.2%
Indiana	6,773,300	103,200	1.5%
Iowa	3,169,100	51,000	1.6%
Kansas	2,924,300	81,300	2.8%
Kentucky	4,485,300	44,700	1%
Louisiana	4,657,900	100,100	2.1%
Maine	1,350,400	4,000	0.3%
Maryland	6,105,000	261,600	4.3%
Massachusetts	6,907,400	231,900	3.4%
Michigan	9,989,700	103,800	1%
Minnesota	5,677,700	86,800	1.5%
Mississippi	2,979,500	23,000	0.8%
Missouri	6,160,800	63,100	1%
Montana	1,079,300	4,400	0.4%
Nebraska	1,950,200	55,800	2.9%
Nevada	3,137,300	211,200	6.7%
New Hampshire	1,363,700	10,400	0.8%
New Jersey	8,899,400	493,200	5.5%
New Mexico	2,107,400	59,200	2.8%
New York	19,386,100	679,800	3.5%
North Carolina	10,639,700	330,800	3.1%
North Dakota	770,300	5,900	0.8%
Ohio	11,715,100	94,400	0.8%
Oklahoma	3,981,800	90,100	2.3%
Oregon	4,261,500	109,100	2.6%
Pennsylvania	12,809,600	217,800	1.7%
Rhode Island	1,061,000	32,900	3.1%
South Carolina	5,229,800	101,500	1.9%
South Dakota	893,800	5,700	0.6%
Tennessee	6,888,900	139,200	2%
Texas	29,479,700	1,649,100	5.6%
Utah	3,263,900	106,100	3.3%
Vermont	624,400	3,500	0.6%
Virginia	8,639,600	297,600	3.4%
Washington	7,730,300	274,400	3.5%
West Virginia	1,780,600	4,300	0.2%
Wisconsin	5,838,300	72,900	1.2%
Wyoming	580,300	4,800	0.8%

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.

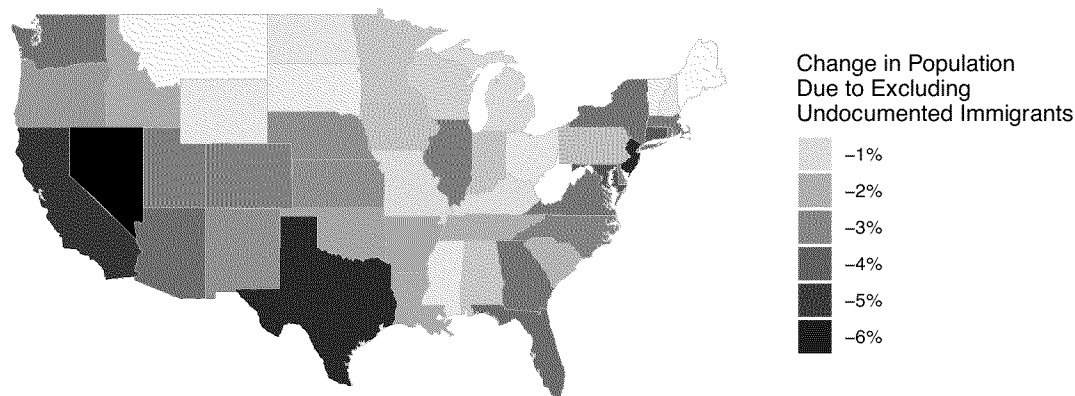


Figure 1: Effects on State Populations

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

State	Baseline Seats (1)	Seats after Exclusion (2)	Seat Delta (3)	Prob. Seat Loss (4)
Alabama	6	7	1	0%
Alaska	1	1	0	0%
Arizona	10	10	-0	0.3%
Arkansas	4	4	0	0%
California	52	51	-1	72.1%
Colorado	8	8	-0	0.3%
Connecticut	5	5	-0	3.4%
Delaware	1	1	0	0%
Florida	29	28	-0	38.4%
Georgia	14	14	0	0%
Hawaii	2	2	0	0%
Idaho	2	2	0	0%
Illinois	17	17	-0	10.1%
Indiana	9	9	0	0%
Iowa	4	4	0	0%
Kansas	4	4	0	0%
Kentucky	6	6	0	0%
Louisiana	6	6	0	0%
Maine	2	2	0	0%
Maryland	8	8	0	0%
Massachusetts	9	9	0	0%
Michigan	13	13	0	0%
Minnesota	7	8	1	0%
Mississippi	4	4	0	0%
Missouri	8	8	0	0%
Montana	2	2	0	0%
Nebraska	3	3	0	0%
Nevada	4	4	0	0%
New Hampshire	2	2	0	0%
New Jersey	12	11	-1	69.8%
New Mexico	3	3	0	0%
New York	26	25	-0	18.9%
North Carolina	14	14	0	0%
North Dakota	1	1	0	0%
Ohio	15	16	1	0%
Oklahoma	5	5	0	0%
Oregon	6	6	0	0%
Pennsylvania	17	17	0	0%
Rhode Island	1	1	0	0%
South Carolina	7	7	0	0%
South Dakota	1	1	0	0%
Tennessee	9	9	0	0%
Texas	39	38	-1	98.3%
Utah	4	4	0	0%
Vermont	1	1	0	0%
Virginia	11	11	0	0%
Washington	10	10	0	0%
West Virginia	2	2	0	0%
Wisconsin	8	8	0	0%
Wyoming	1	1	0	0%

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 than 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

³⁰ See <https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles>.

Pew's estimate.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 2018.³² 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.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%.

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 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.

State	Main Analysis	Scenario #1 MPI	Scenario #2 CMS	Scenario #3 Pew (80%)	Scenario #4 Pew (60%)	Scenario #5 Pew (150%)
California	72%	100%	93%	49%	36%	92%
Florida	38%	0%	26%	39%	48%	60%
New Jersey	70%	80%	23%	57%	36%	91%
New York	19%	52%	19%	17%	28%	24%
Texas	98%	96%	98%	98%	98%	99.5%

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.

State	Main Analysis	Scenario #6 Alternative Population Forecasts	Scenario #7 Alternative Forecasts of Undoc. Imm.'s
California	72%	84%	75%
Florida	38%	45%	96%
New Jersey	70%	73%	51%
New York	19%	58%	30%
Texas	98%	99.5%	100%

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.

State	Main	Scenario #8
State	Analysis	Undercount
California	72%	67%
Florida	38%	0%
New Jersey	70%	93%
New York	19%	0%
Texas	98%	76%

³⁴ See Statement of John H Thompson, Former Director U.S. Census Bureau (August 2013 – June 2017), For the House Committee on Oversight and Reform, U.S. House of Representatives, July 29, 2020 <https://tinyurl.com/y67ojqjb>.

³⁵ See <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> and <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html>.

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 Center³⁶
- 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.

State	Main Analysis (1)	Pew (2)	CIS (3)	CfP (4)	Academic Study (5)
Arizona	0.3%				X
California	72%	X	X	X	X
Florida	38%	X			X
New Jersey	70%			X	
New York	19%		X		
Texas	98%	X	X	X	X

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

³⁶ See <https://www.pewresearch.org/fact-tank/2020/07/24/how-removing-unauthorized-immigrants-from-census-statistics-could-affect-house-reapportionment/>

³⁷ See https://cis.org/sites/default/files/2019-12/camarota-apportionment-12-19_1.pdf.

³⁸ See <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment/>.

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.

A handwritten signature in cursive script, appearing to read "Chris Warshaw".

Christopher Warshaw

References

Ansolabehere, Stephen, Alan Gerber, and Jim Snyder. 2002. “Equal votes, equal money: Court-ordered redistricting and public expenditures in the American states.” *American Political Science Review* 96 (4): 767–777.

Baker, Bryan. 2018. “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2015.” Department of Homeland Security, December.

Baumle, Amanda K, and Dudley L Poston Jr. 2019. “Apportionment of the US House of Representatives in 2020 under Alternative Immigration-Based Scenarios.” *Population and Development Review* 45 (2): 379–400.

Brown, David J., Misty L. Heggeness, Suzanne M. Dorinski, Lawrence Warren, and Moises Yi. 2018. Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census.

Cascio, Elizabeth U, and Ebonya Washington. 2014. “Valuing the vote: The redistribution of voting rights and state funds following the voting rights act of 1965.” *The Quarterly Journal of Economics* 129 (1): 379–433.

Caughey, Devin, and Christopher Warshaw. 2018. “Policy Preferences and Policy Change: Dynamic Responsiveness in the American States, 1936–2014.” *The American Political Science Review* 112 (2): 249–266.

Election Data Services. 2017. Some Change in Apportionment Allocations With New 2017 Census Estimates, But Greater Change Likely by 2020. Available at https://www.electiondataservices.com/wpcontent/uploads/2017/12/NR_Appor17c2wTablesMapsC1.pdf.

Elis, Roy, Neil Malhotra, and Marc Meredith. 2009. “Apportionment cycles as natural experiments.” *Political Analysis* 17 (4): 358–376.

Hyndman, Rob J, and George Athanasopoulos. 2018. *Forecasting: principles and practice*. O-Texts.

Hyndman, Rob, Anne B Koehler, J Keith Ord, and Ralph D Snyder. 2008. *Forecasting with exponential smoothing: the state space approach*. Springer Science & Business Media.

Passel, Jeffrey S. 2016. Overall Number of US Unauthorized Immigrants Holds Steady Since 2009: Decline in Share From Mexico Mostly Offset by Growth From Asia, Central America and Sub-Saharan African. Pew Research Center.

Treier, Shawn, and Simon Jackman. 2008. “Democracy as a latent variable.” *American Journal of Political Science* 52 (1): 201–217.

Warren, Robert. 2014. “Democratizing data about unauthorized residents in the United States: estimates and public-use data, 2010 to 2013.” *Journal on Migration and Human Security* 2 (4): 305–328.

Warren, Robert. 2019. "US undocumented population continued to fall from 2016 to 2017 and visa overstays significantly exceeded illegal crossings for the seventh consecutive year." *Journal on Migration and Human Security* 7 (1): 19–22.

Warren, Robert, and John Robert Warren. 2013. "Unauthorized immigration to the United States: Annual estimates and components of change, by state, 1990 to 2010." *International Migration Review* 47 (2): 296–329.

Appendix A**1. Estimates of Overseas Federal Personnel**

Table 3: Estimates of Overseas Federal Personnel in each State in 2020.

State	Overseas Personnel
Alabama	7,700
Alaska	7,500
Arizona	11,000
Arkansas	2,900
California	74,900
Colorado	14,200
Connecticut	2,600
Delaware	2,100
Florida	29,500
Georgia	26,800
Hawaii	17,500
Idaho	2,200
Illinois	10,300
Indiana	3,300
Iowa	900
Kansas	8,300
Kentucky	11,200
Louisiana	7,300
Maine	1,100
Maryland	33,600
Massachusetts	2,700
Michigan	2,900
Minnesota	1,600
Mississippi	6,700
Missouri	8,400
Montana	2,000
Nebraska	3,600
Nevada	6,200
New Hampshire	700
New Jersey	5,300
New Mexico	7,000
New York	9,300
North Carolina	44,500
North Dakota	4,000
Ohio	8,600
Oklahoma	10,700
Oregon	1,200
Pennsylvania	6,900
Rhode Island	1,700
South Carolina	16,400
South Dakota	2,000
Tennessee	2,600
Texas	51,500
Utah	4,200
Vermont	300
Virginia	68,800
Washington	23,000
West Virginia	700
Wisconsin	1,600
Wyoming	1,800

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.

State	Undocumented Immigrants
Alabama	71,900 (28,800)
Alaska	8,400 (3,500)
Arizona	274,400 (56,400)
Arkansas	65,300 (20,400)
California	2,066,000 (275,700)
Colorado	190,100 (50,200)
Connecticut	148,300 (67,700)
Delaware	29,700 (12,100)
Florida	796,000 (105,300)
Georgia	375,700 (140,000)
Hawaii	43,800 (19,000)
Idaho	38,300 (9,400)
Illinois	409,300 (70,100)
Indiana	103,200 (48,200)
Iowa	51,000 (20,400)
Kansas	81,300 (27,900)
Kentucky	44,700 (20,400)
Louisiana	100,100 (61,500)
Maine	4,000 (1,900)
Maryland	261,600 (76,300)
Massachusetts	231,900 (69,300)
Michigan	103,800 (37,500)
Minnesota	86,800 (34,200)
Mississippi	23,000 (11,600)
Missouri	63,100 (31,300)
Montana	4,400 (1,700)
Nebraska	55,800 (17,900)
Nevada	211,200 (31,600)
New Hampshire	10,400 (4,400)
New Jersey	493,200 (90,000)
New Mexico	59,200 (16,600)
New York	679,800 (102,000)
North Carolina	330,800 (73,400)
North Dakota	5,900 (3,200)
Ohio	94,400 (43,400)
Oklahoma	90,100 (30,200)
Oregon	109,100 (32,200)
Pennsylvania	217,800 (85,500)
Rhode Island	32,900 (12,000)
South Carolina	101,500 (47,500)
South Dakota	5,700 (2,300)
Tennessee	139,200 (56,000)
Texas	1,649,100 (182,200)
Utah	106,100 (19,100)
Vermont	3,500 (1,600)
Virginia	297,600 (104,600)
Washington	274,400 (82,600)
West Virginia	4,300 (2,000)
Wisconsin	72,900 (31,000)
Wyoming	4,800 (1,900)

3. Unrounded Main Results for Congressional Apportionment

Table 12: Unrounded Estimates of Excluding Undocumented Immigrants on Congressional Apportionment

State	Baseline Seats (1)	Seats after Exclusion (2)	Seat Delta (3)	Prob. Seat Loss (4)
Alabama	6.46	7.00	0.54	0%
Alaska	1.00	1.00	0.00	0%
Arizona	10.00	10.00	-0.00	0.3%
Arkansas	4.00	4.00	0.00	0%
California	52.15	51.32	-0.83	72.1%
Colorado	8.00	8.00	-0.00	0.3%
Connecticut	5.00	4.97	-0.03	3.4%
Delaware	1.00	1.00	0.00	0%
Florida	28.86	28.47	-0.38	38.4%
Georgia	14.00	14.02	0.02	0%
Hawaii	2.00	2.00	0.00	0%
Idaho	2.00	2.12	0.12	0%
Illinois	17.00	16.90	-0.10	10.1%
Indiana	9.00	9.00	0.00	0%
Iowa	4.00	4.00	0.00	0%
Kansas	4.00	4.00	0.00	0%
Kentucky	6.00	6.00	0.00	0%
Louisiana	6.00	6.02	0.02	0%
Maine	2.00	2.00	0.00	0%
Maryland	8.00	8.00	0.00	0%
Massachusetts	9.00	9.00	0.00	0%
Michigan	13.00	13.28	0.28	0%
Minnesota	7.07	8.00	0.92	0%
Mississippi	4.00	4.00	0.00	0%
Missouri	8.00	8.00	0.00	0%
Montana	1.92	2.00	0.08	0%
Nebraska	3.00	3.00	0.00	0%
Nevada	4.00	4.00	0.00	0%
New Hampshire	2.00	2.00	0.00	0%
New Jersey	12.00	11.30	-0.70	69.8%
New Mexico	3.00	3.00	0.00	0%
New York	25.54	25.35	-0.19	18.9%
North Carolina	14.00	14.00	0.00	0%
North Dakota	1.00	1.00	0.00	0%
Ohio	15.00	16.00	1.00	0%
Oklahoma	5.00	5.00	0.00	0%
Oregon	6.00	6.00	0.00	0%
Pennsylvania	17.00	17.00	0.00	0%
Rhode Island	1.00	1.17	0.17	0%
South Carolina	7.00	7.00	0.00	0%
South Dakota	1.00	1.00	0.00	0%
Tennessee	9.00	9.00	0.00	0%
Texas	38.99	37.93	-1.06	98.3%
Utah	4.00	4.00	0.00	0%
Vermont	1.00	1.00	0.00	0%
Virginia	11.00	11.16	0.16	0%
Washington	10.00	10.00	0.00	0%
West Virginia	2.00	2.00	0.00	0%
Wisconsin	8.00	8.00	0.00	0%
Wyoming	1.00	1.00	0.00	0%

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.
5. I am also on the Editorial Board of the *Journal of Politics*. I have previously provided expert reports in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania* and *League of Women Voters of Michigan v. Johnson*. My non-academic writing has been published in the New York Times Upshot.

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

¹ 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.

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>.

13. 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.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 1: Validation of State Population Projections

Model	2010			2017		
	Mean Error	Mean Abs. Error	Mean Abs. Prop. Error	Mean Error	Mean Abs Error	Mean Abs. Prop. Error
Linear model (full period)	22,800	62,860	0.013	7,827	32,003	0.007
Linear model (4 years)	27,399	82,106	0.014	33,420	59,396	0.014
Delta in last two years	20,383	50,663	0.010	140,472	142,506	0.020
State space model	5,826	51,033	0.009	-2,599	33,378	0.008

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 2: Population Projections in Select Counties and Cities

County/City	2010 Population	2017 Population	2020 Population Projection
Phoenix, AZ	1,446,909	1,626,078	1,698,187
Los Angeles County, CA	9,818,605	10,163,507	10,256,275
Monterey County, CA	415,052	437,907	444,016
San Francisco, CA	805,193	884,363	909,143
Miami, FL	399,457	463,347	491,295
Chicago, IL	2,695,620	2,716,450	2,704,974
Price Georges County, MD	863,420	912,756	931,412
New York NY	8,174,959	8,622,698	8,645,147
Columbus, OH	788,877	879,170	925,408
Philadelphia, PA	1,526,006	1,580,863	1,598,072
Pittsburgh, PA	305,391	302,407	297,243
Central Falls, RI	19,393	19,359	19,250
Providence, RI	177,997	180,393	181,532
Cameron County, TX	406,219	423,725	429,603
El Paso County, TX	800,647	840,410	851,600
Hidalgo County, TX	774,770	860,661	892,083
Seattle, WA	608,664	724,745	780,550

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

State	2010 Population	2017 Population	2020 Population Projection
Alabama	4,779,736	4,874,747	4,917,351
Alaska	710,231	739,795	739,473
Arizona	6,392,017	7,016,270	7,339,157
Arkansas	2,915,918	3,004,279	3,051,838
California	37,253,956	39,536,653	40,505,540
Colorado	5,029,196	5,607,154	5,823,386
Connecticut	3,574,097	3,588,184	3,589,649
Delaware	897,934	961,939	989,662
District of Columbia	601,723	693,972	722,881
Florida	18,801,310	20,984,400	21,967,862
Georgia	9,687,653	10,429,379	10,776,655
Hawaii	1,360,301	1,427,538	1,429,641
Idaho	1,567,582	1,716,943	1,827,695
Illinois	12,830,632	12,802,023	12,701,647
Indiana	6,483,802	6,666,818	6,761,903
Iowa	3,046,355	3,145,711	3,182,994
Kansas	2,853,118	2,913,123	2,925,781
Kentucky	4,339,367	4,454,189	4,508,391
Louisiana	4,533,372	4,684,333	4,684,247
Maine	1,328,361	1,335,907	1,349,155
Maryland	5,773,552	6,052,177	6,187,649
Massachusetts	6,547,629	6,859,819	6,966,760
Michigan	9,883,640	9,962,311	9,962,308
Minnesota	5,303,925	5,576,606	5,690,791
Mississippi	2,967,297	2,984,100	2,984,630
Missouri	5,988,927	6,113,532	6,180,600
Montana	989,415	1,050,493	1,079,083
Nebraska	1,826,341	1,920,076	1,957,570
Nevada	2,700,551	2,998,039	3,174,453
New Hampshire	1,316,470	1,342,795	1,366,068
New Jersey	8,791,894	9,005,644	9,106,936
New Mexico	2,059,179	2,088,070	2,095,989
New York	19,378,102	19,849,399	19,885,662
North Carolina	9,535,483	10,273,419	10,623,613
North Dakota	672,591	755,393	752,711
Ohio	11,536,504	11,658,609	11,713,096
Oklahoma	3,751,351	3,930,864	3,974,666
Oregon	3,831,074	4,142,776	4,269,590
Pennsylvania	12,702,379	12,805,537	12,838,064
Rhode Island	1,052,567	1,059,639	1,059,639
South Carolina	4,625,364	5,024,369	5,213,894
South Dakota	814,180	869,666	891,229
Tennessee	6,346,105	6,715,984	6,915,723
Texas	25,145,561	28,304,596	29,593,219
Utah	2,763,885	3,101,833	3,274,374
Vermont	625,741	623,657	622,506
Virginia	8,001,024	8,470,020	8,632,998
Washington	6,724,540	7,405,743	7,785,568
West Virginia	1,852,994	1,815,857	1,777,893
Wisconsin	5,686,986	5,795,483	5,858,478
Wyoming	563,626	579,315	565,592

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.⁶

This survey was designed by Dr. Matt Barreto and conducted by Pacific Market Research.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).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?’

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.

⁷ Data and statistical code to replicate my analysis of this survey is available in my replication materials.

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

	Latinos			Foreign-born (not Latino)		
	(1)	(2)	(3)	(4)	(5)	(6)
Citizenship Question	-0.059** (0.029)	-0.070** (0.028)	-0.062*** (0.016)	-0.113 (0.072)	-0.164** (0.066)	-0.096** (0.039)
Survey Weights	X	X		X	X	
Controls		X	X		X	X
Observations	2,362	2,362	2,362	488	488	488
R ²			0.043			0.117
Adjusted R ²			0.021			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)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.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.

Table 5: Effect of Undercount on State Population Enumerations in 2020

State	Baseline Apportionment Pop. Projection	5.8% Undercount		10% Undercount		Survey Experiment Foreign-born + Hispanics
		Noncitizens	Noncitizens+ Hispanic	Noncitizens	Noncitizens + Hispanic	
	(1)	(2)	(3)	(4)	(5)	(6)
Alabama	4,928,974	-0.3%	-0.4%	-0.5%	-0.7%	-0.6%
Alaska	745,119	-0.5%	-0.8%	-0.8%	-1.4%	-1.4%
Arizona	7,349,498	-0.9%	-2.1%	-1.5%	-3.6%	-2.6%
Arkansas	3,056,993	-0.4%	-0.6%	-0.7%	-1%	-0.8%
California	40,549,557	-1.7%	-2.9%	-2.9%	-5%	-4.1%
Colorado	5,831,253	-0.7%	-1.5%	-1.2%	-2.7%	-2%
Connecticut	3,593,415	-0.8%	-1.5%	-1.3%	-2.6%	-2.4%
Delaware	991,133	-0.6%	-1%	-1%	-1.7%	-1.5%
Florida	22,017,594	-1%	-2%	-1.7%	-3.4%	-2.7%
Georgia	10,796,611	-0.7%	-0.9%	-1.2%	-1.6%	-1.5%
Hawaii	1,432,921	-1%	-1.6%	-1.7%	-2.8%	-3%
Idaho	1,830,654	-0.4%	-0.9%	-0.8%	-1.6%	-1.2%
Illinois	12,718,521	-0.8%	-1.4%	-1.4%	-2.4%	-2.1%
Indiana	6,770,793	-0.4%	-0.6%	-0.7%	-1.1%	-0.9%
Iowa	3,186,710	-0.4%	-0.6%	-0.7%	-1%	-0.9%
Kansas	2,931,128	-0.6%	-1%	-1%	-1.7%	-1.3%
Kentucky	4,514,011	-0.3%	-0.4%	-0.5%	-0.7%	-0.6%
Louisiana	4,694,542	-0.3%	-0.5%	-0.5%	-0.8%	-0.6%
Maine	1,351,512	-0.2%	-0.3%	-0.3%	-0.5%	-0.6%
Maryland	6,195,838	-0.9%	-1.2%	-1.6%	-2%	-2.1%
Massachusetts	6,972,768	-0.9%	-1.4%	-1.5%	-2.4%	-2.4%
Michigan	9,976,301	-0.4%	-0.6%	-0.6%	-1%	-1.1%
Minnesota	5,696,268	-0.5%	-0.6%	-0.8%	-1.1%	-1.2%
Mississippi	2,990,101	-0.2%	-0.3%	-0.3%	-0.5%	-0.4%
Missouri	6,191,875	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Montana	1,081,584	-0.1%	-0.3%	-0.2%	-0.6%	-0.5%
Nebraska	1,960,312	-0.5%	-0.9%	-0.9%	-1.5%	-1.2%
Nevada	3,178,894	-1.3%	-2.1%	-2.2%	-3.6%	-3%
New Hampshire	1,368,556	-0.3%	-0.5%	-0.5%	-0.8%	-0.9%
New Jersey	9,114,740	-1.2%	-1.9%	-2%	-3.3%	-3%
New Mexico	2,100,036	-0.8%	-3.1%	-1.3%	-5.3%	-3.3%
New York	19,907,138	-1.2%	-1.9%	-2.1%	-3.2%	-3.1%
North Carolina	10,638,762	-0.6%	-0.8%	-1%	-1.4%	-1.2%
North Dakota	754,368	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Ohio	11,729,092	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Oklahoma	3,981,432	-0.5%	-0.8%	-0.8%	-1.4%	-1.1%
Oregon	4,278,356	-0.7%	-1.1%	-1.1%	-1.9%	-1.6%
Pennsylvania	12,854,327	-0.4%	-0.7%	-0.6%	-1.3%	-1.2%
Rhode Island	1,060,979	-0.7%	-1.3%	-1.2%	-2.3%	-2%
South Carolina	5,224,199	-0.3%	-0.5%	-0.6%	-0.9%	-0.8%
South Dakota	894,019	-0.3%	-0.4%	-0.5%	-0.8%	-0.7%
Tennessee	6,930,386	-0.4%	-0.5%	-0.6%	-0.9%	-0.8%
Texas	29,654,648	-1.3%	-2.7%	-2.2%	-4.6%	-3.2%
Utah	3,277,814	-0.6%	-1.1%	-1.1%	-1.9%	-1.4%
Vermont	624,804	-0.2%	-0.3%	-0.3%	-0.5%	-0.7%
Virginia	8,651,354	-0.7%	-1%	-1.2%	-1.7%	-1.8%
Washington	7,799,983	-0.9%	-1.3%	-1.5%	-2.2%	-2.2%
West Virginia	1,781,304	-0.1%	-0.2%	-0.2%	-0.3%	-0.3%
Wisconsin	5,864,100	-0.3%	-0.6%	-0.6%	-1.1%	-0.9%
Wyoming	567,929	-0.3%	-0.8%	-0.5%	-1.3%	-1%

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.

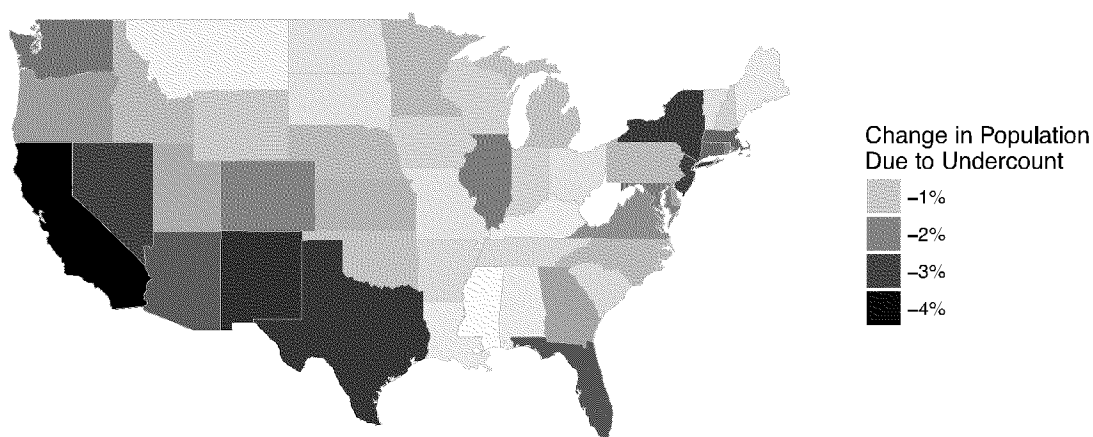


Figure 1: Effects on State Populations

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

State	Baseline Seats	5.8% Undercount		10% Undercount		Survey Experiment
		Noncitizens	Noncitizens+ Hispanic	Noncitizens	Noncitizens + Hispanic	Foreign-born + Hispanics
Alabama	6	0 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)
Alaska	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Arizona	10	0 (-1,0)	0 (-1,0)	0 (-1,0)	-1 (-1,0)	0 (-1,0)
Arkansas	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
California	53	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-2,-1)	-1 (-2,0)
Colorado	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Connecticut	5	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Delaware	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Florida	29	0 (-1,0)	0 (-1,0)	0 (-1,0)	-1 (-1,0)	-1 (-1,0)
Georgia	14	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Hawaii	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Idaho	2	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,1)	0 (0,1)
Illinois	17	0 (-1,0)	0 (0,1)	0 (-1,1)	0 (-1,0)	0 (-1,0)
Indiana	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Iowa	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Kansas	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Kentucky	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Louisiana	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,0)
Maine	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Maryland	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Massachusetts	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Michigan	13	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Minnesota	7	0 (0,1)	0 (0,1)	0 (0,1)	1 (0,1)	1 (0,1)
Mississippi	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Missouri	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Montana	1	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)
Nebraska	3	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Nevada	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Hampshire	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Jersey	12	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Mexico	3	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New York	26	0 (-1,0)	0 (0,0)	0 (-1,0)	0 (-1,0)	0 (-1,0)
North Carolina	14	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
North Dakota	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Ohio	15	0 (0,0)	0 (0,1)	0 (0,1)	1 (0,1)	0 (0,1)
Oklahoma	5	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Oregon	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Pennsylvania	17	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Rhode Island	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
South Carolina	7	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
South Dakota	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Tennessee	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Texas	39	0 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)
Utah	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Vermont	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Virginia	11	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Washington	10	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
West Virginia	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Wisconsin	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Wyoming	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)

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

County	2020 Population	2% Undercount				5.8% Undercount				Survey Experiment			
		Noncitizens		Noncitizens+ Hispanics		Noncitizens		Noncitizens+ Hispanics		Foreign-born+ Hispanics			
		Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change
Phoenix, AZ	1,698,187	9,532	-0.6%	15,939	-0.9%	27,644	-1.6%	46,223	-2.7%	53,388	-3.1%		
Los Angeles County, CA	10,256,275	74,027	-0.7%	118,962	-1.2%	214,679	-2.1%	344,988	-3.4%	469,163	-4.6%		
Monterey County, CA	444,016	3,841	-0.9%	5,525	-1.2%	11,139	-2.5%	16,022	-3.6%	18,215	-4.1%		
San Francisco, CA	909,143	4,640	-0.5%	6,141	-0.7%	13,457	-1.5%	17,808	-2%	37,509	-4.1%		
San Jose, CA	1,045,953	6,843	-0.7%	10,743	-1%	19,845	-1.9%	31,153	-3%	52,766	-5%		
Washington, DC	722,881	1,997	-0.3%	2,690	-0.4%	5,792	-0.8%	7,800	-1.1%	11,859	-1.6%		
Miami, FL	491,295	4,868	-1%	7,734	-1.6%	14,118	-2.9%	22,428	-4.6%	24,713	-5%		
Chicago, IL	2,704,974	12,334	-0.5%	20,052	-0.7%	35,769	-1.3%	58,152	-2.1%	76,859	-2.8%		
Prince Georges County, MD	931,412	4,388	-0.5%	5,054	-0.5%	12,724	-1.4%	14,658	-1.6%	21,592	-2.3%		
New York, NY	8,645,147	55,293	-0.6%	83,728	-1%	160,350	-1.9%	242,811	-2.8%	396,647	-4.6%		
Columbus, OH	925,408	2,375	-0.3%	2,768	-0.3%	6,886	-0.7%	8,027	-0.9%	12,889	-1.4%		
Philadelphia, PA	1,598,072	3,944	-0.2%	7,305	-0.5%	11,438	-0.7%	21,185	-1.3%	32,116	-2%		
Pittsburgh, PA	297,243	480	-0.2%	614	-0.2%	1,392	-0.5%	1,780	-0.6%	3,124	-1.1%		
Central Falls, RI	19,250	190	-1%	313	-1.6%	550	-2.9%	908	-1.7%	920	-4.8%		
Providence, RI	181,532	1,249	-0.7%	1,934	-1.1%	3,622	-2%	5,608	-3.1%	6,833	-3.8%		
Cameron County, TX	429,603	3,535	-0.8%	7,759	-1.8%	10,253	-2.4%	22,501	-5.2%	23,272	-5.4%		
El Paso County, TX	851,600	5,844	-0.7%	14,227	-1.7%	16,947	-2%	41,259	-1.8%	43,069	-5.1%		
Hidalgo County, TX	892,083	8,455	-0.9%	16,540	-1.9%	24,520	-2.7%	47,965	-5.4%	49,626	-5.6%		
Seattle, WA	780,550	2,483	-0.3%	2,987	-0.4%	7,200	-0.9%	8,661	-1.1%	17,083	-2.2%		

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.

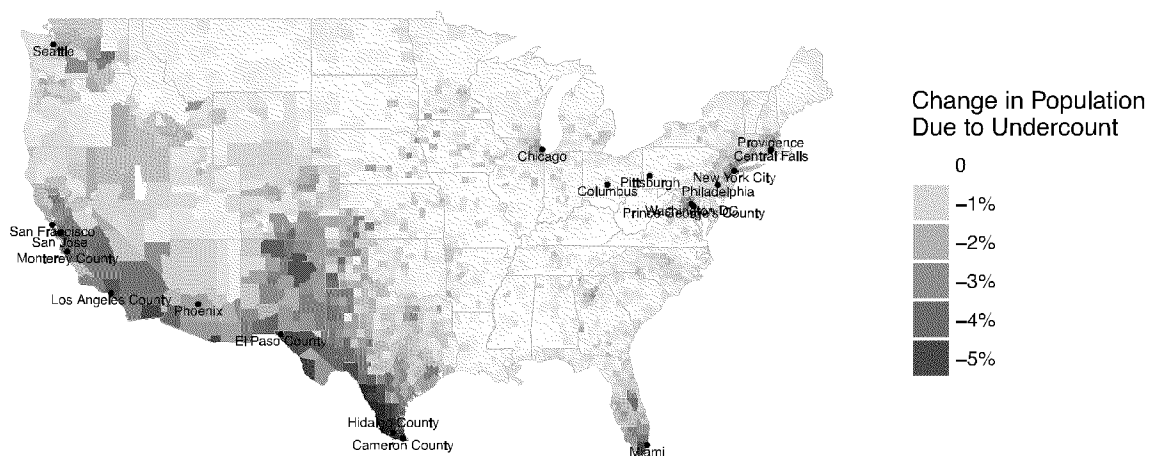


Figure 2: Effects on County Populations

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

	2% Undercount		5.8% Undercount		Survey Experiment
	Noncitizens	Noncitizens+ Hispanics	Noncitizens	Noncitizens+ Hispanics	Foreign-born+ Hispanics
Phoenix, AZ	-0.4%	-0.4%	-0.9%	-0.8%	-0.7%
Los Angeles County, CA	-0.3%	-0.3%	-0.5%	-0.6%	-0.6%
Monterey County, CA	-0.4%	-0.4%	-1%	-0.9%	-0.1%
San Francisco, CA	0%	0.2%	0.1%	0.8%	-0.2%
San Jose, CA	-0.2%	-0.1%	-0.3%	-0.2%	-1.1%
Miami, FL	-0.9%	-1.1%	-2.1%	-2.9%	-2.6%
Chicago, IL	-0.3%	-0.4%	-0.6%	-0.9%	-0.9%
Prince Georges County, MD	-0.3%	-0.3%	-0.6%	-0.5%	-0.4%
New York, NY	-0.3%	-0.4%	-0.8%	-1.1%	-1.6%
Columbus, OH	-0.3%	-0.3%	-0.6%	-0.6%	-0.8%
Philadelphia, PA	-0.2%	-0.3%	-0.5%	-0.7%	-1%
Pittsburgh, PA	-0.2%	-0.1%	-0.2%	0%	0%
Central Falls, RI	-0.9%	-1.3%	-2.3%	-3.5%	-2.9%
Providence, RI	-0.6%	-0.7%	-1.4%	-1.9%	-1.9%
Cameron County, TX	-0.6%	-1.1%	-1.3%	-2.8%	-2.5%
El Paso County, TX	-0.5%	-1%	-0.9%	-2.4%	-2.1%
Hidalgo County, TX	-0.7%	-1.2%	-1.7%	-3%	-2.7%
Seattle, WA	-0.2%	-0.1%	-0.2%	0%	-0.2%

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.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).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.

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.

¹⁵ See https://www.cdc.gov/nchs/data_access/urban_rural.htm

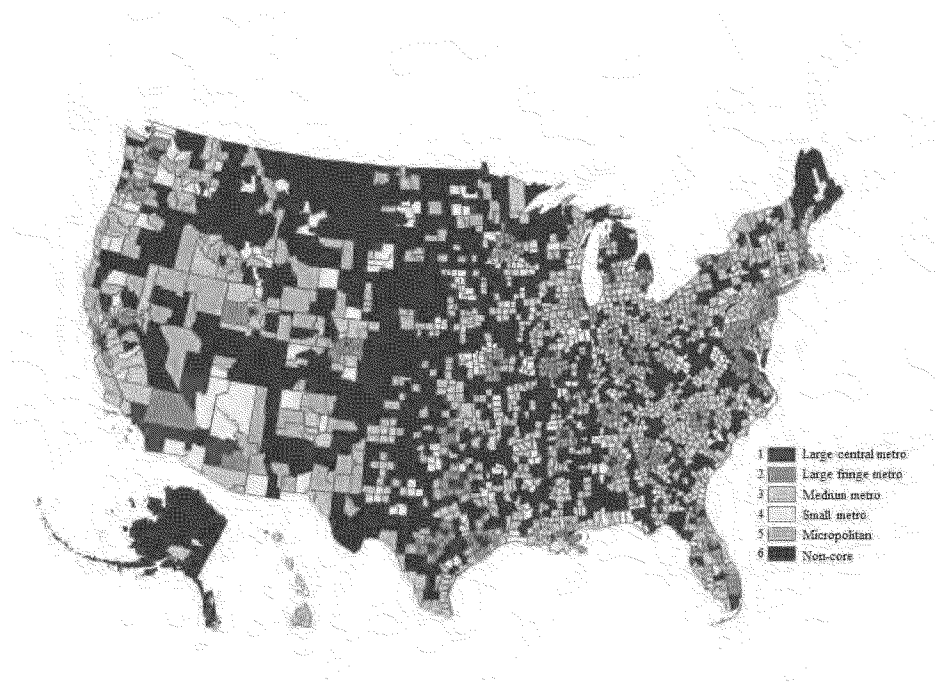


Figure 3: 2013 Urban-Rural Classification Scheme for Counties

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

County	2020 Population Projection	Percentage Change Due to Undercount	Percentage Change in Relative Population
Large central metro	103,025,259	-2.9%	-1.1%
Large fringe metro	83,761,694	-1.8%	.1%
Median metro	69,737,033	-1.5%	.3%
Small metro	30,116,705	-1%	.9%
Micropolitan	27,375,961.605	-.8%	1.1%
Noncore	18,760,860	-.5%	1.4%

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

A handwritten signature in black ink, appearing to read "Chris Warshaw", written over a horizontal line.

Christopher Warshaw

Appendix

Table A1: Effect of 2% Undercount on State Population Enumerations in 2020

State	Baseline Apportionment Pop. Projection	Noncitizens	Noncitizens+ Hispanic
Alabama	4,928,974	-0.1%	-0.1%
Alaska	745,119	-0.2%	-0.3%
Arizona	7,349,498	-0.3%	-0.7%
Arkansas	3,056,993	-0.1%	-0.2%
California	40,549,557	-0.6%	-1%
Colorado	5,831,253	-0.2%	-0.5%
Connecticut	3,593,415	-0.3%	-0.5%
Delaware	991,133	-0.2%	-0.3%
Florida	22,017,594	-0.3%	-0.7%
Georgia	10,796,611	-0.2%	-0.3%
Hawaii	1,432,921	-0.3%	-0.6%
Idaho	1,830,654	-0.2%	-0.3%
Illinois	12,718,521	-0.3%	-0.5%
Indiana	6,770,793	-0.1%	-0.2%
Iowa	3,186,710	-0.1%	-0.2%
Kansas	2,931,128	-0.2%	-0.3%
Kentucky	4,514,011	-0.1%	-0.1%
Louisiana	4,694,542	-0.1%	-0.2%
Maine	1,351,512	-0.1%	-0.1%
Maryland	6,195,838	-0.3%	-0.4%
Massachusetts	6,972,768	-0.3%	-0.5%
Michigan	9,976,301	-0.1%	-0.2%
Minnesota	5,696,268	-0.2%	-0.2%
Mississippi	2,990,101	-0.1%	-0.1%
Missouri	6,191,875	-0.1%	-0.1%
Montana	1,081,584	0%	-0.1%
Nebraska	1,960,312	-0.2%	-0.3%
Nevada	3,178,894	-0.4%	-0.7%
New Hampshire	1,368,556	-0.1%	-0.2%
New Jersey	9,114,740	-0.4%	-0.7%
New Mexico	2,100,036	-0.3%	-1.1%
New York	19,907,138	-0.4%	-0.6%
North Carolina	10,638,762	-0.2%	-0.3%
North Dakota	754,368	-0.1%	-0.1%
Ohio	11,729,092	-0.1%	-0.1%
Oklahoma	3,981,432	-0.2%	-0.3%
Oregon	4,278,356	-0.2%	-0.4%
Pennsylvania	12,854,327	-0.1%	-0.3%
Rhode Island	1,060,979	-0.2%	-0.5%
South Carolina	5,224,199	-0.1%	-0.2%
South Dakota	894,019	-0.1%	-0.2%
Tennessee	6,930,386	-0.1%	-0.2%
Texas	29,654,648	-0.4%	-0.9%
Utah	3,277,814	-0.2%	-0.4%
Vermont	624,804	-0.1%	-0.1%
Virginia	8,651,354	-0.2%	-0.3%
Washington	7,799,983	-0.3%	-0.4%
West Virginia	1,781,304	0%	-0.1%
Wisconsin	5,864,100	-0.1%	-0.2%
Wyoming	567,929	-0.1%	-0.3%

Christopher S. Warshaw

Department of Political Science
2115 G Street, N.W.
Monroe Hall 440
Washington, D.C. 20052

Office: 202-994-6290
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)
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)

20. "Accountability for the Local Economy at All Levels of Government in United States Elections." Forthcoming. 2020. *American Political Science Review* .114(3): 660-676. (with Justin de Benedictis-Kessner)
19. "Politics in Forgotten Governments: The Partisan Composition of County Legislatures and County Fiscal Policies." 2020. *Journal of Politics*. 82(2): 460-475. (with Justin de Benedictis-Kessner)
18. "On the Representativeness of Primary Electorates." 2020. *British Journal of Political Science*. 50(2): 677-685. (with John Sides, Chris Tausanovitch, and Lynn Vavreck)
17. "Geography, Uncertainty, and Polarization." 2019. *Political Science Research and Methods*. 7(4): 775-794. (with Nolan McCarty, Jonathan Rodden, Boris Shor, and Chris Tausanovitch)
16. "Policy Ideology in European Mass Publics, 1981–2016." 2019. *American Political Science Review*. 113(3): 674-693. (with Devin Caughey and Tom O’Grady).
15. "Does Global Warming Increase Public Concern About Climate Change?" 2019. *Journal of Politics*. 81(2): 686-691. (with Parrish Bergquist)
14. "Local Elections and Representation in the United States." 2019. *Annual Review of Political Science*. 22(1): 461-479.
13. "The Ideological Nationalization of Party Constituencies in the American States". 2018. *Public Choice*. Keith Poole Symposium. 176(1-2): 133-151. (with James Dunham and Devin Caughey)
12. "Policy Preferences and Policy Change: Dynamic Responsiveness in the American States, 1936-2014." 2018. *American Political Science Review*. 112(2): 249-266. (with Devin Caughey)
11. "Does the Ideological Proximity Between Candidates and Voters Affect Voting in U.S. House Elections?" 2018. *Political Behavior*. 40(1): 223-245. (with Chris Tausanovitch)
10. "Partisan Gerrymandering and the Political Process: Effects on Roll-Call Voting and State Policies." *Election Law Journal*. December, 2017. 16(4): 453-469. Symposium on Partisan Gerrymandering and the Efficiency Gap. (with Devin Caughey and Chris Tausanovitch)
9. "Incremental Democracy: The Policy Effects of Partisan Control of State Government." 2017. *Journal of Politics*. 79(4): 1342-1358. (with Devin Caughey and Yiqing Xu)
8. "Renewable energy policy design and framing influences public support in the United States." 2017. *Nature Energy*. 2(17107). (with Leah Stokes)
7. "Estimating Candidates’ Political Orientation in a Polarized Congress." 2017. *Political Analysis*. 25(2): 167-187. (with Chris Tausanovitch)
6. "The Dynamics of State Policy Liberalism, 1936-2014." 2016. *American Journal of Political Science*. 60(4): 899-913. (with Devin Caughey)
5. "Mayoral Partisanship and Municipal Fiscal Policy." 2016. *Journal of Politics*. 78(4): 1124-1138. (with Justin de Benedictis-Kessner)
4. "Dynamic Estimation of Latent Opinion Using a Hierarchical Group-Level IRT Model." 2015. *Political Analysis*. 23(2): 197-211. (with Devin Caughey)
3. "Representation in Municipal Government." 2014. *American Political Science Review*. 108(3): 605-641. (with Chris Tausanovitch)
2. "Measuring Constituent Policy Preferences in Congress, State Legislatures and Cities." 2013. *Journal of Politics*. 75(2): 330-342. (with Chris Tausanovitch)

1. "How Should We Measure District-Level Public Opinion on Individual Issues?" 2012. *Journal of Politics*. 74(1): 203-219. (with Jonathan Rodden)

Editor Reviewed Articles in Journals and Law Reviews

3. "Public Opinion in Subnational Politics." 2019. *Journal of Politics*. 81(1): 352-363. Editor reviewed for Symposium on Subnational Policymaking. (with Devin Caughey)
2. "Spatial variation in messaging effects." 2018. *Nature Climate Change*. News & Views. April, 2018.
1. "Business as Usual? Analyzing the Doctrinal Development of Environmental Standing Doctrine since 1976." 2011. *Harvard Law and Policy Review*. Volume 5.2. (with Gregory Wannier).

Book Chapters

5. "Elections and Parties in Environmental Politics." 2020. *Handbook on U.S. Environmental Policy*. David Konisky, ed. (with Parrish Bergquist)
4. "Latent Constructs in Public Opinion." 2018. *Oxford Handbook on Polling and Polling Methods*. R. Michael Alvarez and Lonna Atkeson, ed. Oxford: Oxford University Press.
3. "The Application of Big Data in Surveys to the Study of Elections, Public Opinion, and Representation." 2016. *Data Analytics in Social Science, Government, and Industry*. R. Michael Alvarez, ed. Cambridge: Cambridge University Press.
2. "The Political Economy of Expropriation and Privatization in the Oil Sector." 2012. *Oil and Governance: State-Owned Enterprises and the World Energy Supply*. David G. Victor, David Hulst, and Mark Thurber, eds. Cambridge: Cambridge University Press.
1. "Democratization and Countermajoritarian Institutions: The Role of Power and Constitutional Design In Self-Enforcing Democracy." 2012. *Comparative Constitutional Design*. Cambridge: Cambridge University Press. (with Susan Alberts and Barry R. Weingast).

Policy Reports

1. Reforming Baltimore's Mayoral Elections. 2020. Abell Foundation Report.
<https://www.abell.org/publications/reforming-baltimores-mayoral-elections>

Unpublished Work

Book Project

"Dynamic Democracy: Citizens, Politicians, and Policymaking in the American States." 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

"How Local Covid Deaths Are Affecting Vote Choice." *New York Times*. July 28, 2020. (with Lynn Vavreck)

"A coronavirus recession would hurt all kinds of Republican candidates – not just Trump." *Washington Post*, Monkey Cage. March 18, 2020. (with Justin de Benedictis-Kessner).

"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

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

dgo: Dynamic Estimation of Group-Level Opinion. 2017. R package. <https://CRAN.R-project.org/package=dgo>. (with James Dunham and Devin Caughey)

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

Christopher S. Warshaw

6

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, Urban Affairs Review, Journal of Health Politics, Policy and Law, Perspectives on Politics, Cambridge 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

Organizing Committee, Conference on Ideal Point Models at MIT, <http://idealpoint.tahk.us>, 2015

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

Expert, *League of Women Voters of Pennsylvania v. the Commonwealth of Pennsylvania*, Partisan Gerrymandering Case (2017-18)

Expert, *League of Women Voters of Michigan v. Johnson*, Partisan Gerrymandering Case (2018-2019)

Christopher S. Warshaw

8

Expert, *New York Immigration Coalition v. US Dept of Commerce & State of NY v. US Dept of Commerce, Effects of Undercount on Census due to Citizenship Question* (2018)

Expert, *APRI et al. v. v. Smith et al.*, Partisan Gerrymandering Case (2018-2019)

Community Service

Sierra Club: National Board of Directors (2009-2015)

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

2. Millions of undocumented immigrants live in the United States and many have lived in the United States for many years. *See* Office of Immigration Statistics, U.S. Dep’t of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 2 (Dec. 2018), https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf.

3. California and Texas are consistently the two states with the largest populations of undocumented residents. *Id.* at 4-5.

4. According to the Department of Homeland Security, California had 2.9 million undocumented residents and Texas had 1.9 million undocumented residents in 2015. *Id.* at 2.

5. As of the most recent Congressional reapportionment following the 2010 Decennial Census, the average population of each U.S. House district is 710,767 people. *See* Kristin D. Burnett, *Congressional Apportionment*, U.S. Census Bureau (Nov. 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-08.pdf> (last visited July 30, 2020).

6. According to the United States Census Bureau, as of July 1, 2019, the population of the United States was estimated to be 328,239,523. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited July 30, 2020).

¹ Citations to “Ex. ___” are to the exhibits to the accompanying Declaration of Matthew Colangelo dated August 7, 2020.

7. If the July 1, 2019 Census Bureau estimate of the total United States population is divided by the total number of seats in Congress (435), the quotient is 754,574. *See id.*

8. The Memorandum states that “[i]ncreasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law.” *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679, 44,680 (July 23, 2020) (the “Memorandum”) (ECF No. 1-1).

9. The Memorandum states: “Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State’s entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.” *Id.*

10. A state in which 2.2 million people represent 6 percent of the population would have a total population of more than 36 million residents.

11. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of California was 37,253,956. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited July 30, 2020).

12. According to the Census Bureau, as of July 1, 2019, the total population of the State of California was 39,512,223. *Id.*

13. The second most populous state in the United States is Texas. *Id.*

14. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of Texas was 25,145,561. *Id.*

15. According to the United States Census Bureau, as of July 1, 2019, the total population of the State of Texas was 28,995,881. *Id.*

16. After California and Texas, the next most populous state is Florida, which, according to the Census Bureau, had a total population of 18,801,310 as of April 1, 2010, and an estimated total population of 21,477,737 as of July 1, 2019. *Id.*

17. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute approximately 7.6 percent of the estimated total population of Texas as of July 1, 2019. *See id.*

18. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute over 10 percent of the estimated total population of Florida as of 2019. *See id.*

19. The Memorandum anticipates that excluding undocumented immigrants from the apportionment base would deprive California of at least one seat in the House of Representatives. *See* 85 Fed. Reg. at 44,680.

20. Dr. Christopher Warshaw modeled the effects of excluding undocumented immigrants from the population count used to calculate Congressional reapportionment after the 2020 Census. *See* Warshaw Decl. at ¶ 11 (Ex. 58).

21. According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that Texas will lose a seat in the House of Representatives is 98.3%. *Id.* § 5.2, Tbl. 7.

22. According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that California will lose a seat in the House of Representatives is 72.1%. *Id.*

**THE POLITICAL INFLUENCE OF PLAINTIFFS CONSTITUENTS WILL BE
DIMINISHED BY THE MEMORANDUM'S EXCLUSION OF UNDOCUMENTED
IMMIGRANTS FROM THE APPORTIONMENT BASE**

23. Plaintiff the City and County of San Francisco, represented by and through its City Attorney, is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county. Gov't Pls.' Am. Compl. ¶ 42 (ECF No. 34).

24. Residents of the City and County of San Francisco will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

25. Plaintiff Monterey County, California is a political subdivision of the State of California. *See* Gov't Pls.' Am. Compl. ¶ 48 (ECF No. 34).

26. Residents of the Monterey County will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

27. Plaintiff Cameron County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 44 (ECF No. 34).

28. Residents of Cameron County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

29. Plaintiff El Paso County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 45 (ECF No. 34).

30. Residents of El Paso County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

31. Plaintiff Hidalgo County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 46 (ECF No. 34).

32. Residents of Hidalgo County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

33. Plaintiff American-Arab Anti-Discrimination Committee ("ADC") is a membership-based not-for-profit organization. Khalaf Decl. ¶ 4 (Ex. 26).

34. ADC has several thousand dues-paying members nationwide, with members in all 50 states including California and Texas. *See New York*, 351 F. Supp. 3d at 608; Khalaf Decl. ¶ 5 (Ex. 26).

35. Dr. Souhail Toubia is a member of ADC and a resident of Orange County, California. Khalaf Decl. ¶ 17 (Ex. 26).

36. George Majeed Khoury is a member of ADC and a resident of San Diego, California. *Id.*

37. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

38. George Majeed Khoury is a member of ADC and a resident of San Diego, California. Khalaf Decl. ¶ 17 (Ex. 26).

39. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

40. Plaintiff FIEL Houston Inc. ("FIEL") is a membership-based not-for-profit organization based in Houston, Texas. Espinosa Decl. ¶ 2 (Ex. 18).

41. Today, FIEL has approximately 11,000 members in the greater Houston area. *Id.* ¶ 3.

42. Deyanira Palacios is a member of FIEL and a resident of Montgomery County, Texas. *Id.* ¶ 19.

43. Because Ms. Palacios resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

44. Karen Ramos is a member of FIEL and a resident of Harris County, Texas. Espinosa Decl. ¶ 20 (Ex. 18).

45. Because Ms. Ramos resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

46. Plaintiff Ahri for Justice ("Ahri") is a membership-based not-for-profit organization based in Los Angeles, California. Seon Decl. ¶ 2 (Ex. 43).

47. Ahri has roughly 220 individual members, with most residing in Southern California, and particularly in Orange and Los Angeles Counties. Some but not all of these members are U.S. citizens. *Id.* ¶ 4.

48. Julie Kim is a member of Ahri and a resident of Orange County, California. *Id.* ¶ 20.

49. Because Ms. Kim resides in California, she will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *Id.*

50. Simon Lee is a member of Ahri and a resident of Los Angeles County, California. *Id.* ¶ 21.

51. Because Mr. Lee resides in California, he will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58); Seon Decl. ¶ 21 (Ex. 43).

DATED: August 7, 2020

Respectfully submitted,

/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
acepedaderieux@aclu.org
jtopaz@aclu.org
slakin@aclu.org

/s/ John A. Freedman

John A. Freedman
R. Stanton Jones**
Daniel F. Jacobson**
Chase Raines**
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 942-5000
John.Freedman@arnoldporter.com
Stanton.Jones@arnoldporter.com
Daniel.Jacobson@arnoldporter.com
Chase.Raines@arnoldporter.com

/s/ Perry Grossman

/s/ Sarah Brannon* ***

Ceridwen Cherry*
American Civil Liberties Union
Foundation
915 15th Street, NW

Washington, DC 20005-2313
(202) 675-2337
sbrannon@aclu.org
ccherry@aclu.org

Julia A. Gomez
Peter Eliasberg*
ACLU Foundation of Southern California
1313 West 8th Street
Los Angeles, CA 90017
(213) 977-9500
jgomez@aclusocal.org
peliasberg@aclusocal.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

Perry Grossman
pgrossman@nyclu.org
New York Civil Liberties Union
Foundation
125 Broad Street
New York, NY 10004
Phone: (212) 607-3329

Andre Segura**
Edgar Saldivar**
Thomas Buser-Clancy**
ACLU Foundation of Texas, Inc.
P.O. Box 8306
Houston, TX 77288
Telephone: (713) 942-9146
Fax: (713) 942-8966
asegura@aclutx.org
esaldivar@aclutx.org
tbuser-clancy@aclutx.org

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
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6057

Steven C. Wu
Deputy Solicitor General
Judith N. Vale
Senior Assistant Solicitor General
Eric R. Haren, *Special Counsel*

Of Counsel

elena.goldstein@ag.ny.gov

Attorneys for the Plaintiffs in 20-CV-5770

**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**

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
BACKGROUND	2
I. Constitutional and statutory framework.....	2
II. The Presidential Memorandum.....	4
III. Events precipitating the Presidential Memorandum.....	5
ARGUMENT.....	7
I. Standard of review.....	7
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.....	8
III. Defendants’ decision to exclude undocumented immigrants from the apportionment base violates Article I and the Fourteenth Amendment.....	10
A. The Constitution explicitly requires the population base for apportionment to include the whole number of persons in each State.....	10
B. Apportioning Representatives based on numbers other than the actual enumeration from the decennial census is also unconstitutional.....	24
IV. The Memorandum is <i>ultra vires</i> under the statutory scheme Congress enacted to implement the required decennial census and reapportionment of House seats.....	27
A. The Memorandum violates the statutory requirements to count the total population, and to report and use that total for apportionment purposes.....	27
B. The Memorandum violates the Census Act by producing apportionment figures that are not based solely on the decennial census.....	33
C. The Memorandum violates 2 U.S.C. § 2a by producing apportionment figures that are not based solely on a ministerial calculation.....	36
D. This Court has equitable authority to correct the Presidential Memorandum’s <i>ultra vires</i> mandates.....	38

V. Alternatively, a preliminary injunction is warranted to prevent irreparable harm. 40

 A. The Presidential Memorandum will deter immigrants and their households
 from responding to the 2020 census. 42

 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..... 47

 C. Plaintiffs will be irreparably harmed by Defendants’ efforts to reallocate
 political power away from their jurisdictions. 49

 D. The balance of equities and public interest favor a preliminary injunction..... 50

CONCLUSION..... 52

TABLE OF AUTHORITIES

	Page(s)
Constitutional Provisions	
U.S. Const. amend. XIV	24
U.S. Const. amend. XIV, § 2	<i>passim</i>
U.S. Const. art I, § 2.....	<i>passim</i>
U.S. Const. art. II, § 1	3
Cases	
<i>ACLU v. Ashcroft</i> , 322 F.3d 240 (3d Cir. 2003).....	51
<i>Am. Sch. of Magnetic Healing v. McAnnulty</i> , 187 U.S. 94 (1902).....	38
<i>Armstrong v. Exceptional Child Center</i> , 575 U.S. 320 (2015).....	38, 40
<i>Bowen v. Mich. Acad. of Family Physicians</i> , 476 U.S. 667 (1986).....	38
<i>Carey v. Klutznick</i> , 637 F.2d 834 (2d Cir. 1980).....	49
<i>Carroll v. Safford</i> , 44 U.S. 441 (1845).....	38
<i>Chamber of Commerce v. Reich</i> , 74 F.3d 1322 (D.C. Cir. 1996).....	39
<i>Dalton v. Specter</i> , 511 U.S. 462 (1994).....	40
<i>Dart v. United States</i> , 848 F.2d 217 (D.C. Cir. 1988).....	39
<i>Dep't of Commerce v. Montana</i> , 503 U.S. 442, 1992 WL 672929 (1992).....	29, 30, 36, 37
<i>Dep't of Commerce v. New York</i> , 139 S. Ct. 2551 (2019).....	5, 18, 34, 40

<i>Dep't of Commerce v. U.S. House of Representatives</i> , 525 U.S. 316 (1999).....	<i>passim</i>
<i>Evenwel v. Abbott</i> , 136 S. Ct. 1120 (2016).....	<i>passim</i>
<i>Faiveley Transport. Malmö AB v. Wabtec Corp.</i> , 559 F.3d 110 (2d Cir. 2009).....	41
<i>Fed'n for Am. Immigration Reform (FAIR) v. Klutznick</i> , 486 F. Supp. 564 (D.D.C. 1980).....	12, 13, 19, 20
<i>Franklin v. Massachusetts</i> , 505 U.S. 788 (1992).....	<i>passim</i>
<i>Garza v. County of Los Angeles</i> , 918 F.2d 763 (9th Cir. 1990)	14
<i>Greene v. United States</i> , 79 F.3d 1348 (2d Cir. 1996).....	30
<i>Haim v. Islamic Republic of Iran</i> , 784 F. Supp. 2d 1 (D.D.C. 2011)	41
<i>Hake v. Citibank, N.A.</i> , No. 19-MC-125 (JGK), 2020 WL 1467132 (S.D.N.Y. Mar. 26, 2020)	41
<i>Hawaii v. Trump</i> , 878 F.3d 662 (9th Cir. 2017), <i>rev'd on other grounds</i> , 138 S. Ct. 2392 (2018).....	39
<i>Lamar, Archer & Cofrin, LLP v. Appling</i> , 138 S. Ct. 1752 (2018).....	30
<i>League of Women Voters of Fla. v. Browning</i> , 863 F. Supp. 2d 1155 (N.D. Fla. 2012).....	46
<i>Leedom v. Kyne</i> , 358 U.S. 184 (1958).....	38
<i>Lorillard v. Pons</i> , 434 U.S. 575 (1978).....	31
<i>Make the Road N.Y. v. Cuccinelli</i> , 419 F. Supp. 3d 647 (S.D.N.Y. 2019).....	50
<i>Mittleman v. Postal Regulatory Comm'n</i> , 757 F.3d 300 (D.C. Cir. 2014).....	39

<i>Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela</i> , 863 F.3d 96 (2d Cir. 2017).....	30
<i>Mountain States Legal Found. v. Bush</i> , 306 F. 3d. 1122 (D.C. Cir. 2002).....	38, 39
<i>Mullins v. City of New York</i> , 626 F.3d 47 (2d Cir. 2010).....	41
<i>New York Progress & Prot. PAC v. Walsh</i> , 733 F.3d 483 (2d Cir. 2013).....	51
<i>New York v. U.S. Dep’t of Commerce</i> , 351 F. Supp. 3d 502 (S.D.N.Y. 2019), <i>aff’d</i> 139 S. Ct. 2551 (2019)	<i>passim</i>
<i>New York v. U.S. Dep’t of Homeland Sec.</i> , --- F.3d --- , 2020 WL 4457951 (2d Cir. Aug. 4, 2020)	30
<i>Plyler v. Doe</i> , 457 U.S. 202 (1982).....	12
<i>Ramos v. Nielsen</i> , 336 F. Supp. 3d 1075 (N.D. Cal. 2018)	7
<i>Saget v. Trump</i> , 345 F. Supp. 3d 287 (E.D.N.Y. 2018)	7
<i>Sale v. Haitian Ctrs. Council</i> , 509 U.S. 155 (1993).....	39
<i>U.S. House of Representatives v. U.S. Dep’t of Commerce</i> , 11 F. Supp. 2d 76 (D.D.C. 1998)	50
<i>Utah v. Evans</i> , 536 U.S. 452 (2002).....	24, 25, 27
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964).....	14, 15, 17
<i>Whitmore v. Arkansas</i> , 495 U.S. 149 (1990).....	49
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	8, 50
<i>Wisconsin v. City of New York</i> , 517 U.S. 1 (1996).....	18, 24

<i>XL Specialty Ins. Co. v. Level Glob. Inv'rs, L.P.</i> , 874 F. Supp. 2d 263 (S.D.N.Y. 2012).....	41
--	----

Statutes

2 U.S.C. § 2(a)	5
2 U.S.C. § 2a	<i>passim</i>
2 U.S.C. § 2a(a).....	<i>passim</i>
2 U.S.C. § 2a(b)	3
2 U.S.C. § 141	30
3 U.S.C. § 3	3
13 U.S.C. § 2	3
13 U.S.C. § 4	3
13 U.S.C. § 141	3, 28, 36
13 U.S.C. § 141(a)	2, 3, 27, 28
13 U.S.C. § 141(b)	<i>passim</i>
Act of June 18, 1929, § 2	28
Act of June 18, 1929, § 22	28, 31
Indian Citizenship Act of 1924, Pub. L. No. 68 -175, 43 Stat. 253	13
Pub. L. No. 71-962, § 6(b)	30
Pub. L. No. 76-481	19
Pub. L. No. 77-291, § 1	29

Rules & Regulations

83 Fed. Reg. at 5533	23, 25
Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).....	7
Exec. Order No. 13,880, 84 Fed. Reg. 33,821 (July 11, 2019).....	51
Fed. R. Civ. P. 56(a)	8

<i>Final 2020 Census Residence Criteria and Residence Situations</i> , 83 Fed. Reg. 5525 (Feb. 8, 2018).....	21, 32
<i>Final 2020 Census Residence Criteria and Residence Situations</i> , 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018).....	32
Letter from Assistant Attorney Gen. Carol T. Crawford to Honorable Jeff Bingaman (Sept. 22, 1989), 135 Cong. Rec. S22,521 (daily ed. Sept. 29, 1989).....	20
<i>Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census</i> , 85 Fed. Reg. 44,679, 44,680 (July 23, 2020).....	<i>passim</i>
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
<i>1980 Census: Counting Illegal Aliens: Hearing Before the S. Subcomm. on Energy, Nuclear Proliferation, & Fed. Services of the Comm. on Gov'tal Affairs (1980 Census)</i> , 96th Cong. 10 (1980).....	20
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
<i>Hearing Before the H. Comm. on Oversight & Reform</i> , 116th Cong. 31 (Mar. 14, 2019).....	21

<i>Hearing Before the H. Comm. on Oversight & Reform</i> , 116th Cong. 12 (Feb. 12, 2020)	21
S. Rep. No. 2, 71st Cong., 1st Sess.	36
<i>Statement from the President Regarding Apportionment</i> (July 21, 2020), https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/	6
Other Authorities	
1 The Records of the Federal Convention of 1787 (Max Farrand ed., 1911)	14
Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/inhabitant	22
The Federalist No. 36.	25
The Federalist No. 54.	14
The Founders' Constitution 102-03 (P. Kurland & R. Lerner eds. 1987)	25
<i>Full Transcript: Trump's 2020 State of the Union Address</i> , N.Y. Times (Feb. 5, 2020)	7
Joseph T. Sneed III, <i>Footprints on the Rocks of the Mountain: An Account of the Enactment of the Fourteenth Amendment</i> 28 (1997)	15, 41
Julie Hirschfeld Davis, <i>Trump Calls Some Unauthorized Immigrants 'Animals' in Rant</i> , N.Y. Times (May 16, 2018)	7
Nick Miroff, <i>Trump suspends Global Entry, traveler programs for New York residents over 'sanctuary' policies</i> , Wash. Post (last updated Feb 6, 2020)	7
<i>Remarks by President Trump at Signing of H.R. 3401</i> (July 1, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-3401/	6
<i>Remarks by President Trump Before Marine One Departure</i> (July 5, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/	6
<i>Remarks by President Trump on Citizenship and the Census</i> (July 11, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/	6, 51

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>.....46

U.S. Census Bureau, *2020 Census: Nonresponse Followup*, (June 19, 2020), <https://www.census.gov/newsroom/press-kits/2020/nonresponse-followup.html>.....45

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.*

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

⁴ *N.Y. Immig. Coal. Pls.’ Mot for Sanctions*, 18-CV-2921 (JMF), ECF No. 635-1 at 124–31 (July 16, 2019); *Defs.’ Opp. to Ltr. Mot. to Compel*, 18-CV-2921 (JMF), ECF No. 451 at 3 (Oct. 30, 2018); *Pls.’ Jt. Proposed Post-Trial Findings of Fact*, 18-CV-2921 (JMF), ECF No. 545 at 52–53 (Nov. 21, 2018) (citing exhibits).

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/>.

⁶ *Remarks by President Trump Before Marine One Departure* (July 5, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/>.

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.”¹⁰

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).

federal grants. *See* Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017). In his 2020 State of the Union address, Defendant Trump denounced “the sanctuary city of New York,” and the next day, the Acting Secretary of Homeland Security announced that New York State residents would be prohibited from enrolling or re-enrolling in Trusted Traveler programs in retaliation for New York’s sanctuary laws. Transcript, *Trump’s 2020 State of the Union Address*, N.Y. Times (Feb. 5, 2020), <https://www.nytimes.com/2020/02/05/us/politics/state-of-union-transcript.html>; Nick Miroff, *Trump suspends Global Entry, traveler programs for New York residents over ‘sanctuary’ policies*, Wash. Post (Feb. 5, 2020), https://www.washingtonpost.com/immigration/trump-suspends-global-entry-traveler-programs-for-new-york-residents-over-sanctuary-policies/2020/02/05/e2755790-4890-11ea-9475-535736e48788_story.html.

¹⁰ Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant*, N.Y. Times (May 16, 2018), <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>.

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, Plaintiffs’ 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 Plaintiffs 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 Plaintiffs 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

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, ““*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).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.

Cong. Globe, 39th Cong., 1st Sess. 2767, at 359 (1866).

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.

Cong. Globe, 39th Cong., 1st Sess. 2766–67 (1866).

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 plaintiffs 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

aggregate number of inhabitants, which includes aliens, legal and illegal.” *1980 Census: Counting Illegal Aliens: Hearing Before the S. Subcomm. on Energy, Nuclear Proliferation, & Fed. Services of the Comm. on Gov’tal Affairs (1980 Census)*, 96th Cong. 10 (1980).

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)).¹⁴

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.

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).¹⁵ 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>.

nothing in the [Presidential Memorandum] alters that counting process.” Joint Letter 9, *New York v. Trump*, 20-CV-5770 (JMF), ECF No. 37 (S.D.N.Y. filed Aug. 3, 2020).¹⁶

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.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 797.²¹

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”).

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. McAnnulty*, 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. Malmö 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); 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

²³ U.S. Census Bureau, *2020 Census: Nonresponse Followup*, <https://www.census.gov/newsroom/press-kits/2020/nonresponse-followup.html> (June 19, 2020).

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 (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 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

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

Steven C. Wu
Deputy Solicitor General
 Judith N. Vale
Senior Assistant Solicitor General
 Eric R. Haren, *Special Counsel*
Of Counsel

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: /s/ Matthew Colangelo
 Matthew Colangelo
Chief Counsel for Federal Initiatives
 Morenike Fajana, *Special Counsel*
 Elena Goldstein
Deputy Chief, Civil Rights Bureau
 Fiona J. Kaye, *Assistant Attorney General*
 Office of the New York State Attorney
 General
 28 Liberty Street
 New York, NY 10005
 Phone: (212) 416-6057
 Matthew.Colangelo@ag.ny.gov

Attorneys for the Plaintiffs in 20-CV-5770

/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
acepedaderieux@aclu.org
jtopaz@aclu.org
slakin@aclu.org

/s/ Sarah Brannon* ***

Ceridwen Cherry*
American Civil Liberties Union
Foundation
915 15th Street, NW
Washington, DC 20005-2313
(202) 675-2337
sbrannon@aclu.org
ccherry@aclu.org

Julia A. Gomez
Peter Eliasberg**
ACLU Foundation of Southern California
1313 West 8th Street
Los Angeles, CA 90017
(213) 977-9500
jgomez@aclusocal.org
peliasberg@aclusocal.org

/s/ John A. Freedman

John A. Freedman
R. Stanton Jones**
Daniel F. Jacobson**
Chase Raines**
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 942-5000
John.Freedman@arnoldporter.com
Stanton.Jones@arnoldporter.com
Daniel.Jacobson@arnoldporter.com
Chase.Raines@arnoldporter.com

/s/ Perry Grossman

Perry Grossman
pgrossman@nyclu.org
New York Civil Liberties Union
Foundation
125 Broad Street
New York, NY 10004
Phone: (212) 607-3329
Andre Segura**
Edgar Saldivar**
Thomas Buser-Clancy**
ACLU Foundation of Texas, Inc.
P.O. Box 8306
Houston, TX 77288
Telephone: (713) 942-9146
Fax: (713) 942-8966
asegura@aclutx.org
esaldivar@aclutx.org
tbuser-clancy@aclutx.org

Attorneys for the Plaintiffs in 20-CV-5781

* 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).

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.

3. Throughout my career, I have taught courses on Immigration Policy, Racial and Ethnic Politics, Electoral Politics, Public Opinion, Voting Rights, Chicano/Latino History, Introduction to Statistical Analysis, and Advanced Statistical Analysis to Ph.D. students.

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 Telemundo¹ 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

¹ Telemundo. “Trump Ordena Al Censo Que No Incluya a Los Indocumentados En El Recuento Que Determina El Reparto De Escaños Del Congreso,” July 21, 2020. <https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-tmna3823616>.

² https://latinodecisions.com/wp-content/uploads/2019/06/NALEO_AV_Undoc_Results.pdf

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 immigrant³ 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 uncouned.

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

⁴ 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/>

⁵ 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/>

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

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

⁸ <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)⁹. 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.¹⁰ Major Spanish-language media and

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)

¹⁰ Alex Daughery, *Florida Could Lose Power in Washington if Trump's New Immigration Order is Enacted*, MIAMI HERALD (July 21, 2020), <https://www.miamiherald.com/news/politics-government/article244382462.html>; Alexandra Alper and Nick Brown, *Trump Issues Memo To Stop Counting Undocumented Migrants In Next Round Of Redistricting*, HUFFINGTON POST (July 21, 2020), https://www.huffpost.com/entry/trump-executive-order-immigrants-redistricting_n_5f1709e0c5b615860bb7f415; Chris Megerian, *Trump Tries New Move to Restrict Census, Could Cut California's Seats in Congress*, L.A. TIMES (July 21, 2020), <https://www.latimes.com/politics/story/2020-07-21/trump-new-tack-restrict-immigrants-census>; David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA

Barreto Declaration – Census 2020 Presidential Memorandum

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

TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002/>; Jill Colvin and Kevin Freking, *Trump to Exclude Those in US Illegally From Congressional Reapportionment Count*, CHICAGO SUN-TIMES (July 21, 2020), <https://chicago.suntimes.com/2020/7/21/21333076/trump-to-illegally-from-congressional-reapportionment-count>; Katie Rogers and Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Kevin Freking and Mike Schneider, *Trump's New Immigration Fight: How to Redraw House Districts*, HOUSTON CHRONICLE (July 21, 2020), <https://www.chron.com/news/article/Trump-seeks-to-bar-illegal-alien-from-15423258.php>; Kevin Liptak et al., *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html>; Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants From a Portion of the 2020 Census*, SEATTLE TIMES (July 21, 2020), <https://www.seattletimes.com/nation-world/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/>

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), <https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-reparto-de-esca%C3%B1os-del-congreso>; *Trump Firma Decreto Para Excluir a Indocumentados del Censo 2020*, TELEMUNDO SAN ANTONIO (July 21, 2020), <https://www.telemundosanantonio.com/noticias/la-casa-blanca/presidente-trump-decreto-indocumentados-2020/2068275/>.

¹² *Trump Ordena al Censo No Contar a Los Indocumentados en un Memo de Dudosa Legalidad y Difícil de Cumplir*, UNIVISION (July 21, 2020), <https://www.univision.com/noticias/elecciones-en-eeuu-2020/trump-ordena-al-censo-no-contar-a-los-indocumentados-en-un-memo-de-dudosa-legalidad-y-dificil-de-cumplir>.

¹³ Ju Carpy, *Trump Firma Memo Para Excluir a Migrantes del Censo*, AZTECA AMERICA (July 21, 2020), <https://aztecaamerica.com/2020/07/21/trump-firma-memo-para-excluir-a-migrantes-del-censo/>.

¹⁴ Maria Teresa Sarabia, *Inmigrantes Indocumentados No Serán Contados*, ESTRELLA TV (July 21, 2020), <http://noticiario.estrellatv.com/noticias/inmigrantes-indocumentados-no-seran-contados-noticiario-estrella-tv/>.

¹⁵ *Owned Stations*, TELEMUNDO, <https://www.nbcuniv.com/owned-stations/telemundo-station-group/about?network=5266626> (last visited July 31, 2020); *Local Media*, UNIVISION COMMUNICATIONS INC., <https://corporate.univision.com/partner-with-us/local/> (last visited July 31, 2020); *TV*, ESTRELLA TV, <http://www.estrellamedia.com/programming/tv> (last visited July 31, 2020); *Azteca America*, GRUPO SALINAS, <https://www.gruposalinas.com/en/aztecaUS> (last visited July 31, 2020).

¹⁶ Jesús García, *Trump Firma Memorando Para Excluir a Inmigrantes Indocumentados del Censo*, La Opinion (July 21, 2020), <https://laopinion.com/2020/07/21/trump-firma-memorando-para-excluir-a-inmigrantes-indocumentados-del-censo/>; Jesús García, *Trump Firma Memorando Para Excluir a Inmigrantes Indocumentados del Censo*, El Diario (July 21, 2020), <https://eldiario.com/2020/07/21/trump-firma-memorando-para-excluir-a-inmigrantes-indocumentados-del-censo/>; Kevin Freking and Mike Schneider, *Trump Firma Memo Que Afectaría Conteo de Migrantes*, El Nuevo Herald (July 21, 2020), <https://www.elnuevoherald.com/noticias/estados-unidos/article244382772.html>; <https://www.msn.com/es-nix/noticias/mundo/ordena-trump-excluir-a-indocumentados-del-censo-en-eu/ar-BB171eMI>; <https://cnnespanol.cnn.com/video/centro-elecciones-indocumentados-migrantes-trump-memorando-constitucion-estados-unidos-dusa-vo/>; <https://cnnespanol.cnn.com/2020/07/21/trump-firma-orden-para-excluir-inmigrantes-indocumentados-en-el-censo-2020/>; <https://es-us.noticias.yahoo.com/trump-firma-memorandum-excluir-indocumentados-193912301.html>; <https://www.dallasnews.com/espanol/al-dia/estados-unidos/2020/07/21/donald-trump-pedira-al-censo-2020-que-no>

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.¹⁷ 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.¹⁸

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 si, fomenta el miedo en nuestras comunidades. Una vez más, le dice a nuestra comunidad inmigrante, no se cuentan, no los necesitamos.”* “This memo obviously causes fear among this particular population, I ask you, could fear be one of the reasons

[cuente-a-los-indocumentados-segun-funcionario-de-la-casa-blanca/](https://www.cuente-a-los-indocumentados-segun-funcionario-de-la-casa-blanca/) ; <https://laoferta.com/2020/07/21/trump-ordena-excluir-a-indocumentados-de-distribucion-electoral-tras-censo/> ; <https://www.lavanguardia.com/trump-firma-memorandum-que-busca-excluir-a-indocumentados-del-censo-2020/> ; <https://www.excelsiorcalifornia.com/2020/07/22/trump-abre-nueva-polemica-al-ordenar-enxcluir-a-indocumentados-de-censo/>

¹⁷ <https://www.telemundo62.com/videos/videos-noticias/implicaciones-de-remover-a-los-indocumentados-del-censo-2020/2063236/> ; <https://www.univision.com/local/los-angeles-knmx/que-implicaciones-tiene-la-orden-de-trump-que-busca-excluir-a-los-indocumentados-del-censo-2020-video> ; <https://www.univision.com/local/philadelphia-wuwp/lideres-reaccionan-ante-peticion-de-trump-para-excluir-a-personas-indocumentadas-del-censo-2020-video>

¹⁸ <https://www.chron.com/news/article/Orden-de-Trump-afecta-censo-en-California-15434405.php> ; <https://eldiariouny.com/2020/07/21/enorme-oposicion-a-orden-de-trump-que-afectaria-a-millones-de-inmigrantes-y-que-califican-de-ilegal/> ; Mike Schneider, Orden de Trump afecta censo en California, Florida y Texas, El Nuevo Herald (July 25, 2020), <https://www.elnuevoherald.com/article244496782.html>

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 eliminarnos 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

¹⁹ Telemundo 62. “Implicaciones De Remover a Los Indocumentados Del Censo 2020.” Telemundo 62. Telemundo 62, July 22, 2020. <https://www.telemundo62.com/videos/videos-noticias/implicaciones-de-remover-a-los-indocumentados-del-censo-2020/2063236/>.

²⁰ Univision. “Líderes Reaccionan Ante Petición De Trump Para Excluir a Personas Indocumentadas Del Censo 2020.” Univision, July 22, 2020. <https://www.univision.com/local/philadelphia-wuwp/lideres-reaccionan-ante-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! Yahoo! Accessed July 29, 2020. <https://es-us.noticias.yahoo.com/coalici%C3%B3n-fiscales-demanda-presidente-trump-230425578.html>.

²² Mike Schneider. “Orden De Trump Afecta Censo En California, Florida y Texas.” Houston Chronicle. Associated Press, July 29, 2020. <https://www.chron.com/news/article/Orden-de-Trump-afecta-censo-en-California-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 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

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

²⁷ Barreto, Matt. Garcia-Rios, Sergio. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012." RSF: The Russell Sage Foundation Journal of the Social Sciences. January 06, 2016

²⁸ Barreto, Matt. Garcia-Rios, Sergio. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012." RSF: The Russell Sage Foundation Journal of the Social Sciences. January 06, 2016, p. 78.

²⁹ Subervi-Vélez, Federico A., ed. 2008. The Mass Media and Latino Politics: Studies of U.S. Media Content, Campaign Strategies and Survey Research: 1984–2004. New York: Routledge.

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 2020³⁰ 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.³¹ Over the course of 2018, USCIS reported 287,709 total requests for DACA renewal were made by undocumented immigrants.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 2019.³³ 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.³⁴ A research paper

³¹ Approximate Count of DACA Receipts: Since January 10, 2018, As of Mar. 31, 2018

https://www.uscis.gov/sites/default/files/document/data/DACA_Receipts_Since_Injunction_Mar_31_2018.pdf

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

https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2020_qtr2.pdf

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

https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2020_qtr2.pdf

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.

90. Table 7: Percent of Non-Responders Who Change to Responders at Q7 / Q8

	Total	White	Latino	Black	AAPI	Other
Q8 Yes – with citizenship	45.2	49.5	38.9	62.2	0.2	17.2
Q7 Yes – without citizenship	84.3	89.3	80.1	78.6	53.3	94.9
Difference	-39.1	-39.7	-41.2	-16.5	-53.1	-77.7

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.

³⁵ Jacome, Elisa. "The Effect of Immigration Enforcement on Crime Reporting: Evidence from the Priority Enforcement Program." *Available at SSRN 3263086* (2018).

³⁶ See Tr. 687-89; Trial Ex. 677, *NY v. Dep't Commerce*, 351 F. Supp. 3d 502 (S.D.N.Y. 2019), *aff'd* 139 S. Ct. 2551 (2019). Barreto expert declaration *NY v. Dept Commerce*, September 7, 2018.

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. Menjívar 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

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

Barreto Declaration – Census 2020 Presidential Memorandum

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.

A handwritten signature in black ink, reading "Matt A. Barreto", written over a horizontal line.

Matthew A. Barreto

Barreto Declaration – Census 2020 Presidential Memorandum

August 7, 2020

p42

References

- Abrego, L. J. (2011). Legal consciousness of undocumented Latinos: Fear and stigma as barriers to claims-making for first-and 1.5-generation immigrants. *Law & Society Review*, 45(2), 337-370.
- Amuedo-Dorantes, C., & Arenas-Arroyo, E. (2019). Immigration enforcement, police trust, and domestic violence. *Unpublished manuscript. Retrieved on October, 28, 2019.*
- Arbona, C., Olvera, N., Rodrigues, N., Hagan, J., Linares, A., & Wiesner, M. (2010). Acculturative stress among documented and undocumented Latino immigrants in the United States. *Hispanic Journal of Behavioral Sciences*, 32 (3), 362-384. doi: 10.1177/0739986310373210
- Asad, Asad L. (2020). “On the Radar: System Embeddedness and Latin American Immigrants’ Perceived Risk of Deportation”. In: *Law & Society Review* 54.1. Publisher: Wiley Online Library, pp. 133–167.
- Bhaskar, Renuka, Leticia E. Fernandez, and Sonya R. Porter (2018). “Assimilation and coverage of the foreign-born population in administrative records”. In: *Statistical Journal of the IAOS* 34.2. Publisher: IOS Press, pp. 191–201.
- Desai, Sarah, Jessica Houston Su, and Robert M. Adelman (2019). “Legacies of Marginalization: System Avoidance among the Adult Children of Unauthorized Immigrants in the United States”. In: *International Migration Review*. Publisher: SAGE Publications Sage CA: Los Angeles, CA, p. 0197918319885640.
- Dreby, Joanna (2015). *Everyday illegal: When policies undermine immigrant families*. University of California Press.
- Félix, A., González, C., & Ramírez, R. (2008). Political protest, ethnic media, and Latino naturalization. *American Behavioral Scientist*, 52(4), 618-634.
- Gee, Lisa Christensen, Matthew Gardner, and Meg Wiehe (2016). “Undocumented immigrants’ state & local tax contributions”. In: *The Institute on Taxation and Economic Policy*.
- Kissam, Edward (Jan. 1, 2019). “How low response among Latino immigrants will lead to differential undercount if the United States’ 2020 census includes a question on sensitive citizenship”. In: *Statistical Journal of the IAOS* 35.2. Publisher: IOS Press, pp. 221–243. issn: 1874-7655. doi: 10.3233/SJI-190505.
- Kissam, Edward et al. (2019). “San Joaquin Valley Latino Immigrants: Implications of Survey Findings for Census 2020”. In: *San Joaquin Valley Health Fund*.
- Levine, Sam (2020). Trump orders undocumented immigrants excluded from key census count. *the Guardian*. Library Catalog: www.theguardian.com Section: US news.

Barreto Declaration – Census 2020 Presidential Memorandum

Liptak, Kevin et al. (2020). Trump signs order targeting undocumented immigrants in the US census. CNN. Library Catalog: www.cnn.com. url: <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html>

Smith, Mike (2020). Community groups vow to help undocumented immigrants count in 2020 census in New Mexico. Carlsbad Current-Argus. Library Catalog: www.currentargus.com.

Torres-Ardila, Fabian, Daniela Bravo, and Franklin Ortiz (2020). “Increasing Latino Participation Rates in the 2020 Census in Chelsea, MA”.

Vargas, Edward D. (2015). “Immigration enforcement and mixed-status families: the effects of risk of deportation on Medicaid use”. In: Children and youth services review 57. Publisher: Elsevier, pp. 83–89.

Wang, Hansi Lo (2020). Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen. NPR.org. Library Catalog: www.npr.org.

Watson, Tara (2014). “Inside the refrigerator: Immigration enforcement and chilling effects in Medicaid participation”. In: American Economic Journal: Economic Policy 6.3, pp. 313–38.

Yoshikawa, Hirokazu (2011). Immigrants raising citizens: Undocumented parents and their children. Russell Sage Foundation.

Abowd, John, Depositions on August 15, 2018 (hereinafter Abowd Deposition) and August 29, 2018 (Abowd 30(b)(6)).

Andridge, Rebecca R. and Little, Roderick J. 2010. “A Review of Hot Deck Imputation for Survey Non-Response.” *International Statistical Review* 78(1): 40-64.

Ball, John C. 1967. “The Reliability and Validity of Interview Data Obtained from 59 Narcotic Drug Addicts.” *American Journal of Sociology* 72(6): 650–654.

Berk, Marc L., and Claudia L. Schur. 2001. “The Effect of Fear on Access to Care among Undocumented Latino Immigrants.” *Journal of immigrant health* 3(3): 151–156.

Bradburn, Norman M., Seymour Sudman, Ed Blair, and Carol Stocking. 1978. “Question Threat and Response Bias.” *Public Opinion Quarterly* 42(2): 221–234.

Casey Foundation. 2018. “2018 Kids Count Data Book.”

Center for Survey Measurement. 2017. “MEMORANDUM FOR Associate Directorate for Research and Methodology (ADRM).”

Claes-Magnus Cassell et al., 1977. Foundations of inference in survey sampling.

De La Puente, Manuel. 1995. “Using Ethnography to Explain Why People Are Missed or Erroneously Included by the Census: Evidence from Small Area Ethnographic Studies.” *Center for Survey Methods Research, US Census Bureau*.

———. 2004. *Census 2000 Ethnographic Studies*. Bureau of the Census.

Barreto Declaration – Census 2020 Presidential Memorandum

- Ericksen, Eugene P., and Teresa K. Defonso. 1993. “Guest Commentary: Beyond the Net Undercount: How to Measure Census Error.” *Chance* 6(4): 38–14.
- Federal Committee on Statistical Methodology. 1990. Statistical Working Paper 17 – Survey Coverage. <http://www.fcsm.gov/working-papers/wp17.html>
- Frost, Amanda. 2017. “Can the Government Deport Immigrants Using Information It Encouraged Them to Provide?”
- García, A. S. (2019). *Legal passing: Navigating undocumented life and local immigration law*. University of California Press.
- Groves, Robert M. And Mick P. Couper. 1998. Nonresponse in Household Interview Surveys. New York, NY: John Wiley and Sons
- Groves, Robert . 2004. Survey Errors and Survey Costs, 2nd ed.
- Groves, Robert, Floyd J. Fowler Jr., Mick P. Couper James M. Lepkowski, Eleanor Singer, and Roger Tourangeau. 2004. Survey Methodology. New York, NY: John Wiley and Sons. (Cites 3873)
- Hagan, J. M., Rodriguez, N., & Castro, B. (2011). Social effects of mass deportations by the United States government, 2000–10. *Ethnic and Racial Studies*, 34(8), 1374-1391
- Kalton, Graham. 1983. “Compensation for Missing Survey Data.” University of Michigan Survey Research Center Research Report Series.
- Lohr, Sharon L. 1999. Sampling: Design and Analysis. New York, NY: Brooks/Cole.
- Kissam, Edward. 2017. “Differential Undercount of Mexican Immigrant Families in the US Census.” *Statistical Journal of the IAOS* 33(3): 797–816.
- Krysan, Maria. 1998. “Privacy and the Expression of White Racial Attitudes: A Comparison across Three Contexts.” *Public Opinion Quarterly*: 506–544.
- Lajevardi, Nazita, and Kassra AR Oskooii. 2018. “Old-Fashioned Racism, Contemporary Islamophobia, and the Isolation of Muslim Americans in the Age of Trump.” *Journal of Race, Ethnicity and Politics* 3(1): 112–152.
- National Research Council. 2002. *The 2000 Census: Interim Assessment*. National Academies Press.
- . 2004. *The 2000 Census: Counting under Adversity*. National Academies Press.
- Menjívar, C. (2011). The power of the law: Central Americans’ legality and everyday life in Phoenix, Arizona. *Latino Studies*, 9(4), 377-395
- Meyers, Mikelyn. 2017. “Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census.”

- Michelson, Melissa R., and Jessica L. Lavariega Monforti. 2018. "Back in the Shadows, Back in the Streets." *PS, Political Science & Politics* 51(2): 282
- Montoya, Martin. 1992. "Ethnographic Evaluation of the Behavioral Causes of Undercount: Woodburn, Oregon." *Ethnographic Evaluation of the 1990 Decennial Census Report #25*. Prepared under Joint Statistical Agreement 90-06 with the University of Oregon. Bureau of the Census, Washington D.C.
- Cruz Nichols, Vanessa, Alana MW LeBrón, and Francisco I. Pedraza. 2018. "Spillover Effects: Immigrant Policing and Government Skepticism in Matters of Health for Latinos." *Public Administration Review* 78(3): 432–443.
- O'Hare, William, Yeris Mayol-Garcia, Elizabeth Wildsmith, and Alicia Torres. 2016. "The Invisible Ones: How Latino Children Are Left Out of Our Nation's Census Count."
- Oskooii, Kassra AR. 2016. "How Discrimination Impacts Sociopolitical Behavior: A Multidimensional Perspective." *Political Psychology* 37(5): 613–640.
- Pedraza, Francisco I., and Maricruz Ariana Osorio. 2017. "Courtied and Deported: The Salience of Immigration Issues and Avoidance of Police, Health Care, and Education Services among Latinos." *Aztlan: A Journal of Chicano Studies* 42(2): 249–266.
- Rubin, Donald B. 1976. "Inference and Missing Data." *Biometrika* 63(3): 581-592.
- Raines, Marvin D. 2001. "Gaining Cooperation from a Multi-Cultural Society of Respondents: A Review of the US Census Bureau's Efforts to Count the Newly Immigrated Population." *Statistical Journal of the United Nations Economic Commission for Europe* 18(2, 3): 217–226.
- Rao, Krishna. 2017. "Discussion of 2018 End-to-End Census Test: Nonresponse Follow-up" Census Scientific Advisory Committee. Fall 2017 Meeting.
- Sanchez, Gabriel R., and Barbara Gomez-Aguinaga. 2017. "Latino Rejection of the Trump Campaign." *Aztlan: A Journal of Chicano Studies* 42(2).
- Rodriguez, N., & Hagan, J. M. (2004). Fractured families and communities: Effects of immigration reform in Texas, Mexico, and El Salvador. *Latino Studies*, 2(3), 328-351.
- Stepick, Alex. 1992. "Ethnographic Evaluation of the 1990 Decennial Census Report Series." *Ethnographic Evaluation of the 1990 Decennial Census Report #8*. Prepared under Joint Statistical Agreement #90-08 with Florida International University. Bureau of the Census, Washington D.C.
- Szkupinski Quiroga, S., Medina, D. M., & Glick, J. (2014). In the belly of the beast: Effects of anti-immigration policy on Latino community members. *American Behavioral Scientist*, 58(13), 1723-1742
- Terry, Rodney L. et al. 2017. "Exploring Inconsistent Counts of Racial/Ethnic Minorities in a 2010 Census Ethnographic Evaluation." *Bulletin of Sociological Methodology/Bulletin de Méthodologie Sociologique* 135(1): 32–49.

Barreto Declaration – Census 2020 Presidential Memorandum

Tourangeau, Roger, and Tom W. Smith. 1996. “Asking Sensitive Questions: The Impact of Data Collection Mode, Question Format, and Question Context.” *The Public Opinion Quarterly* 60(2): 275–304.

Tourangeau, Roger, and Ting Yan. 2007. “Sensitive Questions in Surveys.” *Psychological bulletin* 133(5): 859.

U. S. Government Accountability Office. 2003. “Decennial Census: Lessons Learned for Locating and Counting Migrant and Seasonal Farm Workers.” (GAO-03-605). <https://www.gao.gov/products/GAO-03-605> (April 18, 2018).

U.S. Census Bureau. 2013. "U.S. Census Bureau Statistical Quality Standards" July 2013.

<https://www.census.gov/about/policies/quality/standards.html>

———. 2017b. “Investigating the 2010 Undercount of Young Children – Analysis of Census Coverage Measurement Results.”

Velasco, Alfredo. 1992. “Ethnographic Evaluation of the Behavioral Causes of Undercount In The Community of Sherman Heights, San Diego, California.” Ethnographic Evaluation of the 1990 Decennial Census Report #22. Prepared under Joint Statistical Agreement 89-42 with the Chicano Federation of San Diego County. Bureau of the Census, Washington, D.C.

Wines, Michael. 2018. “Census Bureau’s Own Expert Panel Rebukes Decision to Add Citizenship Question.” *New York Times*. March 30

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:

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*

Barreto, Matt and Gary Segura. 2014. Latino America: How America's Most Dynamic Population is Poised to Transform the Politics of the Nation. Public Affairs Books. (Sept)

Barreto, Matt and David Leal, editors. 2018. Race, Class, and Precinct Quality in American Cities. Springer Press.

Christopher Parker and Matt Barreto. 2013. Change They Can't Believe In: The Tea Party and Reactionary Politics in America. Princeton University Press. *Winner: APSA Best Book Award for Race, Ethnicity, Politics, 2014*

Barreto, Matt. 2010. Ethnic Cues: The Role of Shared Ethnicity in Latino Political Participation. University of Michigan Press

PEER-REVIEWED ARTICLES

73. Reny, Tyler and Matt A. Barreto. 2020. "Xenophobia in the time of pandemic: othering, anti-Asian attitudes, and COVID-19 " *Politics, Groups, and Identities*. 8(2).

72. Flores, Lucy and Matt A. Barreto. 2020. "Latina Voters: The key electoral force" *Journal of Cultural Marketing Strategy*. 4(2).

71. Frasure-Yokley, Lorrie, Janelle Wong, Edward Vargas and Matt A. Barreto 2020. "THE COLLABORATIVE MULTIRACIAL POST-ELECTION SURVEY (CMPS): BUILDING THE ACADEMIC PIPELINE THROUGH DATA ACCESS, PUBLICATION, AND NETWORKING OPPORTUNITIES" *PS: Political Science & Politics*. 53(1)

70. Barreto, Matt, Loren Collingwood, Sergio Garcia-Rios and Kassra Oskooii. 2019. "Estimating Candidate Support: Comparing Iterative EI and EI-RxC Methods" *Sociological Methods and Research*. 48(4).

69. Gonzalez-O'Brien, Benjamin, Matt Barreto and Gabriel Sanchez. 2019. "They're All Out to Get Me! Assessing Inter-Group Competition Among Multiple Populations." *Politics, Groups and Identities*. 7(4).

68. Oskooii, Kassra, Karam Dana and Matt Barreto. 2019. "Beyond generalized ethnocentrism: Islam-specific beliefs and prejudice toward Muslim Americans." *Politics, Groups and Identities* 7(3)

67. Vargas, Edward, Gabriel Sanchez, Barbara Gomez-Aguinaga, and Matt Barreto. 2019. "How Latinos' Perceptions of Environmental Health Threats Impact Policy Preferences." *Social Science Quarterly*. 101(1).

66. Walker, Hannah, Marcel Roman and Matt Barreto. 2019. "The Direct and Indirect Effects of Immigration Enforcement on Latino Political Engagement." *UCLA Law Review*. 67.

65. Gutierrez, Angela, Angela Ocampo, Matt Barreto, and Gary Segura. 2019. "Somos Más : How Racial Threat and Anger Mobilized Latino Voters in the Trump Era" *Political Research Quarterly*. 72(4)

64. Chouhoud, Youssef, Karam Dana, and Matt Barreto. 2019. "American Muslim Political Participation: Between Diversity and Cohesion." *Politics and Religion*. 12(S3).

63. Barreto, Matt, Stephen Nuño, Gabriel Sanchez, and Hannah Walker. 2019. "Race, Class and Barriers to Voting in the 21st Century: The Unequal Impact of Voter ID Laws." *American Politics Research*

62. Barreto, Matt. 2018. "The cycle of under-mobilization of minority voters: A comment on 'Selective recruitment of voter neglect?'" *Journal of Race, Ethnicity, and Politics*. 3(1).
61. Ocampo, Angela, Karam Dana and Matt Barreto. 2018. "The American Muslim Voter: Community Belonging and Political Participation." *Social Science Research*. 69(4).
60. Barreto, Matt, Lorrie Frasure-Yokley, Edward Vargas, Janelle Wong. 2018. "Best practices in collecting online data with Asian, Black, Latino, and White respondents: evidence from the 2016 Collaborative Multiracial Post-election Survey." *Politics, Groups & Identities*. 6(1).
59. Barreto, Matt, Tyler Reny and Bryan Wilcox-Archuleta. 2017. "A debate about survey research methodology and the Latina/o vote: why a bilingual, bicultural, Latino-centered approach matters to accurate data." *Aztlán: A Journal of Chicano Studies*. 42(2).
58. Barreto, Matt and Gary Segura. 2017. "Understanding Latino Voting Strength in 2016 and Beyond: Why Culturally Competent Research Matters." *Journal of Cultural Marketing Strategy*. 2:2
57. Dana, Karam, Bryan Wilcox-Archuleta and Matt Barreto. 2017. "The Political Incorporation of Muslims in America: The Mobilizing Role of Religiosity in Islam." *Journal of Race, Ethnicity & Politics*.
56. Collingwood, Loren, Kassra Oskooii, Sergio Garcia-Rios, and Matt Barreto. 2016. "eiCompare: Comparing Ecological Inference Estimates across EI and EI: RxC." *The R Journal*. 8:2 (Dec).
55. Garcia-Rios, Sergio I. and Matt A. Barreto. 2016. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012" *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 2(3): 78-96.
54. Barreto, Matt, Collingwood, Loren, Christopher Parker, and Francisco Pedraza. 2015. "Racial Attitudes and Race of Interviewer Item Non-Response." *Survey Practice*. 8:3.
53. Barreto, Matt and Gary Segura 2015. "Obama y la seducción del voto Latino." *Foreign Affairs Latinoamérica*. 15:2 (Jul).
52. Barreto, Matt and Loren Collingwood 2015. "Group-based appeals and the Latino vote in 2012: How immigration became a mobilizing issue." *Electoral Studies*. 37 (Mar).
51. Collingwood, Loren, Matt Barreto and Sergio Garcia-Rios. 2014. "Revisiting Latino Voting: Cross-Racial Mobilization in the 2012 Election" *Political Research Quarterly*. 67:4 (Sep).
50. Bergman, Elizabeth, Gary Segura and Matt Barreto. 2014. "Immigration Politics and Electoral Consequences: Anticipating the Dynamics of Latino Vote in the 2014 Election" *California Journal of Politics and Policy*. (Feb)
49. Barreto, Matt and Sergio García-Rios. 2012. "El poder del voto latino en Estados Unidos en 2012" *Foreign Affairs Latinoamérica*. 12:4 (Nov).
48. Collingwood, Loren, Matt Barreto and Todd Donovan. 2012. "Early Primaries, Viability and Changing Preferences for Presidential Candidates." *Presidential Studies Quarterly*. 42:1(Mar).
47. Barreto, Matt, Betsy Cooper, Ben Gonzalez, Chris Towler, and Christopher Parker. 2012. "The Tea Party in the Age of Obama: Mainstream Conservatism or Out-Group Anxiety?." *Political Power and Social Theory*. 22:1(Jan).
46. Dana, Karam, Matt Barreto and Kassra Oskooii. 2011. "Mosques as American Institutions: Mosque Attendance, Religiosity and Integration into the American Political System." *Religions*. 2:2 (Sept).
45. Barreto, Matt, Christian Grose and Ana Henderson. 2011. "Redistricting: Coalition Districts and the Voting Rights Act." *Warren Institute on Law and Social Policy*. (May)
44. Barreto, Matt and Stephen Nuño. 2011. "The Effectiveness of Co-Ethnic Contact on Latino Political Recruitment." *Political Research Quarterly*. 64 (June). 448-459.

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

43. Garcia-Castañón, Marcela, Allison Rank and Matt Barreto. 2011 “Plugged in or tuned out? Youth, Race, and Internet Usage in the 2008 Election.” *Journal of Political Marketing*. 10:2 115-138.
42. Barreto, Matt, Victoria DeFrancesco, and Jennifer Merolla. 2011 “Multiple Dimensions of Mobilization: The Impact of Direct Contact and Political Ads on Latino Turnout in the 2000 Presidential Election.” *Journal of Political Marketing*. 10:1
41. Barreto, Matt, Loren Collingwood, and Sylvia Manzano. 2010. “Measuring Latino Political Influence in National Elections” *Political Research Quarterly*. 63:4 (Dec)
40. Barreto, Matt, and Francisco Pedraza. 2009. “The Renewal and Persistence of Group Identification in American Politics.” *Electoral Studies*. 28 (Dec) 595-605
39. Barreto, Matt and Dino Bozonelos. 2009. “Democrat, Republican, or None of the Above? Religiosity and the Partisan Identification of Muslim Americans” *Politics & Religion* 2 (Aug). 1-31
38. Barreto, Matt, Sylvia Manzano, Ricardo Ramírez and Kathy Rim. 2009. “Immigrant Social Movement Participation: Understanding Involvement in the 2006 Immigration Protest Rallies.” *Urban Affairs Review*. 44: (5) 736-764
37. Grofman, Bernard and Matt Barreto. 2009. “A Reply to Zax’s (2002) Critique of Grofman and Migalski (1988): Double Equation Approaches to Ecological Inferences.” *Sociological Methods and Research*. 37 (May)
36. Barreto, Matt, Stephen Nuño and Gabriel Sanchez. 2009. “The Disproportionate Impact of Voter-ID Requirements on the Electorate – New Evidence from Indiana.” *PS: Political Science & Politics*. 42 (Jan)
35. Barreto, Matt, Luis Fraga, Sylvia Manzano, Valerie Martinez-Ebers, and Gary Segura. 2008. “Should they dance with the one who brung ‘em? Latinos and the 2008 Presidential election” *PS: Political Science & Politics*. 41 (Oct).
34. Barreto, Matt, Mara Marks and Nathan Woods. 2008. “Are All Precincts Created Equal? The Prevalence of Low- Quality Precincts in Low-Income and Minority Communities.” *Political Research Quarterly*. 62
33. Barreto, Matt. 2007. “*Si Se Puede!* Latino Candidates and the Mobilization of Latino Voters.” *American Political Science Review*. 101 (August): 425-441.
32. Barreto, Matt and David Leal. 2007. “Latinos, Military Service, and Support for Bush and Kerry in 2004.” *American Politics Research*. 35 (March): 224-251.
31. Barreto, Matt, Mara Marks and Nathan Woods. 2007. “Homeownership: Southern California’s New Political Fault Line?” *Urban Affairs Review*. 42 (January). 315-341.
30. Barreto, Matt, Matt Streb, Fernando Guerra, and Mara Marks. 2006. “Do Absentee Voters Differ From Polling Place Voters? New Evidence From California.” *Public Opinion Quarterly*. 70 (Summer): 224-34.
29. Barreto, Matt, Fernando Guerra, Mara Marks, Stephen Nuño, and Nathan Woods. 2006. “Controversies in Exit Polling: Implementing a racially stratified homogenous precinct approach.” *PS: Political Science & Politics*. 39 (July) 477-83.
28. Barreto, Matt, Ricardo Ramírez, and Nathan Woods. 2005. “Are Naturalized Voters Driving the California Latino Electorate? Measuring the Impact of IRCA Citizens on Latino Voting.” *Social Science Quarterly*. 86 (December): 792-811.
27. Barreto, Matt. 2005. “Latino Immigrants at the Polls: Foreign-born Voter Turnout in the 2002 Election.” *Political Research Quarterly*. 58 (March): 79-86.
26. Barreto, Matt, Mario Villarreal and Nathan Woods. 2005. “Metropolitan Latino Political Behavior: Turnout and Candidate Preference in Los Angeles.” *Journal of Urban Affairs*. 27(February): 71-91.
25. Leal, David, Matt Barreto, Jongho Lee and Rodolfo de la Garza. 2005. “The Latino Vote in the 2004 Election.” *PS: Political Science & Politics*. 38 (January): 41-49.
24. Marks, Mara, Matt Barreto and Nathan Woods. 2004. “Harmony and Bliss in LA? Race and Racial Attitudes a Decade After the 1992 Riots.” *Urban Affairs Review*. 40 (September): 3-18.

23. Barreto, Matt, Gary Segura and Nathan Woods. 2004. "The Effects of Overlapping Majority-Minority Districts on Latino Turnout." *American Political Science Review*. 98 (February): 65-75.
22. Barreto, Matt and Ricardo Ramírez. 2004. "Minority Participation and the California Recall: Latino, Black, and Asian Voting Trends 1990 – 2003." *PS: Political Science & Politics*. 37 (January): 11-14.
21. Barreto, Matt and José Muñoz. 2003. "Reexamining the 'politics of in-between': political participation among Mexican immigrants in the United States." *Hispanic Journal of Behavioral Sciences*. 25 (November): 427-447.
20. Barreto, Matt. 2003. "National Origin (Mis)Identification Among Latinos in the 2000 Census: The Growth of the "Other Hispanic or Latino" Category." *Harvard Journal of Hispanic Policy*. 15 (June): 39-63.

Edited Volume Book Chapters

19. Barreto, Matt and Gary Segura. 2020. "Latino Reaction and Resistance to Trump: Lessons learned from Pete Wilson and 1994." In Raul Hinojosa and Edward Telles (eds.) Equitable Globalization: Expanding Bridges, Overcoming Walls. Oakland: University of California Press.
18. Barreto, Matt, Albert Morales and Gary Segura. 2019. "The Brown Tide and the Blue Wave in 2018" In Larry Sabato, Kyle Kondik, Geoffrey Skelley (eds.) The Blue Wave. New York: Rowman & Littlefield.
17. Gutierrez, Angela, Angela Ocampo and Matt Barreto. 2018. "Obama's Latino Legacy: From Unknown to Never Forgotten" In Andrew Rudalevige and Bert Rockman (eds.) The Obama Legacy. Lawrence, KS: University of Kansas Press.
16. Barreto, Matt, Thomas Schaller and Gary Segura. 2017. "Latinos and the 2016 Election: How Trump Lost Latinos on Day 1" In Larry Sabato, Kyle Kondik, Geoffrey Skelley (eds.) Trumped: The 2016 Election that Broke All the Rules. New York: Rowman & Littlefield.
15. Walker, Hannah, Gabriel Sanchez, Stephen Nuño, Matt Barreto 2017. "Race and the Right to Vote: The Modern Barrier of Voter ID Laws" In Todd Donovan (ed.) Election Rules and Reforms. New York: Rowman & Littlefield.
14. Barreto, Matt and Christopher Parker. 2015. "Public Opinion and Reactionary Movements: From the Klan to the Tea Party" In Adam Berinsky (ed.) New Directions in Public Opinion. 2nd edition. New York: Routledge Press.
13. Barreto, Matt and Gabriel Sanchez. 2014. "A 'Southern Exception' in Black-Latino Attitudes?." In Anthony Affigne, Evelyn Hu-Dehart, Marion Orr (eds.) Latino Politics en Ciencia Política. New York: New York University Press.
12. Barreto, Matt, Ben Gonzalez, and Gabriel Sanchez. 2014. "Rainbow Coalition in the Golden State? Exposing Myths, Uncovering New Realities in Latino Attitudes Towards Blacks." In Josh Kun and Laura Pulido (eds.) Black and Brown in Los Angeles: Beyond Conflict and Coalition. Berkeley, CA: University of California Press.
11. Barreto, Matt, Loren Collingwood, Ben Gonzalez, and Christopher Parker. 2011. "Tea Party Politics in a Blue State: Dino Rossi and the 2010 Washington Senate Election" In William Miller and Jeremy Walling (eds.) Stuck in the Middle to Lose: Tea Party Effects on 2010 U.S. Senate Elections. Rowman & Littlefield Publishing Group.
10. Jason Morin, Gabriel Sanchez and Matt Barreto. 2011. "Perceptions of Competition Between Latinos and Blacks: The Development of a Relative Measure of Inter-Group Competition." In Edward Telles, Gaspar Rivera-Salgado and Mark Sawyer (eds.) Just Neighbors? Research on African American and Latino Relations in the US. New York: Russell Sage Foundation.
9. Grofman, Bernard, Frank Wayman and Matt Barreto. 2009. "Rethinking partisanship: Some thoughts on a unified theory." In John Bartle and Paolo Bellucci (eds.) Political Parties and Partisanship: Social identity and individual attitudes. New York: Routledge Press.
8. Barreto, Matt, Ricardo Ramírez, Luis Fraga and Fernando Guerra. 2009. "Why California Matters: How California Latinos Influence the Presidential Election." In Rodolfo de la Garza, Louis DeSipio and David Leal (eds.) Beyond the Barrio: Latinos in the 2004 Elections. South Bend, ID: University of Notre Dame Press.

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

7. Francisco Pedraza and Matt Barreto. 2008. "Exit Polls and Ethnic Diversity: How to Improve Estimates and Reduce Bias Among Minority Voters." In Wendy Alvey and Fritz Scheuren (eds.) Elections and Exit Polling. Hoboken, NJ: Wiley and Sons.
6. Adrian Pantoja, Matt Barreto and Richard Anderson. 2008. "Politics y la Iglesia: Attitudes Toward the Role of Religion in Politics Among Latino Catholics" In Michael Genovese, Kristin Hayer and Mark J. Rozell (eds.) Catholics and Politics. Washington, D.C: Georgetown University Press..
5. Barreto, Matt. 2007. "The Role of Latino Candidates in Mobilizing Latino Voters: Revisiting Latino Vote Choice." In Rodolfo Espino, David Leal and Kenneth Meier (eds.) Latino Politics: Identity, Mobilization, and Representation. Charlottesville: University of Virginia Press.
4. Abosch, Yishaiya, Matt Barreto and Nathan Woods. 2007. "An Assessment of Racially Polarized Voting For and Against Latinos Candidates in California." In Ana Henderson (ed.) Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation, and Power. Berkeley, CA: UC Berkeley Public Policy Press.
3. Barreto, Matt and Ricardo Ramirez. 2005. "The Race Card and California Politics: Minority Voters and Racial Cues in the 2003 Recall Election." In Shaun Bowler and Bruce Cain (eds.) Clicker Politics: Essays on the California Recall. Englewood-Cliffs: Prentice-Hall.
2. Barreto, Matt and Nathan Woods. 2005. "The Anti-Latino Political Context and its Impact on GOP Detachment and Increasing Latino Voter Turnout in Los Angeles County." In Gary Segura and Shawn Bowler (eds.) Diversity in Democracy: Minority Representation in the United States. Charlottesville: University of Virginia Press.
1. Pachon, Harry, Matt Barreto and Frances Marquez. 2004. "Latino Politics Comes of Age in the Golden State." In Rodolfo de la Garza and Louis DeSipio (eds.) Muted Voices: Latino Politics in the 2000 Election. New York: Rowman & Littlefield

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

RESEARCH AWARDS AND FELLOWSHIPS

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

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

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	Brenan Center for Justice, New York University [with Stephen Nuño 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: Donald Trump, Race, and the Crisis of American Politics.
Under Contract, University of Chicago Press, *expected 2020*

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]

Gutierrez, Angela, Angela Ocampo, Matt Barreto and Gary Segura. "From Proposition 187 to Donald Trump: New Evidence that Anti-Immigrant Threat Mobilizes Latino Voters." [Under Review]

Collins, Jonathan, Matt Barreto, Gregory Leslie and Tye Rush. "Racial Efficacy and Voter Enthusiasm Among African Americans Post-Obama" [Under Review]

Oskooii, Kassra, Matt Barreto, and Karam Dana. "No Sharia, No Mosque: Orientalist Notions of Islam and Intolerance Toward Muslims in the United States" [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
- New York, 2018, Expert for Plaintiffs in Census Citizenship Lawsuit, New York v. U.S. Dept of Commerce (also an expert related cases: *California v. Ross* and *Kravitz v. Dept of Commerce*)
- 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
- Kansas, 2016, Expert for Plaintiffs in Kansas voter registration lawsuit, Fish v. Kobach 2:16-cv-02105-JAR
- North Dakota, 2015, Expert for Plaintiffs in North Dakota voter ID lawsuit, Brakebill v. Jaeger 1:16-cv-00008-CSM
- Alabama, 2015, Expert for Plaintiffs in Alabama voter ID lawsuit, Birmingham Ministries v. State of Alabama 2:15-cv-02193-LSC
- Texas, 2014, Testifying Expert for Plaintiffs in Texas voter ID lawsuit, Veasey v. Perry 2:13-cv-00193
- 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
- Pennsylvania, 2012, Testifying Expert for ACLU Foundation of Pennsylvania in voter ID lawsuit, Applewhite v. Commonwealth of Pennsylvania No. 330 MD 2012
- Milwaukee County, WI, 2012, Testifying Expert for ACLU Foundation of Wisconsin in voter ID lawsuit, Frank v. Walker 2:11-cv-01128(LA)
- 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
- Los Angeles County Redistricting Commission, 2011, Consulting Expert for Supervisor Gloria Molina, Racially Polarized voting analysis within L.A. County
- State of California, Citizens Redistricting Commission, 2011, Consulting Expert, Racially Polarized Voting analysis throughout state of California
- 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

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

- 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
- ACLU of Washington, 2008, preliminary analysis of voting patterns in Eastern Washington, related to electability of Latino candidates
- 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:**

UCLA & UW

2005 – Present

- 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**

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 Lanijonu – University of Toronto (UCLA Ph.D. 2018)
- Adria Tinin – *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 Bozonelos – 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.

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)

Expert Declaration of Mr. John Thompson

I. 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.

² Albert E. Fontenot, Jr., 2020 Census Residence Criteria and Residence Situations, 2020 Census Program Memorandum Series: 2018.04, February 5, 2018.

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 deadlines⁴ 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

³ US Census Bureau 2020 Census daily response rate tracker, <https://2020census.gov/en/response-rates.html> (last accessed August 6, 2020).

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

⁵ Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count, <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>, August 3, 2020.

⁶ P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

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.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 them⁹. 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 testimony¹¹ 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

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.

¹¹ Trial Testimony of Dr. John Abowd, Nov. 13, 2018, *New York Immigration Coalition, et al. v. United States Department of Commerce, et al.*, 18-CV-5025-JMF (S.D.N.Y.), at 926-27.

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.”

¹² Committee on National Statistics, Principles and Practices for a Federal Statistical Agency 2 (6th ed. 2017).

- 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

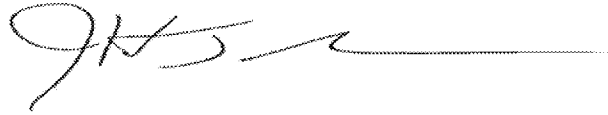
In conclusion, it is my opinion that the issuance of the Memorandum will significantly increase the risk of much larger undercounts for the 2020 Census than measured in previous censuses, including undercounts of immigrant communities. In addition, there is no transparency or documentation of how the 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.

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).

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.

A handwritten signature in black ink, appearing to read 'JH', followed by a long horizontal line extending to the right.

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;
-

John H. Thompson
Page 2

- 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,

John H. Thompson
Page 3

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.

John H. Thompson
Page 4

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, Silver Medal, U.S. Bureau of the Census, 1998

Department of Commerce, Bronze Medal, U.S. Bureau of the Census, 1988

John H. Thompson
Page 5

PAPERS AND PUBLICATIONS

- 2018 Thompson, John H and Yablon, Robert. Issue Brief: "Preparing for the 2020 Census Considerations for State Attorneys General". American Constitution Society., October 10, 2018
- 2012 Thompson, John H. (Panel Member). "Panel Discussion: Considering Changing Sectors in the Research Industry?: Advice From Those Who Have Done It!" AAPOR 67th Annual Conference, Orlando, Florida, May 19, 2012
- 2012 Thompson, John H. (Discussant). "Future is Now: Realignment of Current Survey Management and Operations at the Census Bureau". Population Association of America 2012 Annual Meeting, San Francisco, California, May 4, 2012.
- 2012 Thompson, John H. (Discussant). "Use of Administrative Records in the 2020 Census." Federal Committee on Statistical Methodology, Washington, DC., January 10, 2012
- 2011 Weinberg, Daniel H. and Thompson, John H., "Organization and Administration of the 2010 U.S. Census." In Margo J. Anderson, Constance F. Citro, and Joseph J. Salvo (eds.) *Encyclopedia of the U.S. Census*, Second Edition, CQ Press., July 2011
- 2010 Thompson, John H., "Challenges, Innovation and Quality for the 21st Century" Keynote Speech at the 2010 FCSM Statistical Policy Seminar, Washington, DC, December 14, 2010.
- 2010 Thompson, John H., "The Future of Survey Research: Opportunities and Challenges" Paper presented at the Applied Demography Conference, San Antonio, Texas., January 11, 2010 and at the Population Association of America 2010 Annual meeting, Dallas, Texas, April 15, 2010.
- 2008 Thompson, John H. (Panel Member). "Panel Discussion: The American Community Survey: Promise, Products and Perspectives." Population Association of America Annual Meeting, New Orleans, Louisiana, April 17, 2008.
- 2006 Thompson, John H. (Discussant). "Census 2010: A New Census for the 21st Century." Population Association of America Annual Meeting, Los Angeles, California, March 30, 2006.
- 2004 Thompson, John H., "Interviewer Falsification of Survey Data." Paper presented at the Joint Meetings of the American Statistical Association, Toronto, Canada, August 11, 2004.
- 2003 Thompson, John H., "Is Interviewer Falsification Scientific Misconduct?" Roundtable paper presented at the American Association for Public Opinion Research 58th Annual Conference, Nashville, Tennessee, May 16, 2003.
- 2002 Thompson, John H. (Discussant). "Eliminating the 2010 Census Long Form? – Current Status of the American Community Survey." Population Association of America Annual Meeting, Atlanta, Georgia, May 9, 2002.

John H. Thompson
Page 6

- 2001 Thompson, John H., "Decision on Release of Statistically Corrected Redistricting Data." Invited paper presented at the Joint Meetings of the American Statistical Association, Atlanta Georgia, August 6, 2001.
- 1999 Thompson, John H., "Census 2000 – Innovations and New Technology." Paper presented at the Economic Commission for Europe's Conference of European Statisticians Meeting, Geneva, Switzerland, February 15-17, 1999.
- 1998 Thompson, John H. and Robert E. Fay, "Census 2000: The Statistical Issues." Paper presented at the Joint Meetings of the American Statistical Association, Dallas, Texas, August 9-13, 1998.
- 1996 Thompson, John H. and Karen Mills, "Census 2000 Content: Tradeoffs on Cost, Quality, and Quantity." Paper presented at the Annual Meeting of the Population Association of America, New Orleans, Louisiana, May 9-11, 1996.
- 1995 Thompson, John H., Mary H. Mulry, Susan M. Miskura, "Census 2000: Statistical Issues in Reengineering the Decennial Census." Paper presented at the Annual Meeting of the American Statistical Association, Orlando, Florida, August 13-17, 1995.
- 1992 Fay, Robert E. and John H. Thompson, "The 1990 Post-Enumeration Survey: Statistical Lessons in, Hindsight." Paper presented at the Annual Research Conference, March 22-25, 1992, Arlington, Virginia.
- 1989 Edson, Robert G. and John H. Thompson, "1990 Decennial Census Coverage Improvement Program." Paper presented at the Annual Winter Meetings of the American Statistical Association, San Diego, California, January, 1989.
- 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.
- 1987 Griffin, Richard A. and John H. Thompson, "Confidentiality Techniques for the 1990 Census." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, October, 1987.

U.S. Bureau of the Census, "Programs to Improve Coverage in the 1980 Census," by John H. Thompson. Evaluation and Research Reports, PHC80-E3.
- 1986 Thompson, John H. and David Franklin, "Test Census Results and Applications for the 1990 Planning." Paper presented at the Census Bureau Second Annual Research Conference, Reston, Virginia, March, 1986.
- 1984 Miskura, Susan M., John H. Thompson, Henry F. Woltman, "Uses of Sampling for the Census Count." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

Fan, Milton C., Martha L. Sutt, and John H. Thompson, "Evaluation of the 1980 Census Precanvass Coverage Improvement Program." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

Keeley, Catherine and John H. Thompson, "The 1980 Census Nonhousehold Sources Program." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

John H. Thompson
Page 7

- 1983 Miskura, Susan M. and John H. Thompson, "1980 Census Findings and Their Implications for 1990 Census Planning." Presented at the Joint Statistical Meetings, Toronto, Canada, August, 1983.

Taeuber, Cynthia and John H. Thompson, "1980 Census Data: The Quality of the Data and Some Anomalies." Paper presented at the Annual Meeting of the Population Association of America, April, 1983.
- 1982 Fan, Milton C., John H. Thompson, Jay Kim, and Henry F. Woltman, "Sample Design, Estimation and Presentation of Sampling Errors for the 1980 Census Early Publications National Sample." Paper presented at the Annual Meetings of the American Statistical Association, Chicago, Illinois, August, 1982.
- 1981 Woltman, Henry F., Susan M. Miskura, John H. Thompson, and Peter A. Bounpane, "1980 Census Weighting and Variance Estimation Studies, Design and Methodology." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.

Kim, Jay, John H. Thompson, Henry F. Woltman, and Stephen M. Vajs, "Empirical Results from the 1980 Census Sample Estimation Study." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.

Fan, Milton, C., John H. Thompson, and Susan M. Miskura, "1980 Census Variance Estimation Procedure." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.

Thompson, John H., "Convergence Properties of the Iterative 1980 Census Estimator." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.
- 1978 Thompson, John H., "The Nonhousehold Sources Program." Paper presented at the Annual Meetings of the American Statistical Association, San Diego, California, August, 1978.

Exhibit 58

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

!	!
!	!
STATE OF NEW YORK, et al.,	!
!	!
Plaintiffs,	20ACV5770(JMF)!
!	!
v.	!
!	!
DONALD J. TRUMP, in his official capacity as President of the United States, et al.,	
!	
Defendants.	
!	
!	
NEW YORK IMMIGRATION COALITION, et al.,	!
!	!
Plaintiffs,	20ACV5781(JMF)!
!	!
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.”

8. I have also previously provided expert reports in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, No. 159 MM 2017 (PA 2018); *League of Women Voters of Michigan v. Johnson*, No. 2:17-cv-14148 (E.D. 2019); and *PRI et al v. Smith et al.*, No. 18-cv-357 (S.D. Ohio 2018).
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

.....

¹ See <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-alien-apportionment-base-following-2020-census/>.

² For the state populations from 2010-2019, I used the file ‘nst-est2019-01.xlsx’ which I obtained from <https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html>. For the 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>. For the population counts from 1990-1999, I used the data available at <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-1990-2000-state-and-county-totals.html>.

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.³ My population projections are based on these official population estimates for each state for the period from 1990-2019.⁴

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

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.

⁴ For the state populations from 2010-2019, I used the file ‘nst-est2019-01.xlsx’ which I obtained from <https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html>. For the 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>. For the population counts from 1990-1999, I used the data available at <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-1990-2000-state-and-county-totals.html>.

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

	Model	ME	RMSE	MAE	MPE	MAPE
(1):	Linear model (decade)	-20,821	71,748	32,448	-0.29%	0.57%
(2):	Linear model (4 years)	-12,219	33,933	14,513	-0.11%	0.21%
(3):	Delta in last two years	-2,940	12,129	6,073	-0.02%	0.09%
(4):	State spacemodel	-4,034	12,623	6,766	-0.04%	0.13%

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

State	2010 Population	2019 Population	2020 Population	Projection
Alabama	4,779,736	4,903,185	4,918,700	
Alaska	710,231	731,545	728,000	
Arizona	6,392,017	7,278,717	7,399,400	
Arkansas	2,915,918	3,017,804	3,025,900	
California	37,253,956	39,512,223	39,724,500	
Colorado	5,029,196	5,758,736	5,833,000	
Connecticut	3,574,097	3,565,287	3,565,300	
Delaware	897,934	973,764	982,000	
District of Columbia	601,723	705,749	710,000	
Florida	18,801,310	21,477,737	21,706,500	
Georgia	9,687,653	10,617,423	10,723,200	
Hawaii	1,360,301	1,415,872	1,411,500	
Idaho	1,567,582	1,787,065	1,823,600	
Illinois	12,830,632	12,671,821	12,622,100	
Indiana	6,483,802	6,732,219	6,769,900	
Iowa	3,046,355	3,155,070	3,168,400	
Kansas	2,853,118	2,913,314	2,915,500	
Kentucky	4,339,367	4,467,673	4,474,200	
Louisiana	4,533,372	4,648,794	4,650,500	
Maine	1,328,361	1,344,212	1,349,400	
Maryland	5,773,552	6,045,680	6,071,200	
Massachusetts	6,547,629	6,892,503	6,904,900	
Michigan	9,883,640	9,986,857	9,986,900	
Minnesota	5,303,925	5,639,632	5,676,100	
Mississippi	2,967,297	2,976,149	2,972,300	
Missouri	5,988,927	6,137,428	6,152,400	
Montana	989,415	1,068,778	1,077,400	
Nebraska	1,826,341	1,934,408	1,946,500	
Nevada	2,700,551	3,080,156	3,132,200	
New Hampshire	1,316,470	1,359,711	1,363,300	
New Jersey	8,791,894	8,882,190	8,894,300	
New Mexico	2,059,179	2,096,829	2,100,400	
New York	19,378,102	19,453,561	19,377,200	
North Carolina	9,535,483	10,488,084	10,594,600	
North Dakota	672,591	762,062	766,100	
Ohio	11,536,504	11,689,100	11,706,400	
Oklahoma	3,751,351	3,956,971	3,971,200	
Oregon	3,831,074	4,217,737	4,260,000	
Pennsylvania	12,702,379	12,801,989	12,803,100	
Rhode Island	1,052,567	1,059,361	1,059,400	
South Carolina	4,625,364	5,148,714	5,213,000	
South Dakota	814,180	884,659	891,700	
Tennessee	6,346,105	6,829,174	6,886,700	
Texas	25,145,561	28,995,881	29,432,600	
Utah	2,763,885	3,205,958	3,259,800	
Vermont	625,741	623,989	624,100	
Virginia	8,001,024	8,535,519	8,570,600	
Washington	6,724,540	7,614,893	7,707,400	
West Virginia	1,852,994	1,792,147	1,780,000	
Wisconsin	5,686,986	5,822,434	5,836,800	
Wyoming	563,626	578,759	578,700	

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.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.⁷ For the 2020 Census, however, all overseas federal personnel will be counted at their usual residential address in the United States.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.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, 2020.¹⁰
- ∞ Second, I allocated these personnel to each state in proportion to the number of service members in each branch based in each state.¹¹ This approach implicitly assumes that each

.....

⁶ “Overseas” is defined as anywhere outside the 50 U.S. States and the District of Columbia.

⁷ See the Census Bureau's FAQ on Congressional Apportionment in the 2010 Census.

<https://webcache.googleusercontent.com/search?q=cache:WTXwriFq15AJ:https://www.census.gov/population/apportionment/about/faq.html+&cd=2&hl=en&ct=clnk&gl=us&client=safari> and

⁸ See <https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/>.

⁹ See <https://www.doi.gov/sites/doi.gov/files/uploads/oia-02052020-census-and-the-military.pdf>.

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.

¹² 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.

¹³ See 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.

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.¹⁵ It is important to note that the federal overseas population is down by nearly 50% since the 2010 Census.¹⁶ This likely reflects the reduction in the nation's military deployments in conflict areas over the past decade.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.”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.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.

.....

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/>.

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>.

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/>.

¹⁸ See <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-alien-apportionment-base-following-2020-census/>.

¹⁹ See <https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/>.

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:

$$\text{Unauthorized Immigrants (U)} = \text{Survey, Total Foreign Born (F)} - \text{Estimated Lawful Immigrant Population (L)}$$

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 Statistics²¹ 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 2017.²² 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.²³ 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-methodology/>.

	Model	ME	RMSE	MAE	MPE	MAPE
(1):	Linear model (decade)	-21,998.25	90,634.40	31,639.51	-3.34	14.56
(2):	Linear model (4 years)	-10,944.23	50,403.96	25,971.15	-3.95	17.59
(3):	Delta in last two years	-12,884.62	58,005.64	28,961.54	-0.40	19.24
(4):	State spacemodel	-13,688.05	55,204.49	22,794.32	-3.46	15.48

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 6: Estimates of Effect on State Population Enumerations in 2020

State	Baseline 2020 Apportionment Population	Undocumented Immigrants (Pew)	Undocumented Percentage
	(1)	(2)	(3)
Alabama	4,926,400	71,900	1.5%
Alaska	735,700	8,400	1.1%
Arizona	7,410,500	274,400	3.7%
Arkansas	3,028,800	65,300	2.2%
California	39,799,200	2,066,000	5.2%
Colorado	5,846,100	190,100	3.3%
Connecticut	3,568,100	148,300	4.2%
Delaware	984,300	29,700	3%
Florida	21,736,600	796,000	3.7%
Georgia	10,749,300	375,700	3.5%
Hawaii	1,428,900	43,800	3.1%
Idaho	1,825,700	38,300	2.1%
Illinois	12,633,400	409,300	3.2%
Indiana	6,773,300	103,200	1.5%
Iowa	3,169,100	51,000	1.6%
Kansas	2,924,300	81,300	2.8%
Kentucky	4,485,300	44,700	1%
Louisiana	4,657,900	100,100	2.1%
Maine	1,350,400	4,000	0.3%
Maryland	6,105,000	261,600	4.3%
Massachusetts	6,907,400	231,900	3.4%
Michigan	9,989,700	103,800	1%
Minnesota	5,677,700	86,800	1.5%
Mississippi	2,979,500	23,000	0.8%
Missouri	6,160,800	63,100	1%
Montana	1,079,300	4,400	0.4%
Nebraska	1,950,200	55,800	2.9%
Nevada	3,137,300	211,200	6.7%
New Hampshire	1,363,700	10,400	0.8%
New Jersey	8,899,400	493,200	5.5%
New Mexico	2,107,400	59,200	2.8%
New York	19,386,100	679,800	3.5%
North Carolina	10,639,700	330,800	3.1%
North Dakota	770,300	5,900	0.8%
Ohio	11,715,100	94,400	0.8%
Oklahoma	3,981,800	90,100	2.3%
Oregon	4,261,500	109,100	2.6%
Pennsylvania	12,809,600	217,800	1.7%
Rhode Island	1,061,000	32,900	3.1%
South Carolina	5,229,800	101,500	1.9%
South Dakota	893,800	5,700	0.6%
Tennessee	6,888,900	139,200	2%
Texas	29,479,700	1,649,100	5.6%
Utah	3,263,900	106,100	3.3%
Vermont	624,400	3,500	0.6%
Virginia	8,639,600	297,600	3.4%
Washington	7,730,300	274,400	3.5%
West Virginia	1,780,600	4,300	0.2%
Wisconsin	5,838,300	72,900	1.2%
Wyoming	580,300	4,800	0.8%

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.

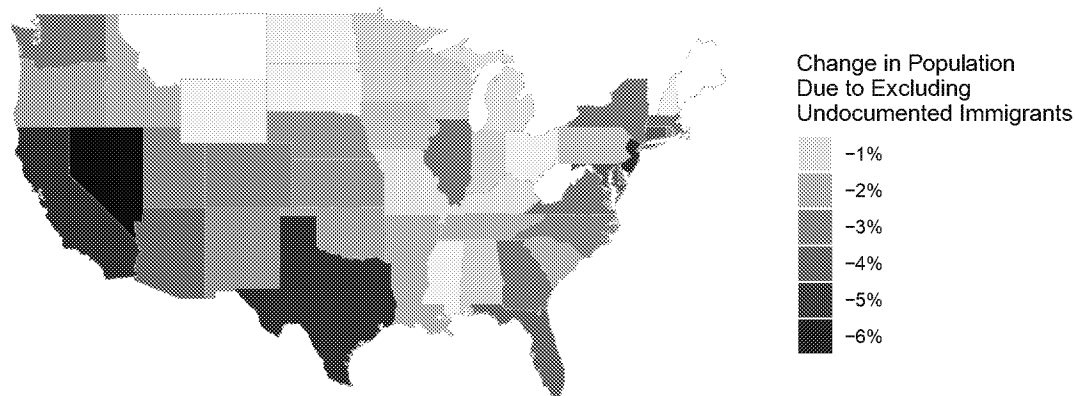


Figure 1: Effects on State Populations

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

State	Baseline Seats (1)	Seats after Exclusion (2)	Seat Delta (3)	Prob. Seat Loss (4)
Alabama	6	7	1	0%
Alaska	1	1	0	0%
Arizona	10	10	-0	0.3%
Arkansas	4	4	0	0%
California	52	51	-1	72.1%
Colorado	8	8	-0	0.3%
Connecticut	5	5	-0	3.4%
Delaware	1	1	0	0%
Florida	29	28	-0	38.4%
Georgia	14	14	0	0%
Hawaii	2	2	0	0%
Idaho	2	2	0	0%
Illinois	17	17	-0	10.1%
Indiana	9	9	0	0%
Iowa	4	4	0	0%
Kansas	4	4	0	0%
Kentucky	6	6	0	0%
Louisiana	6	6	0	0%
Maine	2	2	0	0%
Maryland	8	8	0	0%
Massachusetts	9	9	0	0%
Michigan	13	13	0	0%
Minnesota	7	8	1	0%
Mississippi	4	4	0	0%
Missouri	8	8	0	0%
Montana	2	2	0	0%
Nebraska	3	3	0	0%
Nevada	4	4	0	0%
New Hampshire	2	2	0	0%
New Jersey	12	11	-1	69.8%
New Mexico	3	3	0	0%
New York	26	25	-0	18.9%
North Carolina	14	14	0	0%
North Dakota	1	1	0	0%
Ohio	15	16	1	0%
Oklahoma	5	5	0	0%
Oregon	6	6	0	0%
Pennsylvania	17	17	0	0%
Rhode Island	1	1	0	0%
South Carolina	7	7	0	0%
South Dakota	1	1	0	0%
Tennessee	9	9	0	0%
Texas	39	38	-1	98.3%
Utah	4	4	0	0%
Vermont	1	1	0	0%
Virginia	11	11	0	0%
Washington	10	10	0	0%
West Virginia	2	2	0	0%
Wisconsin	8	8	0	0%
Wyoming	1	1	0	0%

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 than 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

|||||

³⁰ See <https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles>.

Pew's estimate.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 2018.³² 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.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%.

.....

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 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.

State	Main Analysis	Scenario#1 MPI	Scenario#2 CMS	Scenario#3 Pew (80%)	Scenario#4 Pew (60%)	Scenario#5 Pew (150%)
California	72%	100%	93%	49%	36%	92%
Florida	38%	0%	26%	39%	48%	60%
New Jersey	70%	80%	23%	57%	36%	91%
New York	19%	52%	19%	17%	28%	24%
Texas	98%	96%	98%	98%	98%	99.5%

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.

State	Main Analysis	Scenario#6 Alternative Population Forecasts	Scenario#7 Alternative Forecasts of Undoc. Imm.'s
California	72%	84%	75%
Florida	38%	45%	96%
New Jersey	70%	73%	51%
New York	19%	58%	30%
Texas	98%	99.5%	100%

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.

State	Main	Scenario#8
State	Analysis	Undercount
California	72%	67%
Florida	38%	0%
New Jersey	70%	93%
New York	19%	0%
Texas	98%	76%

³⁵ See <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> and <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html>.

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 Center³⁶
- ∞ 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.

State	Main Analysis (1)	Pew (2)	CIS (3)	CfP (4)	Academic Study (5)
Arizona	0.3%				X
California	72%	X	X	X	X
Florida	38%	X			X
New Jersey	70%			X	
New York	19%		X		
Texas	98%	X	X	X	X

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

!!

³⁶ See <https://www.pewresearch.org/fact-tank/2020/07/24/how-removing-unauthorized-immigrants-from-census-statistics-could-affect-house-reapportionment/>

³⁷ See https://cis.org/sites/default/files/2019-12/camarota-apportionment-12-19_1.pdf.

³⁸ See <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment/>.

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.

A handwritten signature in cursive script, appearing to read "Chris Warshaw".

Christopher Warshaw

References

Ansolabehere, Stephen, Alan Gerber, and Jim Snyder. 2002. “Equal votes, equal money: Court-ordered redistricting and public expenditures in the American states.” *American Political Science Review* 96 (4): 767–777.

Baker, Bryan. 2018. “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2015.” Department of Homeland Security, December.

Baumle, Amanda K, and Dudley L Poston Jr. 2019. “Apportionment of the US House of Representatives in 2020 under Alternative Immigration-Based Scenarios.” *Population and Development Review* 45 (2): 379–400.

Brown, David J., Misty L. Heggeness, Suzanne M. Dorinski, Lawrence Warren, and Moises Yi. 2018. Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census.

Cascio, Elizabeth U, and Ebonya Washington. 2014. “Valuing the vote: The redistribution of voting rights and state funds following the voting rights act of 1965.” *The Quarterly Journal of Economics* 129 (1): 379–433.

Caughey, Devin, and Christopher Warshaw. 2018. “Policy Preferences and Policy Change: Dynamic Responsiveness in the American States, 1936–2014.” *The American Political Science Review* 112 (2): 249–266.

Election Data Services. 2017. Some Change in Apportionment Allocations With New 2017 Census Estimates, But Greater Change Likely by 2020. Available at https://www.electiondataservices.com/wpcontent/uploads/2017/12/NR_Appor17c2wTablesMapsC1.pdf.

Elis, Roy, Neil Malhotra, and Marc Meredith. 2009. “Apportionment cycles as natural experiments.” *Political Analysis* 17 (4): 358–376.

Hyndman, Rob J, and George Athanasopoulos. 2018. *Forecasting: principles and practice*. O-Texs.

Hyndman, Rob, Anne B Koehler, J Keith Ord, and Ralph D Snyder. 2008. *Forecasting with exponential smoothing: the state space approach*. Springer Science & Business Media.

Passel, Jeffrey S. 2016. Overall Number of US Unauthorized Immigrants Holds Steady Since 2009: Decline in Share From Mexico Mostly Offset by Growth From Asia, Central America and Sub-Saharan African. Pew Research Center.

Treier, Shawn, and Simon Jackman. 2008. “Democracy as a latent variable.” *American Journal of Political Science* 52 (1): 201–217.

Warren, Robert. 2014. “Democratizing data about unauthorized residents in the United States: estimates and public-use data, 2010 to 2013.” *Journal on Migration and Human Security* 2 (4): 305–328.

Warren, Robert. 2019. "US undocumented population continued to fall from 2016 to 2017 and visa overstays significantly exceeded illegal crossings for the seventh consecutive year." *Journal on Migration and Human Security* 7 (1): 19–22.

Warren, Robert, and John Robert Warren. 2013. "Unauthorized immigration to the United States: Annual estimates and components of change, by state, 1990 to 2010." *International Migration Review* 47 (2): 296–329.

Appendix A**1. Estimates of Overseas Federal Personnel**

Table 3: Estimates of Overseas Federal Personnel in each State in 2020.

State	Overseas Personnel
Alabama	7,700
Alaska	7,500
Arizona	11,000
Arkansas	2,900
California	74,900
Colorado	14,200
Connecticut	2,600
Delaware	2,100
Florida	29,500
Georgia	26,800
Hawaii	17,500
Idaho	2,200
Illinois	10,300
Indiana	3,300
Iowa	900
Kansas	8,300
Kentucky	11,200
Louisiana	7,300
Maine	1,100
Maryland	33,600
Massachusetts	2,700
Michigan	2,900
Minnesota	1,600
Mississippi	6,700
Missouri	8,400
Montana	2,000
Nebraska	3,600
Nevada	6,200
New Hampshire	700
New Jersey	5,300
New Mexico	7,000
New York	9,300
North Carolina	44,500
North Dakota	4,000
Ohio	8,600
Oklahoma	10,700
Oregon	1,200
Pennsylvania	6,900
Rhode Island	1,700
South Carolina	16,400
South Dakota	2,000
Tennessee	2,600
Texas	51,500
Utah	4,200
Vermont	300
Virginia	68,800
Washington	23,000
West Virginia	700
Wisconsin	1,600
Wyoming	1,800

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.

State	Undocumented Immigrants
Alabama	71,900 (28,800)
Alaska	8,400 (3,500)
Arizona	274,400 (56,400)
Arkansas	65,300 (20,400)
California	2,066,000 (275,700)
Colorado	190,100 (50,200)
Connecticut	148,300 (67,700)
Delaware	29,700 (12,100)
Florida	796,000 (105,300)
Georgia	375,700 (140,000)
Hawaii	43,800 (19,000)
Idaho	38,300 (9,400)
Illinois	409,300 (70,100)
Indiana	103,200 (48,200)
Iowa	51,000 (20,400)
Kansas	81,300 (27,900)
Kentucky	44,700 (20,400)
Louisiana	100,100 (61,500)
Maine	4,000 (1,900)
Maryland	261,600 (76,300)
Massachusetts	231,900 (69,300)
Michigan	103,800 (37,500)
Minnesota	86,800 (34,200)
Mississippi	23,000 (11,600)
Missouri	63,100 (31,300)
Montana	4,400 (1,700)
Nebraska	55,800 (17,900)
Nevada	211,200 (31,600)
New Hampshire	10,400 (4,400)
New Jersey	493,200 (90,000)
New Mexico	59,200 (16,600)
New York	679,800 (102,000)
North Carolina	330,800 (73,400)
North Dakota	5,900 (3,200)
Ohio	94,400 (43,400)
Oklahoma	90,100 (30,200)
Oregon	109,100 (32,200)
Pennsylvania	217,800 (85,500)
Rhode Island	32,900 (12,000)
South Carolina	101,500 (47,500)
South Dakota	5,700 (2,300)
Tennessee	139,200 (56,000)
Texas	1,649,100 (182,200)
Utah	106,100 (19,100)
Vermont	3,500 (1,600)
Virginia	297,600 (104,600)
Washington	274,400 (82,600)
West Virginia	4,300 (2,000)
Wisconsin	72,900 (31,000)
Wyoming	4,800 (1,900)

3. Unrounded Main Results for Congressional Apportionment

Table 12: Unrounded Estimates of Excluding Undocumented Immigrants on Congressional Apportionment

State	Baseline Seats (1)	Seats after Exclusion (2)	Seat Delta (3)	Prob. Seat Loss (4)
Alabama	6.46	7.00	0.54	0%
Alaska	1.00	1.00	0.00	0%
Arizona	10.00	10.00	-0.00	0.3%
Arkansas	4.00	4.00	0.00	0%
California	52.15	51.32	-0.83	72.1%
Colorado	8.00	8.00	-0.00	0.3%
Connecticut	5.00	4.97	-0.03	3.4%
Delaware	1.00	1.00	0.00	0%
Florida	28.86	28.47	-0.38	38.4%
Georgia	14.00	14.02	0.02	0%
Hawaii	2.00	2.00	0.00	0%
Idaho	2.00	2.12	0.12	0%
Illinois	17.00	16.90	-0.10	10.1%
Indiana	9.00	9.00	0.00	0%
Iowa	4.00	4.00	0.00	0%
Kansas	4.00	4.00	0.00	0%
Kentucky	6.00	6.00	0.00	0%
Louisiana	6.00	6.02	0.02	0%
Maine	2.00	2.00	0.00	0%
Maryland	8.00	8.00	0.00	0%
Massachusetts	9.00	9.00	0.00	0%
Michigan	13.00	13.28	0.28	0%
Minnesota	7.07	8.00	0.92	0%
Mississippi	4.00	4.00	0.00	0%
Missouri	8.00	8.00	0.00	0%
Montana	1.92	2.00	0.08	0%
Nebraska	3.00	3.00	0.00	0%
Nevada	4.00	4.00	0.00	0%
New Hampshire	2.00	2.00	0.00	0%
New Jersey	12.00	11.30	-0.70	69.8%
New Mexico	3.00	3.00	0.00	0%
New York	25.54	25.35	-0.19	18.9%
North Carolina	14.00	14.00	0.00	0%
North Dakota	1.00	1.00	0.00	0%
Ohio	15.00	16.00	1.00	0%
Oklahoma	5.00	5.00	0.00	0%
Oregon	6.00	6.00	0.00	0%
Pennsylvania	17.00	17.00	0.00	0%
Rhode Island	1.00	1.17	0.17	0%
South Carolina	7.00	7.00	0.00	0%
South Dakota	1.00	1.00	0.00	0%
Tennessee	9.00	9.00	0.00	0%
Texas	38.99	37.93	-1.06	98.3%
Utah	4.00	4.00	0.00	0%
Vermont	1.00	1.00	0.00	0%
Virginia	11.00	11.16	0.16	0%
Washington	10.00	10.00	0.00	0%
West Virginia	2.00	2.00	0.00	0%
Wisconsin	8.00	8.00	0.00	0%
Wyoming	1.00	1.00	0.00	0%

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.
5. I am also on the Editorial Board of the *Journal of Politics*. I have previously provided expert reports in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania* and *League of Women Voters of Michigan v. Johnson*. My non-academic writing has been published in the New York Times Upshot.

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

¹ 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.

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>.

13. 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.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 1: Validation of State Population Projections

Model	2010			2017		
	Mean Error	Mean Abs. Error	Mean Abs. Prop. Error	Mean Error	Mean Abs Error	Mean Abs. Prop. Error
Linear model (full period)	22,800	62,860	0.013	7,827	32,003	0.007
Linear model (4 years)	27,399	82,106	0.014	33,420	59,396	0.014
Delta in last two years	20,383	50,663	0.010	140,472	142,506	0.020
State space model	5,826	51,033	0.009	-2,599	33,378	0.008

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 2: Population Projections in Select Counties and Cities

County/City	2010 Population	2017 Population	2020 Population Projection
Phoenix, AZ	1,446,909	1,626,078	1,698,187
Los Angeles County, CA	9,818,605	10,163,507	10,256,275
Monterey County, CA	415,052	437,907	444,016
San Francisco, CA	805,193	884,363	909,143
Miami, FL	399,457	463,347	491,295
Chicago, IL	2,695,620	2,716,450	2,704,974
Price Georges County, MD	863,420	912,756	931,412
New York NY	8,174,959	8,622,698	8,645,147
Columbus, OH	788,877	879,170	925,408
Philadelphia, PA	1,526,006	1,580,863	1,598,072
Pittsburgh, PA	305,391	302,407	297,243
Central Falls, RI	19,393	19,359	19,250
Providence, RI	177,997	180,393	181,532
Cameron County, TX	406,219	423,725	429,603
El Paso County, TX	800,647	840,410	851,600
Hidalgo County, TX	774,770	860,661	892,083
Seattle, WA	608,664	724,745	780,550

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

State	2010 Population	2017 Population	2020 Population Projection
Alabama	4,779,736	4,874,747	4,917,351
Alaska	710,231	739,795	739,473
Arizona	6,392,017	7,016,270	7,339,157
Arkansas	2,915,918	3,004,279	3,051,838
California	37,253,956	39,536,653	40,505,540
Colorado	5,029,196	5,607,154	5,823,386
Connecticut	3,574,097	3,588,184	3,589,649
Delaware	897,934	961,939	989,662
District of Columbia	601,723	693,972	722,881
Florida	18,801,310	20,984,400	21,967,862
Georgia	9,687,653	10,429,379	10,776,655
Hawaii	1,360,301	1,427,538	1,429,641
Idaho	1,567,582	1,716,943	1,827,695
Illinois	12,830,632	12,802,023	12,701,647
Indiana	6,483,802	6,666,818	6,761,903
Iowa	3,046,355	3,145,711	3,182,994
Kansas	2,853,118	2,913,123	2,925,781
Kentucky	4,339,367	4,454,189	4,508,391
Louisiana	4,533,372	4,684,333	4,684,247
Maine	1,328,361	1,335,907	1,349,155
Maryland	5,773,552	6,052,177	6,187,649
Massachusetts	6,547,629	6,859,819	6,966,760
Michigan	9,883,640	9,962,311	9,962,308
Minnesota	5,303,925	5,576,606	5,690,791
Mississippi	2,967,297	2,984,100	2,984,630
Missouri	5,988,927	6,113,532	6,180,600
Montana	989,415	1,050,493	1,079,083
Nebraska	1,826,341	1,920,076	1,957,570
Nevada	2,700,551	2,998,039	3,174,453
New Hampshire	1,316,470	1,342,795	1,366,068
New Jersey	8,791,894	9,005,644	9,106,936
New Mexico	2,059,179	2,088,070	2,095,989
New York	19,378,102	19,849,399	19,885,662
North Carolina	9,535,483	10,273,419	10,623,613
North Dakota	672,591	755,393	752,711
Ohio	11,536,504	11,658,609	11,713,096
Oklahoma	3,751,351	3,930,864	3,974,666
Oregon	3,831,074	4,142,776	4,269,590
Pennsylvania	12,702,379	12,805,537	12,838,064
Rhode Island	1,052,567	1,059,639	1,059,639
South Carolina	4,625,364	5,024,369	5,213,894
South Dakota	814,180	869,666	891,229
Tennessee	6,346,105	6,715,984	6,915,723
Texas	25,145,561	28,304,596	29,593,219
Utah	2,763,885	3,101,833	3,274,374
Vermont	625,741	623,657	622,506
Virginia	8,001,024	8,470,020	8,632,998
Washington	6,724,540	7,405,743	7,785,568
West Virginia	1,852,994	1,815,857	1,777,893
Wisconsin	5,686,986	5,795,483	5,858,478
Wyoming	563,626	579,315	565,592

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.⁶

This survey was designed by Dr. Matt Barreto and conducted by Pacific Market Research.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).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?’

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.

⁷ Data and statistical code to replicate my analysis of this survey is available in my replication materials.

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

	Latinos			Foreign-born (not Latino)		
	(1)	(2)	(3)	(4)	(5)	(6)
Citizenship Question	-0.059** (0.029)	-0.070** (0.028)	-0.062*** (0.016)	-0.113 (0.072)	-0.164** (0.066)	-0.096** (0.039)
Survey Weights	X	X		X	X	
Controls		X	X		X	X
Observations	2,362	2,362	2,362	488	488	488
R ²			0.043			0.117
Adjusted R ²			0.021			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)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.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.

Table 5: Effect of Undercount on State Population Enumerations in 2020

State	Baseline Apportionment Pop. Projection	5.8% Undercount		10% Undercount		Survey Experiment Foreign-born + Hispanics
		Noncitizens	Noncitizens+ Hispanic	Noncitizens	Noncitizens + Hispanic	
	(1)	(2)	(3)	(4)	(5)	(6)
Alabama	4,928,974	-0.3%	-0.4%	-0.5%	-0.7%	-0.6%
Alaska	745,119	-0.5%	-0.8%	-0.8%	-1.4%	-1.4%
Arizona	7,349,498	-0.9%	-2.1%	-1.5%	-3.6%	-2.6%
Arkansas	3,056,993	-0.4%	-0.6%	-0.7%	-1%	-0.8%
California	40,549,557	-1.7%	-2.9%	-2.9%	-5%	-4.1%
Colorado	5,831,253	-0.7%	-1.5%	-1.2%	-2.7%	-2%
Connecticut	3,593,415	-0.8%	-1.5%	-1.3%	-2.6%	-2.4%
Delaware	991,133	-0.6%	-1%	-1%	-1.7%	-1.5%
Florida	22,017,594	-1%	-2%	-1.7%	-3.4%	-2.7%
Georgia	10,796,611	-0.7%	-0.9%	-1.2%	-1.6%	-1.5%
Hawaii	1,432,921	-1%	-1.6%	-1.7%	-2.8%	-3%
Idaho	1,830,654	-0.4%	-0.9%	-0.8%	-1.6%	-1.2%
Illinois	12,718,521	-0.8%	-1.4%	-1.4%	-2.4%	-2.1%
Indiana	6,770,793	-0.4%	-0.6%	-0.7%	-1.1%	-0.9%
Iowa	3,186,710	-0.4%	-0.6%	-0.7%	-1%	-0.9%
Kansas	2,931,128	-0.6%	-1%	-1%	-1.7%	-1.3%
Kentucky	4,514,011	-0.3%	-0.4%	-0.5%	-0.7%	-0.6%
Louisiana	4,694,542	-0.3%	-0.5%	-0.5%	-0.8%	-0.6%
Maine	1,351,512	-0.2%	-0.3%	-0.3%	-0.5%	-0.6%
Maryland	6,195,838	-0.9%	-1.2%	-1.6%	-2%	-2.1%
Massachusetts	6,972,768	-0.9%	-1.4%	-1.5%	-2.4%	-2.4%
Michigan	9,976,301	-0.4%	-0.6%	-0.6%	-1%	-1.1%
Minnesota	5,696,268	-0.5%	-0.6%	-0.8%	-1.1%	-1.2%
Mississippi	2,990,101	-0.2%	-0.3%	-0.3%	-0.5%	-0.4%
Missouri	6,191,875	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Montana	1,081,584	-0.1%	-0.3%	-0.2%	-0.6%	-0.5%
Nebraska	1,960,312	-0.5%	-0.9%	-0.9%	-1.5%	-1.2%
Nevada	3,178,894	-1.3%	-2.1%	-2.2%	-3.6%	-3%
New Hampshire	1,368,556	-0.3%	-0.5%	-0.5%	-0.8%	-0.9%
New Jersey	9,114,740	-1.2%	-1.9%	-2%	-3.3%	-3%
New Mexico	2,100,036	-0.8%	-3.1%	-1.3%	-5.3%	-3.3%
New York	19,907,138	-1.2%	-1.9%	-2.1%	-3.2%	-3.1%
North Carolina	10,638,762	-0.6%	-0.8%	-1%	-1.4%	-1.2%
North Dakota	754,368	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Ohio	11,729,092	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Oklahoma	3,981,432	-0.5%	-0.8%	-0.8%	-1.4%	-1.1%
Oregon	4,278,356	-0.7%	-1.1%	-1.1%	-1.9%	-1.6%
Pennsylvania	12,854,327	-0.4%	-0.7%	-0.6%	-1.3%	-1.2%
Rhode Island	1,060,979	-0.7%	-1.3%	-1.2%	-2.3%	-2%
South Carolina	5,224,199	-0.3%	-0.5%	-0.6%	-0.9%	-0.8%
South Dakota	894,019	-0.3%	-0.4%	-0.5%	-0.8%	-0.7%
Tennessee	6,930,386	-0.4%	-0.5%	-0.6%	-0.9%	-0.8%
Texas	29,654,648	-1.3%	-2.7%	-2.2%	-4.6%	-3.2%
Utah	3,277,814	-0.6%	-1.1%	-1.1%	-1.9%	-1.4%
Vermont	624,804	-0.2%	-0.3%	-0.3%	-0.5%	-0.7%
Virginia	8,651,354	-0.7%	-1%	-1.2%	-1.7%	-1.8%
Washington	7,799,983	-0.9%	-1.3%	-1.5%	-2.2%	-2.2%
West Virginia	1,781,304	-0.1%	-0.2%	-0.2%	-0.3%	-0.3%
Wisconsin	5,864,100	-0.3%	-0.6%	-0.6%	-1.1%	-0.9%
Wyoming	567,929	-0.3%	-0.8%	-0.5%	-1.3%	-1%

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.

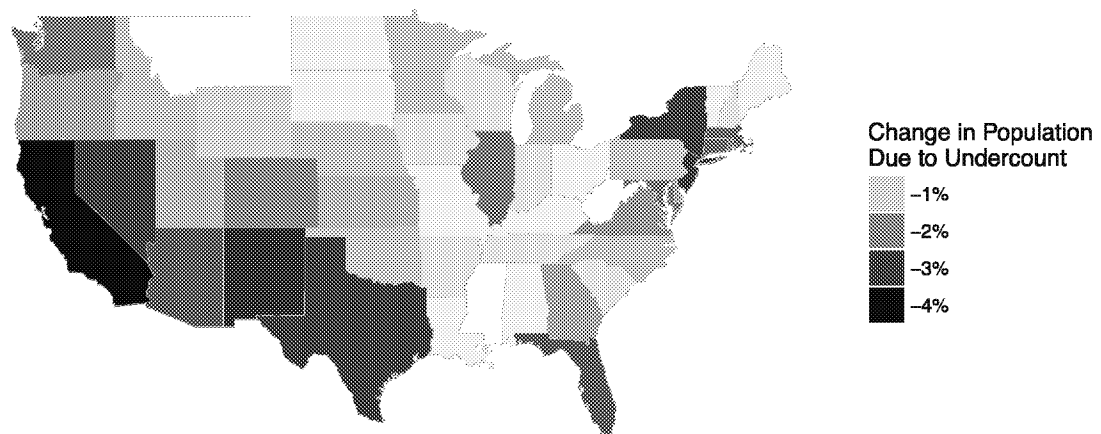


Figure 1: Effects on State Populations

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

State	Baseline Seats	5.8% Undercount		10% Undercount		Survey Experiment Foreign-born + Hispanics
		Noncitizens	Noncitizens+ Hispanic	Noncitizens	Noncitizens + Hispanic	
Alabama	6	0 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)
Alaska	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Arizona	10	0 (-1,0)	0 (-1,0)	0 (-1,0)	-1 (-1,0)	0 (-1,0)
Arkansas	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
California	53	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-2,-1)	-1 (-2,0)
Colorado	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Connecticut	5	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Delaware	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Florida	29	0 (-1,0)	0 (-1,0)	0 (-1,0)	-1 (-1,0)	-1 (-1,0)
Georgia	14	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,0)
Hawaii	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Idaho	2	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,1)	0 (0,1)
Illinois	17	0 (-1,0)	0 (0,1)	0 (-1,1)	0 (-1,0)	0 (-1,0)
Indiana	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Iowa	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Kansas	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Kentucky	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Louisiana	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,0)
Maine	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Maryland	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Massachusetts	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Michigan	13	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Minnesota	7	0 (0,1)	0 (0,1)	0 (0,1)	1 (0,1)	1 (0,1)
Mississippi	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Missouri	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Montana	1	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)
Nebraska	3	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Nevada	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Hampshire	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Jersey	12	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Mexico	3	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New York	26	0 (-1,0)	0 (0,0)	0 (-1,0)	0 (-1,0)	0 (-1,0)
North Carolina	14	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
North Dakota	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Ohio	15	0 (0,0)	0 (0,1)	0 (0,1)	1 (0,1)	0 (0,1)
Oklahoma	5	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Oregon	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Pennsylvania	17	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Rhode Island	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
South Carolina	7	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
South Dakota	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Tennessee	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Texas	39	0 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)
Utah	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Vermont	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Virginia	11	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Washington	10	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
West Virginia	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Wisconsin	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Wyoming	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)

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

County	2020 Population	2% Undercount				5.8% Undercount				Survey Experiment			
		Noncitizens		Noncitizens+ Hispanics		Noncitizens		Noncitizens+ Hispanics		Foreign-born+ Hispanics			
		Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change
Phoenix, AZ	1,698,187	9,532	-0.6%	15,939	-0.9%	27,644	-1.6%	46,223	-2.7%	53,388	-3.1%	53,388	-3.1%
Los Angeles County, CA	10,266,275	74,027	-0.7%	118,962	-1.2%	214,679	-2.1%	344,988	-3.4%	469,163	-4.6%	469,163	-4.6%
Monterey County, CA	444,016	3,841	-0.9%	5,525	-1.2%	11,139	-2.5%	16,022	-3.6%	18,215	-4.1%	18,215	-4.1%
San Francisco, CA	909,143	4,640	-0.5%	6,141	-0.7%	13,457	-1.5%	17,808	-2%	37,509	-4.1%	37,509	-4.1%
San Jose, CA	1,045,953	6,843	-0.7%	10,743	-1%	19,845	-1.9%	31,153	-3%	52,766	-5%	52,766	-5%
Washington, DC	722,881	1,997	-0.3%	2,690	-0.4%	5,792	-0.8%	7,800	-1.1%	11,859	-1.6%	11,859	-1.6%
Miami, FL	491,295	4,868	-1%	7,734	-1.6%	14,118	-2.9%	22,428	-4.6%	24,713	-5%	24,713	-5%
Chicago, IL	2,704,974	12,334	-0.5%	20,052	-0.7%	35,769	-1.3%	58,152	-2.1%	76,859	-2.8%	76,859	-2.8%
Prince Georges County, MD	931,412	4,388	-0.5%	5,054	-0.5%	12,724	-1.4%	14,658	-1.6%	21,592	-2.3%	21,592	-2.3%
New York, NY	8,645,147	55,293	-0.6%	83,728	-1%	160,350	-1.9%	242,811	-2.8%	396,647	-4.6%	396,647	-4.6%
Columbus, OH	925,408	2,375	-0.3%	2,768	-0.3%	6,886	-0.7%	8,027	-0.9%	12,889	-1.4%	12,889	-1.4%
Philadelphia, PA	1,598,072	3,944	-0.2%	7,305	-0.5%	11,438	-0.7%	21,185	-1.3%	32,116	-2%	32,116	-2%
Pittsburgh, PA	297,243	480	-0.2%	614	-0.2%	1,392	-0.5%	1,780	-0.6%	3,124	-1.1%	3,124	-1.1%
Central Falls, RI	19,250	190	-1%	313	-1.6%	550	-2.9%	908	-4.7%	920	-4.8%	920	-4.8%
Providence, RI	181,532	1,249	-0.7%	1,934	-1.1%	3,622	-2%	5,608	-3.1%	6,833	-3.8%	6,833	-3.8%
Cameron County, TX	429,603	3,535	-0.8%	7,759	-1.8%	10,253	-2.4%	22,501	-5.2%	23,272	-5.4%	23,272	-5.4%
El Paso County, TX	851,600	5,844	-0.7%	14,227	-1.7%	16,947	-2%	41,259	-4.8%	43,069	-5.1%	43,069	-5.1%
Hidalgo County, TX	892,083	8,455	-0.9%	16,540	-1.9%	24,520	-2.7%	47,965	-5.4%	49,626	-5.6%	49,626	-5.6%
Seattle, WA	780,550	2,483	-0.3%	2,987	-0.4%	7,200	-0.9%	8,661	-1.1%	17,083	-2.2%	17,083	-2.2%

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.

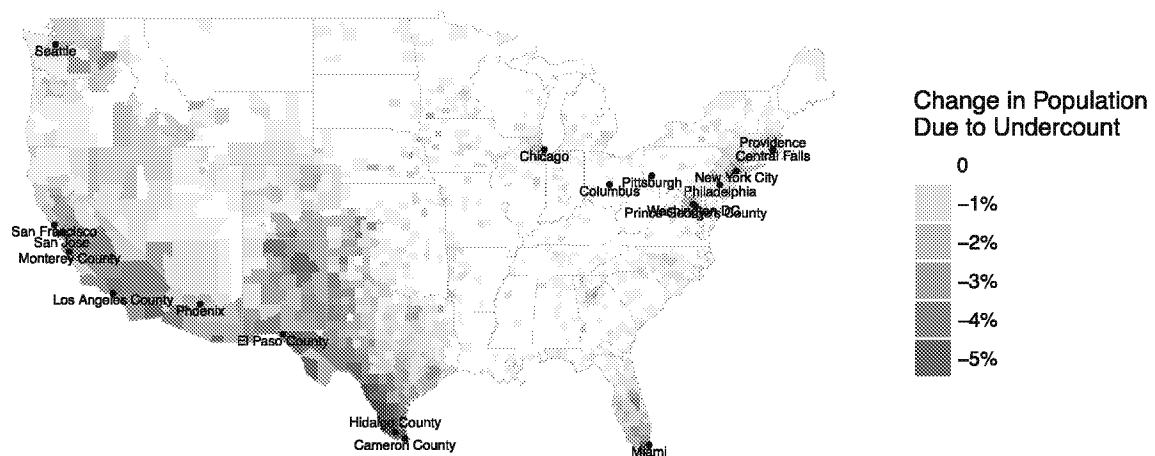


Figure 2: Effects on County Populations

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

	2% Undercount		5.8% Undercount		Survey Experiment
	Noncitizens	Noncitizens+ Hispanics	Noncitizens	Noncitizens+ Hispanics	Foreign-born+ Hispanics
Phoenix, AZ	-0.4%	-0.4%	-0.9%	-0.8%	-0.7%
Los Angeles County, CA	-0.3%	-0.3%	-0.5%	-0.6%	-0.6%
Monterey County, CA	-0.4%	-0.4%	-1%	-0.9%	-0.1%
San Francisco, CA	0%	0.2%	0.1%	0.8%	-0.2%
San Jose, CA	-0.2%	-0.1%	-0.3%	-0.2%	-1.1%
Miami, FL	-0.9%	-1.1%	-2.1%	-2.9%	-2.6%
Chicago, IL	-0.3%	-0.4%	-0.6%	-0.9%	-0.9%
Prince Georges County, MD	-0.3%	-0.3%	-0.6%	-0.5%	-0.4%
New York, NY	-0.3%	-0.4%	-0.8%	-1.1%	-1.6%
Columbus, OH	-0.3%	-0.3%	-0.6%	-0.6%	-0.8%
Philadelphia, PA	-0.2%	-0.3%	-0.5%	-0.7%	-1%
Pittsburgh, PA	-0.2%	-0.1%	-0.2%	0%	0%
Central Falls, RI	-0.9%	-1.3%	-2.3%	-3.5%	-2.9%
Providence, RI	-0.6%	-0.7%	-1.4%	-1.9%	-1.9%
Cameron County, TX	-0.6%	-1.1%	-1.3%	-2.8%	-2.5%
El Paso County, TX	-0.5%	-1%	-0.9%	-2.4%	-2.1%
Hidalgo County, TX	-0.7%	-1.2%	-1.7%	-3%	-2.7%
Seattle, WA	-0.2%	-0.1%	-0.2%	0%	-0.2%

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.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).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.

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.

¹⁵ See https://www.cdc.gov/nchs/data_access/urban_rural.htm

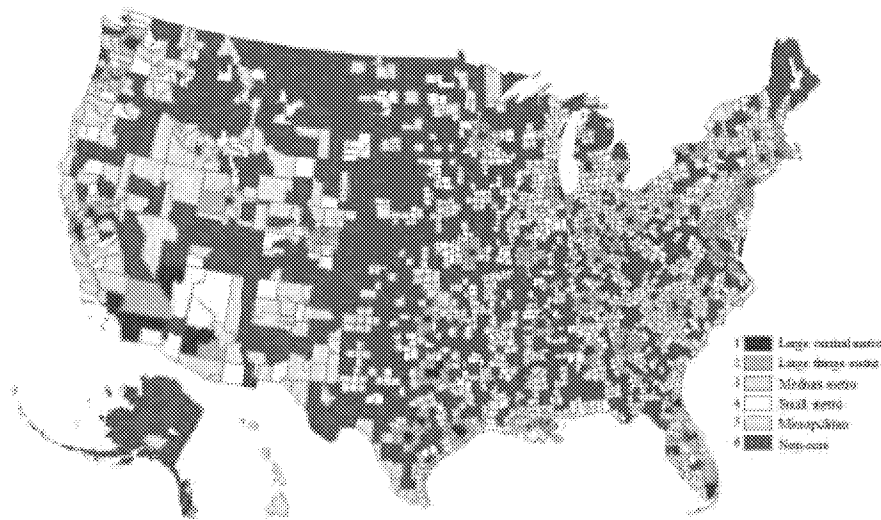


Figure 3: 2013 Urban-Rural Classification Scheme for Counties

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

County	2020 Population Projection	Percentage Change Due to Undercount	Percentage Change in Relative Population
Large central metro	103,025,259	-2.9%	-1.1%
Large fringe metro	83,761,694	-1.8%	.1%
Median metro	69,737,033	-1.5%	.3%
Small metro	30,116,705	-1%	.9%
Micropolitan	27,375,961.605	-.8%	1.1%
Noncore	18,760,860	-.5%	1.4%

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

A handwritten signature in cursive script, appearing to read "Chris Warshaw", is written over a horizontal dotted line.

Christopher Warshaw

Appendix

Table A1: Effect of 2% Undercount on State Population Enumerations in 2020

State	Baseline Apportionment Pop. Projection	Noncitizens	Noncitizens+ Hispanic
Alabama	4,928,974	-0.1%	-0.1%
Alaska	745,119	-0.2%	-0.3%
Arizona	7,349,498	-0.3%	-0.7%
Arkansas	3,056,993	-0.1%	-0.2%
California	40,549,557	-0.6%	-1%
Colorado	5,831,253	-0.2%	-0.5%
Connecticut	3,593,415	-0.3%	-0.5%
Delaware	991,133	-0.2%	-0.3%
Florida	22,017,594	-0.3%	-0.7%
Georgia	10,796,611	-0.2%	-0.3%
Hawaii	1,432,921	-0.3%	-0.6%
Idaho	1,830,654	-0.2%	-0.3%
Illinois	12,718,521	-0.3%	-0.5%
Indiana	6,770,793	-0.1%	-0.2%
Iowa	3,186,710	-0.1%	-0.2%
Kansas	2,931,128	-0.2%	-0.3%
Kentucky	4,514,011	-0.1%	-0.1%
Louisiana	4,694,542	-0.1%	-0.2%
Maine	1,351,512	-0.1%	-0.1%
Maryland	6,195,838	-0.3%	-0.4%
Massachusetts	6,972,768	-0.3%	-0.5%
Michigan	9,976,301	-0.1%	-0.2%
Minnesota	5,696,268	-0.2%	-0.2%
Mississippi	2,990,101	-0.1%	-0.1%
Missouri	6,191,875	-0.1%	-0.1%
Montana	1,081,584	0%	-0.1%
Nebraska	1,960,312	-0.2%	-0.3%
Nevada	3,178,894	-0.4%	-0.7%
New Hampshire	1,368,556	-0.1%	-0.2%
New Jersey	9,114,740	-0.4%	-0.7%
New Mexico	2,100,036	-0.3%	-1.1%
New York	19,907,138	-0.4%	-0.6%
North Carolina	10,638,762	-0.2%	-0.3%
North Dakota	754,368	-0.1%	-0.1%
Ohio	11,729,092	-0.1%	-0.1%
Oklahoma	3,981,432	-0.2%	-0.3%
Oregon	4,278,356	-0.2%	-0.4%
Pennsylvania	12,854,327	-0.1%	-0.3%
Rhode Island	1,060,979	-0.2%	-0.5%
South Carolina	5,224,199	-0.1%	-0.2%
South Dakota	894,019	-0.1%	-0.2%
Tennessee	6,930,386	-0.1%	-0.2%
Texas	29,654,648	-0.4%	-0.9%
Utah	3,277,814	-0.2%	-0.4%
Vermont	624,804	-0.1%	-0.1%
Virginia	8,651,354	-0.2%	-0.3%
Washington	7,799,983	-0.3%	-0.4%
West Virginia	1,781,304	0%	-0.1%
Wisconsin	5,864,100	-0.1%	-0.2%
Wyoming	567,929	-0.1%	-0.3%

Christopher S. Warshaw

Department of Political Science
2115G Street, N.W.
Monroe Hall 440
Washington, D.C. 20052

Office: 202-994-6290
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)
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)

20. "Accountability for the Local Economy at All Levels of Government in United States Elections." Forthcoming. 2020 American Political Science Review. 114(3): 660-676 (with Justin de Benedictis-Kessner)
19. "Politics in Forgotten Governments: The Partisan Composition of County Legislatures and County Fiscal Policies." 2020 Journal of Politics. 82(2): 460-475 (with Justin de Benedictis-Kessner)
18. "On the Representativeness of Primary Electorates." 2020 British Journal of Political Science 50(2): 677-685 (with John Sides, Chris Tausanovitch, and Lynn Vavreck)
17. "Geography, Uncertainty, and Polarization." 2019 Political Science Research and Methods 7(4): 775-794 (with Nolan McCarty, Jonathan Rodden, Boris Shor, and Chris Tausanovitch)
16. "Policy Ideology in European Mass Publics, 1981-2016" 2019 American Political Science Review 113(3): 674-693 (with Devin Caughey and Tom O'Grady).
15. "Does Global Warming Increase Public Concern About Climate Change?" 2019 Journal of Politics. 81(2): 686-691. (with Parrish Bergquist)
14. "Local Elections and Representation in the United States." 2019 Annual Review of Political Science 22(1): 461-479.
13. "The Ideological Nationalization of Party Constituencies in the American States". 2018 Public Choice Keith Poole Symposium. 176(1-2): 133-151. (with James Dunham and Devin Caughey)
12. "Policy Preferences and Policy Change: Dynamic Responsiveness in the American States, 1936-2014" 2018 American Political Science Review 112(2): 249-266 (with Devin Caughey)
11. "Does the Ideological Proximity Between Candidates and Voters Affect Voting in U.S. House Elections?" 2018 Political Behavior 40(1): 223-245 (with Chris Tausanovitch)
10. "Partisan Gerrymandering and the Political Process: Effects on Roll-Call Voting and State Policies." Election Law Journal. December, 2017. 16(4): 453-469. Symposium on Partisan Gerrymandering and the Efficiency Gap. (with Devin Caughey and Chris Tausanovitch)
9. "Incremental Democracy: The Policy Effects of Partisan Control of State Government." 2017. Journal of Politics 79(4): 1342-1358 (with Devin Caughey and Yiqing Xu)
8. "Renewable energy policy design and framing influences public support in the United States." 2017. Nature Energy. 2(17107). (with Leah Stokes)
7. "Estimating Candidates' Political Orientation in a Polarized Congress." 2017. Political Analysis 25(2): 167-187. (with Chris Tausanovitch)
6. "The Dynamics of State Policy Liberalism, 1936-2014" 2016 American Journal of Political Science 60(4): 899-913 (with Devin Caughey)
5. "Mayoral Partisanship and Municipal Fiscal Policy." 2016 Journal of Politics. 78(4): 1124-1138 (with Justin de Benedictis-Kessner)
4. "Dynamic Estimation of Latent Opinion Using a Hierarchical Group-Level IRT Model." 2015 Political Analysis 23(2): 197-211. (with Devin Caughey)
3. "Representation in Municipal Government." 2014 American Political Science Review 108(3): 605-641. (with Chris Tausanovitch)
2. "Measuring Constituent Policy Preferences in Congress, State Legislatures and Cities." 2013 Journal of Politics 75(2): 330-342 (with Chris Tausanovitch)

1. "How Should We Measure District-Level Public Opinion on Individual Issues?" 2012 *Journal of Politics* 74(1): 203-219 (with Jonathan Rodden)

Editor Reviewed Articles in Journals and Law Reviews

3. "Public Opinion in Subnational Politics." 2019 *Journal of Politics* 81(1): 352-363 Editor reviewed for Symposium on Subnational Policymaking. (with Devin Caughey)
2. "Spatial variation in messaging effects." 2018 *Nature Climate Change News & Views*. April, 2018
1. "Business as Usual? Analyzing the Doctrinal Development of Environmental Standing Doctrine since 1976" 2011 *Harvard Law and Policy Review* Volume 5.2. (with Gregory Wannier).

Book Chapters

5. "Elections and Parties in Environmental Politics." 2020 *Handbook on U.S. Environmental Policy*. David Konisky, ed. (with Parrish Bergquist)
4. "Latent Constructs in Public Opinion." 2018 *Oxford Handbook on Polling and Polling Methods*. R. Michael Alvarez and Lonna Atkeson, ed. Oxford: Oxford University Press.
3. "The Application of Big Data in Surveys to the Study of Elections, Public Opinion, and Representation." 2016 *Data Analytics in Social Science, Government, and Industry*. R. Michael Alvarez, ed. Cambridge: Cambridge University Press.
2. "The Political Economy of Expropriation and Privatization in the Oil Sector." 2012 *Oil and Governance: State-Owned Enterprises and the World Energy Supply*. David G. Victor, David Hults, and Mark Thurber, eds. Cambridge: Cambridge University Press.
1. "Democratization and Counter-majoritarian Institutions: The Role of Power and Constitutional Design in Self-Enforcing Democracy." 2012 *Comparative Constitutional Design*. Cambridge: Cambridge University Press. (with Susan Albers and Barry R. Weingast).

Policy Reports

1. Reforming Baltimore's Mayoral Elections. 2020 Abell Foundation Report.
<https://www.abell.org/publications/reforming-baltimores-mayoral-elections>

Unpublished Work

Book Project

"Dynamic Democracy: Citizens, Politicians, and Policymaking in the American States." 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)

Christopher S. Warshaw

4

"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

"How Local Covid Deaths Are Affecting Vote Choice." New York Times July 28, 2020 (with Lynn Vavreck)

"A coronavirus recession would hurt all kinds of Republican candidates – not just Trump." Washington Post Monkey Cage. March 18, 2020 (with Justin de Benedictis-Kessner).

"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

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

Christopher S. Warshaw

5

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

dgo: Dynamic Estimation of Group-Level Opinion. 2017. R package. <https://CRAN.R-project.org/package=dgo> (with James Dunham and Devin Caughey)

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

Christopher S. Warshaw

6

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

Christopher S. Warshaw

7

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, Urban Affairs Review, Journal of Health Politics, Policy and Law, Perspectives on Politics, Cambridge 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

Organizing Committee, Conference on Ideal Point Models at MIT, <http://idealpoint.tahk.us>, 2015

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

Expert, League of Women Voters of Pennsylvania v. the Commonwealth of Pennsylvania, Partisan Gerrymandering Case (2017-18)

Expert, League of Women Voters of Michigan v. Johnson, Partisan Gerrymandering Case (2018-2019)

Christopher S. Warshaw

8

Expert, New York Immigration Coalition v. US Dept of Commerce & State of NY v. US Dept of Commerce
Effects of Undercount on Census due to Citizenship Question (2018)

Expert, APRI et al. v. v. Smith et al., Partisan Gerrymandering Case (2018 & 2019)

Community Service

Sierra Club: National Board of Directors (2009 & 2015)

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

2. Millions of undocumented immigrants live in the United States and many have lived in the United States for many years. *See* Office of Immigration Statistics, U.S. Dep't of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 2 (Dec. 2018), https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf.

3. California and Texas are consistently the two states with the largest populations of undocumented residents. *Id.* at 4-5.

4. According to the Department of Homeland Security, California had 2.9 million undocumented residents and Texas had 1.9 million undocumented residents in 2015. *Id.* at 2.

5. As of the most recent Congressional reapportionment following the 2010 Decennial Census, the average population of each U.S. House district is 710,767 people. *See* Kristin D. Burnett, *Congressional Apportionment*, U.S. Census Bureau (Nov. 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-08.pdf> (last visited July 30, 2020).

6. According to the United States Census Bureau, as of July 1, 2019, the population of the United States was estimated to be 328,239,523. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited July 30, 2020).

¹ Citations to “Ex. ___” are to the exhibits to the accompanying Declaration of Matthew Colangelo dated August 7, 2020.

7. If the July 1, 2019 Census Bureau estimate of the total United States population is divided by the total number of seats in Congress (435), the quotient is 754,574. *See id.*

8. The Memorandum states that “[i]ncreasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law.” *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679, 44,680 (July 23, 2020) (the “Memorandum”) (ECF No. 1-1).

9. The Memorandum states: “Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State’s entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.” *Id.*

10. A state in which 2.2 million people represent 6 percent of the population would have a total population of more than 36 million residents.

11. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of California was 37,253,956. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited July 30, 2020).

12. According to the Census Bureau, as of July 1, 2019, the total population of the State of California was 39,512,223. *Id.*

13. The second most populous state in the United States is Texas. *Id.*

14. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of Texas was 25,145,561. *Id.*

15. According to the United States Census Bureau, as of July 1, 2019, the total population of the State of Texas was 28,995,881. *Id.*

16. After California and Texas, the next most populous state is Florida, which, according to the Census Bureau, had a total population of 18,801,310 as of April 1, 2010, and an estimated total population of 21,477,737 as of July 1, 2019. *Id.*

17. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute approximately 7.6 percent of the estimated total population of Texas as of July 1, 2019. *See id.*

18. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute over 10 percent of the estimated total population of Florida as of 2019. *See id.*

19. The Memorandum anticipates that excluding undocumented immigrants from the apportionment base would deprive California of at least one seat in the House of Representatives. *See* 85 Fed. Reg. at 44,680.

20. Dr. Christopher Warshaw modeled the effects of excluding undocumented immigrants from the population count used to calculate Congressional reapportionment after the 2020 Census. *See* Warshaw Decl. at ¶ 11 (Ex. 58).

21. According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that Texas will lose a seat in the House of Representatives is 98.3%. *Id.* § 5.2, Tbl. 7.

22. According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that California will lose a seat in the House of Representatives is 72.1%. *Id.*

**THE POLITICAL INFLUENCE OF PLAINTIFFS CONSTITUENTS WILL BE
DIMINISHED BY THE MEMORANDUM'S EXCLUSION OF UNDOCUMENTED
IMMIGRANTS FROM THE APPORTIONMENT BASE**

23. Plaintiff the City and County of San Francisco, represented by and through its City Attorney, is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county. Gov't Pls.' Am. Compl. ¶ 42 (ECF No. 34).

24. Residents of the City and County of San Francisco will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

25. Plaintiff Monterey County, California is a political subdivision of the State of California. *See* Gov't Pls.' Am. Compl. ¶ 48 (ECF No. 34).

26. Residents of the Monterey County will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

27. Plaintiff Cameron County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 44 (ECF No. 34).

28. Residents of Cameron County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

29. Plaintiff El Paso County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 45 (ECF No. 34).

30. Residents of El Paso County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

31. Plaintiff Hidalgo County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 46 (ECF No. 34).

32. Residents of Hidalgo County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

33. Plaintiff American-Arab Anti-Discrimination Committee ("ADC") is a membership-based not-for-profit organization. Khalaf Decl. ¶ 4 (Ex. 26).

34. ADC has several thousand dues-paying members nationwide, with members in all 50 states including California and Texas. *See New York*, 351 F. Supp. 3d at 608; Khalaf Decl. ¶ 5 (Ex. 26).

35. Dr. Souhail Toubia is a member of ADC and a resident of Orange County, California. Khalaf Decl. ¶ 17 (Ex. 26).

36. George Majeed Khoury is a member of ADC and a resident of San Diego, California. *Id.*

37. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

38. George Majeed Khoury is a member of ADC and a resident of San Diego, California. Khalaf Decl. ¶ 17 (Ex. 26).

39. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

40. Plaintiff FIEL Houston Inc. ("FIEL") is a membership-based not-for-profit organization based in Houston, Texas. Espinosa Decl. ¶ 2 (Ex. 18).

41. Today, FIEL has approximately 11,000 members in the greater Houston area. *Id.* ¶ 3.

42. Deyanira Palacios is a member of FIEL and a resident of Montgomery County, Texas. *Id.* ¶ 19.

43. Because Ms. Palacios resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

44. Karen Ramos is a member of FIEL and a resident of Harris County, Texas. Espinosa Decl. ¶ 20 (Ex. 18).

45. Because Ms. Ramos resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

46. Plaintiff Ahri for Justice ("Ahri") is a membership-based not-for-profit organization based in Los Angeles, California. Seon Decl. ¶ 2 (Ex. 43).

47. Ahri has roughly 220 individual members, with most residing in Southern California, and particularly in Orange and Los Angeles Counties. Some but not all of these members are U.S. citizens. *Id.* ¶ 4.

48. Julie Kim is a member of Ahri and a resident of Orange County, California. *Id.* ¶ 20.

49. Because Ms. Kim resides in California, she will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *Id.*

50. Simon Lee is a member of Ahri and a resident of Los Angeles County, California. *Id.* ¶ 21.

51. Because Mr. Lee resides in California, he will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58); Seon Decl. ¶ 21 (Ex. 43).

DATED: August 7, 2020

Respectfully submitted,

/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
acepedaderieux@aclu.org
jtopaz@aclu.org
slakin@aclu.org

/s/ John A. Freedman

John A. Freedman
R. Stanton Jones**
Daniel F. Jacobson**
Chase Raines**
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 942-5000
John.Freedman@arnoldporter.com
Stanton.Jones@arnoldporter.com
Daniel.Jacobson@arnoldporter.com
Chase.Raines@arnoldporter.com

/s/ Perry Grossman

/s/ Sarah Brannon* ***

Ceridwen Cherry*
American Civil Liberties Union
Foundation
915 15th Street, NW

Washington, DC 20005-2313
(202) 675-2337
sbrannon@aclu.org
ccherry@aclu.org

Julia A. Gomez
Peter Eliasberg*
ACLU Foundation of Southern California
1313 West 8th Street
Los Angeles, CA 90017
(213) 977-9500
jgomez@aclusocal.org
peliasberg@aclusocal.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

Perry Grossman
pgrossman@nyclu.org
New York Civil Liberties Union
Foundation
125 Broad Street
New York, NY 10004
Phone: (212) 607-3329

Andre Segura**
Edgar Saldivar**
Thomas Buser-Clancy**
ACLU Foundation of Texas, Inc.
P.O. Box 8306
Houston, TX 77288
Telephone: (713) 942-9146
Fax: (713) 942-8966
asegura@aclutx.org
esaldivar@aclutx.org
tbuser-clancy@aclutx.org

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
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6057

Steven C. Wu
Deputy Solicitor General
Judith N. Vale
Senior Assistant Solicitor General
Eric R. Haren, *Special Counsel*
Of Counsel

elena.goldstein@ag.ny.gov

Attorneys for the Plaintiffs in 20-CV-5770

**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**

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
BACKGROUND	2
I. Constitutional and statutory framework.....	2
II. The Presidential Memorandum.....	4
III. Events precipitating the Presidential Memorandum.....	5
ARGUMENT.....	7
I. Standard of review.....	7
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.....	8
III. Defendants’ decision to exclude undocumented immigrants from the apportionment base violates Article I and the Fourteenth Amendment.....	10
A. The Constitution explicitly requires the population base for apportionment to include the whole number of persons in each State.....	10
B. Apportioning Representatives based on numbers other than the actual enumeration from the decennial census is also unconstitutional.....	24
IV. The Memorandum is <i>ultra vires</i> under the statutory scheme Congress enacted to implement the required decennial census and reapportionment of House seats.....	27
A. The Memorandum violates the statutory requirements to count the total population, and to report and use that total for apportionment purposes.....	27
B. The Memorandum violates the Census Act by producing apportionment figures that are not based solely on the decennial census.....	33
C. The Memorandum violates 2 U.S.C. § 2a by producing apportionment figures that are not based solely on a ministerial calculation.....	36
D. This Court has equitable authority to correct the Presidential Memorandum’s <i>ultra vires</i> mandates.....	38

V. Alternatively, a preliminary injunction is warranted to prevent irreparable harm. 40

A. The Presidential Memorandum will deter immigrants and their households
from responding to the 2020 census. 42

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..... 47

C. Plaintiffs will be irreparably harmed by Defendants’ efforts to reallocate
political power away from their jurisdictions. 49

D. The balance of equities and public interest favor a preliminary injunction..... 50

CONCLUSION..... 52

TABLE OF AUTHORITIES

	Page(s)
Constitutional Provisions	
U.S. Const. amend. XIV	24
U.S. Const. amend. XIV, § 2	<i>passim</i>
U.S. Const. art I, § 2.....	<i>passim</i>
U.S. Const. art. II, § 1	3
Cases	
<i>ACLU v. Ashcroft</i> , 322 F.3d 240 (3d Cir. 2003).....	51
<i>Am. Sch. of Magnetic Healing v. McAnnulty</i> , 187 U.S. 94 (1902).....	38
<i>Armstrong v. Exceptional Child Center</i> , 575 U.S. 320 (2015).....	38, 40
<i>Bowen v. Mich. Acad. of Family Physicians</i> , 476 U.S. 667 (1986).....	38
<i>Carey v. Klutznick</i> , 637 F.2d 834 (2d Cir. 1980).....	49
<i>Carroll v. Safford</i> , 44 U.S. 441 (1845).....	38
<i>Chamber of Commerce v. Reich</i> , 74 F.3d 1322 (D.C. Cir. 1996).....	39
<i>Dalton v. Specter</i> , 511 U.S. 462 (1994).....	40
<i>Dart v. United States</i> , 848 F.2d 217 (D.C. Cir. 1988).....	39
<i>Dep't of Commerce v. Montana</i> , 503 U.S. 442, 1992 WL 672929 (1992).....	29, 30, 36, 37
<i>Dep't of Commerce v. New York</i> , 139 S. Ct. 2551 (2019).....	5, 18, 34, 40

<i>Dep't of Commerce v. U.S. House of Representatives</i> , 525 U.S. 316 (1999).....	<i>passim</i>
<i>Evenwel v. Abbott</i> , 136 S. Ct. 1120 (2016).....	<i>passim</i>
<i>Faiveley Transport. Malmö AB v. Wabtec Corp.</i> , 559 F.3d 110 (2d Cir. 2009).....	41
<i>Fed'n for Am. Immigration Reform (FAIR) v. Klutznick</i> , 486 F. Supp. 564 (D.D.C. 1980).....	12, 13, 19, 20
<i>Franklin v. Massachusetts</i> , 505 U.S. 788 (1992).....	<i>passim</i>
<i>Garza v. County of Los Angeles</i> , 918 F.2d 763 (9th Cir. 1990)	14
<i>Greene v. United States</i> , 79 F.3d 1348 (2d Cir. 1996).....	30
<i>Haim v. Islamic Republic of Iran</i> , 784 F. Supp. 2d 1 (D.D.C. 2011)	41
<i>Hake v. Citibank, N.A.</i> , No. 19-MC-125 (JGK), 2020 WL 1467132 (S.D.N.Y. Mar. 26, 2020)	41
<i>Hawaii v. Trump</i> , 878 F.3d 662 (9th Cir. 2017), <i>rev'd on other grounds</i> , 138 S. Ct. 2392 (2018).....	39
<i>Lamar, Archer & Cofrin, LLP v. Appling</i> , 138 S. Ct. 1752 (2018).....	30
<i>League of Women Voters of Fla. v. Browning</i> , 863 F. Supp. 2d 1155 (N.D. Fla. 2012).....	46
<i>Leedom v. Kyne</i> , 358 U.S. 184 (1958).....	38
<i>Lorillard v. Pons</i> , 434 U.S. 575 (1978).....	31
<i>Make the Road N.Y. v. Cuccinelli</i> , 419 F. Supp. 3d 647 (S.D.N.Y. 2019).....	50
<i>Mittleman v. Postal Regulatory Comm'n</i> , 757 F.3d 300 (D.C. Cir. 2014).....	39

<i>Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela</i> , 863 F.3d 96 (2d Cir. 2017).....	30
<i>Mountain States Legal Found. v. Bush</i> , 306 F. 3d. 1122 (D.C. Cir. 2002).....	38, 39
<i>Mullins v. City of New York</i> , 626 F.3d 47 (2d Cir. 2010).....	41
<i>New York Progress & Prot. PAC v. Walsh</i> , 733 F.3d 483 (2d Cir. 2013).....	51
<i>New York v. U.S. Dep’t of Commerce</i> , 351 F. Supp. 3d 502 (S.D.N.Y. 2019), <i>aff’d</i> 139 S. Ct. 2551 (2019)	<i>passim</i>
<i>New York v. U.S. Dep’t of Homeland Sec.</i> , --- F.3d --- , 2020 WL 4457951 (2d Cir. Aug. 4, 2020)	30
<i>Plyler v. Doe</i> , 457 U.S. 202 (1982).....	12
<i>Ramos v. Nielsen</i> , 336 F. Supp. 3d 1075 (N.D. Cal. 2018)	7
<i>Saget v. Trump</i> , 345 F. Supp. 3d 287 (E.D.N.Y. 2018)	7
<i>Sale v. Haitian Ctrs. Council</i> , 509 U.S. 155 (1993).....	39
<i>U.S. House of Representatives v. U.S. Dep’t of Commerce</i> , 11 F. Supp. 2d 76 (D.D.C. 1998)	50
<i>Utah v. Evans</i> , 536 U.S. 452 (2002).....	24, 25, 27
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964).....	14, 15, 17
<i>Whitmore v. Arkansas</i> , 495 U.S. 149 (1990).....	49
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	8, 50
<i>Wisconsin v. City of New York</i> , 517 U.S. 1 (1996).....	18, 24

<i>XL Specialty Ins. Co. v. Level Glob. Inv'rs, L.P.</i> , 874 F. Supp. 2d 263 (S.D.N.Y. 2012).....	41
--	----

Statutes

2 U.S.C. § 2(a)	5
2 U.S.C. § 2a	<i>passim</i>
2 U.S.C. § 2a(a).....	<i>passim</i>
2 U.S.C. § 2a(b)	3
2 U.S.C. § 141	30
3 U.S.C. § 3	3
13 U.S.C. § 2	3
13 U.S.C. § 4	3
13 U.S.C. § 141	3, 28, 36
13 U.S.C. § 141(a)	2, 3, 27, 28
13 U.S.C. § 141(b)	<i>passim</i>
Act of June 18, 1929, § 2	28
Act of June 18, 1929, § 22	28, 31
Indian Citizenship Act of 1924, Pub. L. No. 68 -175, 43 Stat. 253	13
Pub. L. No. 71-962, § 6(b)	30
Pub. L. No. 76-481	19
Pub. L. No. 77-291, § 1	29

Rules & Regulations

83 Fed. Reg. at 5533	23, 25
Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).....	7
Exec. Order No. 13,880, 84 Fed. Reg. 33,821 (July 11, 2019).....	51
Fed. R. Civ. P. 56(a)	8

<i>Final 2020 Census Residence Criteria and Residence Situations</i> , 83 Fed. Reg. 5525 (Feb. 8, 2018).....	21, 32
<i>Final 2020 Census Residence Criteria and Residence Situations</i> , 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018).....	32
Letter from Assistant Attorney Gen. Carol T. Crawford to Honorable Jeff Bingaman (Sept. 22, 1989), 135 Cong. Rec. S22,521 (daily ed. Sept. 29, 1989).....	20
<i>Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census</i> , 85 Fed. Reg. 44,679, 44,680 (July 23, 2020).....	<i>passim</i>
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
<i>1980 Census: Counting Illegal Aliens: Hearing Before the S. Subcomm. on Energy, Nuclear Proliferation, & Fed. Services of the Comm. on Gov'tal Affairs (1980 Census)</i> , 96th Cong. 10 (1980).....	20
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
<i>Hearing Before the H. Comm. on Oversight & Reform</i> , 116th Cong. 31 (Mar. 14, 2019).....	21

<i>Hearing Before the H. Comm. on Oversight & Reform</i> , 116th Cong. 12 (Feb. 12, 2020)	21
S. Rep. No. 2, 71st Cong., 1st Sess.	36
<i>Statement from the President Regarding Apportionment</i> (July 21, 2020), https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/	6
Other Authorities	
1 The Records of the Federal Convention of 1787 (Max Farrand ed., 1911)	14
Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/inhabitant	22
The Federalist No. 36.	25
The Federalist No. 54.	14
The Founders' Constitution 102-03 (P. Kurland & R. Lerner eds. 1987)	25
<i>Full Transcript: Trump's 2020 State of the Union Address</i> , N.Y. Times (Feb. 5, 2020)	7
Joseph T. Sneed III, <i>Footprints on the Rocks of the Mountain: An Account of the Enactment of the Fourteenth Amendment</i> 28 (1997)	15, 41
Julie Hirschfeld Davis, <i>Trump Calls Some Unauthorized Immigrants 'Animals' in Rant</i> , N.Y. Times (May 16, 2018)	7
Nick Miroff, <i>Trump suspends Global Entry, traveler programs for New York residents over 'sanctuary' policies</i> , Wash. Post (last updated Feb 6, 2020)	7
<i>Remarks by President Trump at Signing of H.R. 3401</i> (July 1, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-3401/	6
<i>Remarks by President Trump Before Marine One Departure</i> (July 5, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/	6
<i>Remarks by President Trump on Citizenship and the Census</i> (July 11, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/	6, 51

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>.....46

U.S. Census Bureau, *2020 Census: Nonresponse Followup*, (June 19, 2020), <https://www.census.gov/newsroom/press-kits/2020/nonresponse-followup.html>.....45

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.*

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

⁴ *N.Y. Immig. Coal. Pls.’ Mot for Sanctions*, 18-CV-2921 (JMF), ECF No. 635-1 at 124–31 (July 16, 2019); *Defs.’ Opp. to Ltr. Mot. to Compel*, 18-CV-2921 (JMF), ECF No. 451 at 3 (Oct. 30, 2018); *Pls.’ Jt. Proposed Post-Trial Findings of Fact*, 18-CV-2921 (JMF), ECF No. 545 at 52–53 (Nov. 21, 2018) (citing exhibits).

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/>.

⁶ *Remarks by President Trump Before Marine One Departure* (July 5, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/>.

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.”¹⁰

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).

federal grants. *See* Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017). In his 2020 State of the Union address, Defendant Trump denounced “the sanctuary city of New York,” and the next day, the Acting Secretary of Homeland Security announced that New York State residents would be prohibited from enrolling or re-enrolling in Trusted Traveler programs in retaliation for New York’s sanctuary laws. Transcript, *Trump’s 2020 State of the Union Address*, N.Y. Times (Feb. 5, 2020), <https://www.nytimes.com/2020/02/05/us/politics/state-of-union-transcript.html>; Nick Miroff, *Trump suspends Global Entry, traveler programs for New York residents over ‘sanctuary’ policies*, Wash. Post (Feb. 5, 2020), https://www.washingtonpost.com/immigration/trump-suspends-global-entry-traveler-programs-for-new-york-residents-over-sanctuary-policies/2020/02/05/e2755790-4890-11ea-9475-535736e48788_story.html.

¹⁰ Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant*, N.Y. Times (May 16, 2018), <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>.

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, Plaintiffs’ 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 Plaintiffs 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 Plaintiffs 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

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, “*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).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.

Cong. Globe, 39th Cong., 1st Sess. 2767, at 359 (1866).

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.

Cong. Globe, 39th Cong., 1st Sess. 2766–67 (1866).

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 plaintiffs 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

aggregate number of inhabitants, which includes aliens, legal and illegal.” *1980 Census: Counting Illegal Aliens: Hearing Before the S. Subcomm. on Energy, Nuclear Proliferation, & Fed. Services of the Comm. on Gov’tal Affairs (1980 Census)*, 96th Cong. 10 (1980).

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)).¹⁴

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.

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).¹⁵ 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>.

nothing in the [Presidential Memorandum] alters that counting process.” Joint Letter 9, *New York v. Trump*, 20-CV-5770 (JMF), ECF No. 37 (S.D.N.Y. filed Aug. 3, 2020).¹⁶

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.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 797.²¹

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”).

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. McAnnulty*, 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. Malmö 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); 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

²³ U.S. Census Bureau, *2020 Census: Nonresponse Followup*, <https://www.census.gov/newsroom/press-kits/2020/nonresponse-followup.html> (June 19, 2020).

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 (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 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

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,

LETITIA JAMES
Attorney General of the State of New York

Steven C. Wu
Deputy Solicitor General
Judith N. Vale
Senior Assistant Solicitor General
Eric R. Haren, *Special Counsel*
Of Counsel

By: /s/ Matthew Colangelo
Matthew Colangelo
Chief Counsel for Federal Initiatives
Morenike Fajana, *Special Counsel*
Elena Goldstein
Deputy Chief, Civil Rights Bureau
Fiona J. Kaye, *Assistant Attorney General*
Office of the New York State Attorney
General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6057
Matthew.Colangelo@ag.ny.gov

Attorneys for the Plaintiffs in 20-CV-5770

/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
acepedaderieux@aclu.org
jtopaz@aclu.org
slakin@aclu.org

/s/ Sarah Brannon* ***

Ceridwen Cherry*
American Civil Liberties Union
Foundation
915 15th Street, NW
Washington, DC 20005-2313
(202) 675-2337
sbrannon@aclu.org
ccherry@aclu.org

Julia A. Gomez
Peter Eliasberg**
ACLU Foundation of Southern California
1313 West 8th Street
Los Angeles, CA 90017
(213) 977-9500
jgomez@aclusocal.org
peliasberg@aclusocal.org

/s/ John A. Freedman

John A. Freedman
R. Stanton Jones**
Daniel F. Jacobson**
Chase Raines**
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 942-5000
John.Freedman@arnoldporter.com
Stanton.Jones@arnoldporter.com
Daniel.Jacobson@arnoldporter.com
Chase.Raines@arnoldporter.com

/s/ Perry Grossman

Perry Grossman
pgrossman@nyclu.org
New York Civil Liberties Union
Foundation
125 Broad Street
New York, NY 10004
Phone: (212) 607-3329
Andre Segura**
Edgar Saldivar**
Thomas Buser-Clancy**
ACLU Foundation of Texas, Inc.
P.O. Box 8306
Houston, TX 77288
Telephone: (713) 942-9146
Fax: (713) 942-8966
asegura@aclutx.org
esaldivar@aclutx.org
tbuser-clancy@aclutx.org

Attorneys for the Plaintiffs in 20-CV-5781

* 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).

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.

3. Throughout my career, I have taught courses on Immigration Policy, Racial and Ethnic Politics, Electoral Politics, Public Opinion, Voting Rights, Chicano/Latino History, Introduction to Statistical Analysis, and Advanced Statistical Analysis to Ph.D. students.

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 Telemundo¹ 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

¹ Telemundo. “Trump Ordena Al Censo Que No Incluya a Los Indocumentados En El Recuento Que Determina El Reparto De Escaños Del Congreso,” July 21, 2020. <https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-tmna3823616>.

² https://latinodecisions.com/wp-content/uploads/2019/06/NALEO_AV_Undoc_Results.pdf

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 immigrant³ 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 uncouned.

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

⁴ 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/>

⁵ 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/>

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

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

⁸ <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)⁹. 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.¹⁰ Major Spanish-language media and

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)

¹⁰ Alex Daughery, *Florida Could Lose Power in Washington if Trump's New Immigration Order is Enacted*, MIAMI HERALD (July 21, 2020), <https://www.miamiherald.com/news/politics-government/article244382462.html>; Alexandra Alper and Nick Brown, *Trump Issues Memo To Stop Counting Undocumented Migrants In Next Round Of Redistricting*, HUFFINGTON POST (July 21, 2020), https://www.huffpost.com/entry/trump-executive-order-immigrants-redistricting_n_5f1709e0c5b615860bb7f415; Chris Megerian, *Trump Tries New Move to Restrict Census, Could Cut California's Seats in Congress*, L.A. TIMES (July 21, 2020), <https://www.latimes.com/politics/story/2020-07-21/trump-new-tack-restrict-immigrants-census>; David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA

Barreto Declaration – Census 2020 Presidential Memorandum

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

TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002/>; Jill Colvin and Kevin Freking, *Trump to Exclude Those in US Illegally From Congressional Reapportionment Count*, CHICAGO SUN-TIMES (July 21, 2020), <https://chicago.suntimes.com/2020/7/21/21333076/trump-to-illegally-from-congressional-reapportionment-count>; Katie Rogers and Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Kevin Freking and Mike Schneider, *Trump's New Immigration Fight: How to Redraw House Districts*, HOUSTON CHRONICLE (July 21, 2020), <https://www.chron.com/news/article/Trump-seeks-to-bar-illegal-aliens-from-15423258.php>; Kevin Liptak et al., *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html>; Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants From a Portion of the 2020 Census*, SEATTLE TIMES (July 21, 2020), <https://www.seattletimes.com/nation-world/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/>

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), <https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-trunna3823616>; *Trump Firma Decreto Para Excluir a Indocumentados del Censo 2020*, TELEMUNDO SAN ANTONIO (July 21, 2020), <https://www.telemundosanantonio.com/noticias/la-casa-blanca/presidente-trump-decreto-indocumentados-2020/2068275/>.

¹² *Trump Ordena al Censo No Contar a Los Indocumentados en un Memo de Dudosa Legalidad y Difícil de Cumplir*, UNIVISION (July 21, 2020), <https://www.univision.com/noticias/elecciones-en-eeuu-2020/trump-ordena-al-censo-no-contar-a-los-indocumentados-en-un-memo-de-dudosa-legalidad-y-dificil-de-cumplir>.

¹³ Ju Carpy, *Trump Firma Memo Para Excluir a Migrantes del Censo*, AZTECA AMERICA (July 21, 2020), <https://aztecaamerica.com/2020/07/21/trump-firma-memo-para-excluir-a-migrantes-del-censo/>

¹⁴ Maria Teresa Sarabia, *Inmigrantes Indocumentados No Serán Contados*, ESTRELLA TV (July 21, 2020), <http://noticiario.estrellatv.com/noticias/inmigrantes-indocumentados-no-seran-contados-noticiario-estrella-tv/>

¹⁵ *Owned Stations*, TELEMUNDO, <https://www.nbcuniv.com/owned-stations/telemundo-station-group/about?network=5266626> (last visited July 31, 2020); *Local Media*, UNIVISION COMMUNICATIONS INC., <https://corporate.univision.com/partner-with-us/local/> (last visited July 31, 2020); *TV*, ESTRELLA TV, <http://www.estrellamedia.com/programming/tv> (last visited July 31, 2020); *Azteca America*, GRUPO SALINAS, <https://www.gruposalinas.com/en/aztecaUS> (last visited July 31, 2020).

¹⁶ Jesús García, *Trump Firma Memorando Para Excluir a Inmigrantes Indocumentados del Censo*, La Opinion (July 21, 2020), <https://laopinion.com/2020/07/21/trump-firma-memorando-para-excluir-a-inmigrantes-indocumentados-del-censo/>; Jesús García, *Trump Firma Memorando Para Excluir a Inmigrantes Indocumentados del Censo*, El Diario (July 21, 2020), <https://eldiario.com/2020/07/21/trump-firma-memorando-para-excluir-a-inmigrantes-indocumentados-del-censo/>; Kevin Freking and Mike Schneider, *Trump Firma Memo Que Afectaría Conteo de Migrantes*, El Nuevo Herald (July 21, 2020), <https://www.elnuevoherald.com/noticias/estados-unidos/article244382772.html> ; <https://www.msn.com/es-nix/noticias/mundo/ordena-trump-excluir-a-indocumentados-del-censo-en-eu/ar-BB171eMI> ; <https://cnnespanol.cnn.com/video/censo-elecciones-indocumentados-migrantes-trump-memorando-constitucion-estados-unidos-dusa-vo/> ; <https://cnnespanol.cnn.com/2020/07/21/trump-firma-orden-para-excluir-inmigrantes-indocumentados-en-el-censo-2020/> ; <https://es-us.noticias.yahoo.com/trump-firma-memorandum-excluir-indocumentados-193912301.html> ; <https://www.dallasnews.com/espanol/al-dia/estados-unidos/2020/07/21/donald-trump-pedira-al-censo-2020-que-no>

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.¹⁷ 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.¹⁸

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 si, fomenta el miedo en nuestras comunidades. Una vez más, le dice a nuestra comunidad inmigrante, no se cuentan, no los necesitamos.”* “This memo obviously causes fear among this particular population, I ask you, could fear be one of the reasons

[cuente-a-los-indocumentados-segun-funcionario-de-la-casa-blanca/](https://www.cuente-a-los-indocumentados-segun-funcionario-de-la-casa-blanca/) ; <https://laoferta.com/2020/07/21/trump-ordena-excluir-a-indocumentados-de-distribucion-electoral-tras-censo/> ; <https://www.lavanguardia.com/trump-firma-memorandum-que-busca-excluir-a-indocumentados-del-censo-2020/> ; <https://www.excelsiorcalifornia.com/2020/07/22/trump-abre-nueva-polemica-al-ordenar-enxcluir-a-indocumentados-de-censo/>

¹⁷ <https://www.telemundo62.com/videos/videos-noticias/implicaciones-de-remover-a-los-indocumentados-del-censo-2020/2063236/> ; <https://www.univision.com/local/los-angeles-knmx/que-implicaciones-tiene-la-orden-de-trump-que-busca-excluir-a-los-indocumentados-del-censo-2020-video> ; <https://www.univision.com/local/philadelphia-wuwp/lideres-reaccionan-ante-peticion-de-trump-para-excluir-a-personas-indocumentadas-del-censo-2020-video>

¹⁸ <https://www.chron.com/news/article/Orden-de-Trump-afecta-censo-en-California-15434405.php> ; <https://eldiariouny.com/2020/07/21/enorme-oposicion-a-orden-de-trump-que-afectaria-a-millones-de-inmigrantes-y-que-califican-de-ilegal/> ; Mike Schneider, Orden de Trump afecta censo en California, Florida y Texas, El Nuevo Herald (July 25, 2020), <https://www.elnuevoherald.com/article244496782.html>

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 eliminarnos 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

¹⁹ Telemundo 62. “Implicaciones De Remover a Los Indocumentados Del Censo 2020.” Telemundo 62. Telemundo 62, July 22, 2020. <https://www.telemundo62.com/videos/videos-noticias/implicaciones-de-remover-a-los-indocumentados-del-censo-2020/2063236/>.

²⁰ Univision. “Líderes Reaccionan Ante Petición De Trump Para Excluir a Personas Indocumentadas Del Censo 2020.” Univision, July 22, 2020. <https://www.univision.com/local/philadelphia-wuwp/lideres-reaccionan-ante-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! Yahoo! Accessed July 29, 2020. <https://es-us.noticias.yahoo.com/coalici%C3%B3n-fiscales-demanda-presidente-trump-230425578.html>.

²² Mike Schneider. “Orden De Trump Afecta Censo En California, Florida y Texas.” Houston Chronicle. Associated Press, July 29, 2020. <https://www.chron.com/news/article/Orden-de-Trump-afecta-censo-en-California-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 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

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

²⁷ Barreto, Matt. Garcia-Rios, Sergio. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012." RSF: The Russell Sage Foundation Journal of the Social Sciences. January 06, 2016

²⁸ Barreto, Matt. Garcia-Rios, Sergio. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012." RSF: The Russell Sage Foundation Journal of the Social Sciences. January 06, 2016, p. 78.

²⁹ Subervi-Vélez, Federico A., ed. 2008. The Mass Media and Latino Politics: Studies of U.S. Media Content, Campaign Strategies and Survey Research: 1984–2004. New York: Routledge.

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 2020³⁰ 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.³¹ Over the course of 2018, USCIS reported 287,709 total requests for DACA renewal were made by undocumented immigrants.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 2019.³³ 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.³⁴ A research paper

³¹ Approximate Count of DACA Receipts: Since January 10, 2018, As of Mar. 31, 2018

https://www.uscis.gov/sites/default/files/document/data/DACA_Receipts_Since_Injunction_Mar_31_2018.pdf

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

https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2020_qtr2.pdf

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

https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2020_qtr2.pdf

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.

90. Table 7: Percent of Non-Responders Who Change to Responders at Q7 / Q8

	Total	White	Latino	Black	AAPI	Other
Q8 Yes – with citizenship	45.2	49.5	38.9	62.2	0.2	17.2
Q7 Yes – without citizenship	84.3	89.3	80.1	78.6	53.3	94.9
Difference	-39.1	-39.7	-41.2	-16.5	-53.1	-77.7

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.

³⁵ Jacome, Elisa. "The Effect of Immigration Enforcement on Crime Reporting: Evidence from the Priority Enforcement Program." *Available at SSRN 3263086* (2018).

³⁶ See Tr. 687-89; Trial Ex. 677, *NY v. Dep't Commerce*, 351 F. Supp. 3d 502 (S.D.N.Y. 2019), *aff'd* 139 S. Ct. 2551 (2019). Barreto expert declaration *NY v. Dept Commerce*, September 7, 2018.

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. Menjívar 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

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

Barreto Declaration – Census 2020 Presidential Memorandum

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.

A handwritten signature in black ink, reading "Matt A. Barreto", written over a horizontal line.

Matthew A. Barreto

Barreto Declaration – Census 2020 Presidential Memorandum

August 7, 2020

p42

References

- Abrego, L. J. (2011). Legal consciousness of undocumented Latinos: Fear and stigma as barriers to claims-making for first-and 1.5-generation immigrants. *Law & Society Review*, 45(2), 337-370.
- Amuedo-Dorantes, C., & Arenas-Arroyo, E. (2019). Immigration enforcement, police trust, and domestic violence. *Unpublished manuscript. Retrieved on October, 28, 2019.*
- Arbona, C., Olvera, N., Rodrigues, N., Hagan, J., Linares, A., & Wiesner, M. (2010). Acculturative stress among documented and undocumented Latino immigrants in the United States. *Hispanic Journal of Behavioral Sciences*, 32 (3), 362-384. doi: 10.1177/0739986310373210
- Asad, Asad L. (2020). “On the Radar: System Embeddedness and Latin American Immigrants’ Perceived Risk of Deportation”. In: *Law & Society Review* 54.1. Publisher: Wiley Online Library, pp. 133–167.
- Bhaskar, Renuka, Leticia E. Fernandez, and Sonya R. Porter (2018). “Assimilation and coverage of the foreign-born population in administrative records”. In: *Statistical Journal of the IAOS* 34.2. Publisher: IOS Press, pp. 191–201.
- Desai, Sarah, Jessica Houston Su, and Robert M. Adelman (2019). “Legacies of Marginalization: System Avoidance among the Adult Children of Unauthorized Immigrants in the United States”. In: *International Migration Review*. Publisher: SAGE Publications Sage CA: Los Angeles, CA, p. 0197918319885640.
- Dreby, Joanna (2015). *Everyday illegal: When policies undermine immigrant families*. University of California Press.
- Félix, A., González, C., & Ramírez, R. (2008). Political protest, ethnic media, and Latino naturalization. *American Behavioral Scientist*, 52(4), 618-634.
- Gee, Lisa Christensen, Matthew Gardner, and Meg Wiehe (2016). “Undocumented immigrants’ state & local tax contributions”. In: *The Institute on Taxation and Economic Policy*.
- Kissam, Edward (Jan. 1, 2019). “How low response among Latino immigrants will lead to differential undercount if the United States’ 2020 census includes a question on sensitive citizenship”. In: *Statistical Journal of the IAOS* 35.2. Publisher: IOS Press, pp. 221–243. issn: 1874-7655. doi: 10.3233/SJI-190505.
- Kissam, Edward et al. (2019). “San Joaquin Valley Latino Immigrants: Implications of Survey Findings for Census 2020”. In: *San Joaquin Valley Health Fund*.
- Levine, Sam (2020). Trump orders undocumented immigrants excluded from key census count. *the Guardian*. Library Catalog: www.theguardian.com Section: US news.

Barreto Declaration – Census 2020 Presidential Memorandum

Liptak, Kevin et al. (2020). Trump signs order targeting undocumented immigrants in the US census. CNN. Library Catalog: www.cnn.com. url: <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html>

Smith, Mike (2020). Community groups vow to help undocumented immigrants count in 2020 census in New Mexico. Carlsbad Current-Argus. Library Catalog: www.currentargus.com.

Torres-Ardila, Fabian, Daniela Bravo, and Franklin Ortiz (2020). “Increasing Latino Participation Rates in the 2020 Census in Chelsea, MA”.

Vargas, Edward D. (2015). “Immigration enforcement and mixed-status families: the effects of risk of deportation on Medicaid use”. In: *Children and youth services review* 57. Publisher: Elsevier, pp. 83–89.

Wang, Hansi Lo (2020). Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen. NPR.org. Library Catalog: www.npr.org.

Watson, Tara (2014). “Inside the refrigerator: Immigration enforcement and chilling effects in Medicaid participation”. In: *American Economic Journal: Economic Policy* 6.3, pp. 313–38.

Yoshikawa, Hirokazu (2011). *Immigrants raising citizens: Undocumented parents and their children*. Russell Sage Foundation.

Abowd, John, Depositions on August 15, 2018 (hereinafter Abowd Deposition) and August 29, 2018 (Abowd 30(b)(6)).

Andridge, Rebecca R. and Little, Roderick J. 2010. “A Review of Hot Deck Imputation for Survey Non-Response.” *International Statistical Review* 78(1): 40-64.

Ball, John C. 1967. “The Reliability and Validity of Interview Data Obtained from 59 Narcotic Drug Addicts.” *American Journal of Sociology* 72(6): 650–654.

Berk, Marc L., and Claudia L. Schur. 2001. “The Effect of Fear on Access to Care among Undocumented Latino Immigrants.” *Journal of immigrant health* 3(3): 151–156.

Bradburn, Norman M., Seymour Sudman, Ed Blair, and Carol Stocking. 1978. “Question Threat and Response Bias.” *Public Opinion Quarterly* 42(2): 221–234.

Casey Foundation. 2018. “2018 Kids Count Data Book.”

Center for Survey Measurement. 2017. “MEMORANDUM FOR Associate Directorate for Research and Methodology (ADRM).”

Claes-Magnus Cassell et al., 1977. *Foundations of inference in survey sampling*.

De La Puente, Manuel. 1995. “Using Ethnography to Explain Why People Are Missed or Erroneously Included by the Census: Evidence from Small Area Ethnographic Studies.” *Center for Survey Methods Research, US Census Bureau*.

———. 2004. *Census 2000 Ethnographic Studies*. Bureau of the Census.

Barreto Declaration – Census 2020 Presidential Memorandum

- Ericksen, Eugene P., and Teresa K. Defonso. 1993. “Guest Commentary: Beyond the Net Undercount: How to Measure Census Error.” *Chance* 6(4): 38–14.
- Federal Committee on Statistical Methodology. 1990. Statistical Working Paper 17 – Survey Coverage. <http://www.fcsm.gov/working-papers/wp17.html>
- Frost, Amanda. 2017. “Can the Government Deport Immigrants Using Information It Encouraged Them to Provide?”
- García, A. S. (2019). *Legal passing: Navigating undocumented life and local immigration law*. University of California Press.
- Groves, Robert M. And Mick P. Couper. 1998. Nonresponse in Household Interview Surveys. New York, NY: John Wiley and Sons
- Groves, Robert . 2004. Survey Errors and Survey Costs, 2nd ed.
- Groves, Robert, Floyd J. Fowler Jr., Mick P. Couper James M. Lepkowski, Eleanor Singer, and Roger Tourangeau. 2004. Survey Methodology. New York, NY: John Wiley and Sons. (Cites 3873)
- Hagan, J. M., Rodriguez, N., & Castro, B. (2011). Social effects of mass deportations by the United States government, 2000–10. *Ethnic and Racial Studies*, 34(8), 1374-1391
- Kalton, Graham. 1983. “Compensation for Missing Survey Data.” University of Michigan Survey Research Center Research Report Series.
- Lohr, Sharon L. 1999. Sampling: Design and Analysis. New York, NY: Brooks/Cole.
- Kissam, Edward. 2017. “Differential Undercount of Mexican Immigrant Families in the US Census.” *Statistical Journal of the IAOS* 33(3): 797–816.
- Krysan, Maria. 1998. “Privacy and the Expression of White Racial Attitudes: A Comparison across Three Contexts.” *Public Opinion Quarterly*: 506–544.
- Lajevardi, Nazita, and Kassra AR Oskooii. 2018. “Old-Fashioned Racism, Contemporary Islamophobia, and the Isolation of Muslim Americans in the Age of Trump.” *Journal of Race, Ethnicity and Politics* 3(1): 112–152.
- National Research Council. 2002. *The 2000 Census: Interim Assessment*. National Academies Press.
- . 2004. *The 2000 Census: Counting under Adversity*. National Academies Press.
- Menjívar, C. (2011). The power of the law: Central Americans’ legality and everyday life in Phoenix, Arizona. *Latino Studies*, 9(4), 377-395
- Meyers, Mikelyn. 2017. “Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census.”

- Michelson, Melissa R., and Jessica L. Lavariega Monforti. 2018. "Back in the Shadows, Back in the Streets." *PS, Political Science & Politics* 51(2): 282
- Montoya, Martin. 1992. "Ethnographic Evaluation of the Behavioral Causes of Undercount: Woodburn, Oregon." *Ethnographic Evaluation of the 1990 Decennial Census Report #25*. Prepared under Joint Statistical Agreement 90-06 with the University of Oregon. Bureau of the Census, Washington D.C.
- Cruz Nichols, Vanessa, Alana MW LeBrón, and Francisco I. Pedraza. 2018. "Spillover Effects: Immigrant Policing and Government Skepticism in Matters of Health for Latinos." *Public Administration Review* 78(3): 432–443.
- O'Hare, William, Yeris Mayol-Garcia, Elizabeth Wildsmith, and Alicia Torres. 2016. "The Invisible Ones: How Latino Children Are Left Out of Our Nation's Census Count."
- Oskooii, Kassra AR. 2016. "How Discrimination Impacts Sociopolitical Behavior: A Multidimensional Perspective." *Political Psychology* 37(5): 613–640.
- Pedraza, Francisco I., and Maricruz Ariana Osorio. 2017. "Courtied and Deported: The Salience of Immigration Issues and Avoidance of Police, Health Care, and Education Services among Latinos." *Aztlan: A Journal of Chicano Studies* 42(2): 249–266.
- Rubin, Donald B. 1976. "Inference and Missing Data." *Biometrika* 63(3): 581-592.
- Raines, Marvin D. 2001. "Gaining Cooperation from a Multi-Cultural Society of Respondents: A Review of the US Census Bureau's Efforts to Count the Newly Immigrated Population." *Statistical Journal of the United Nations Economic Commission for Europe* 18(2, 3): 217–226.
- Rao, Krishna. 2017. "Discussion of 2018 End-to-End Census Test: Nonresponse Follow-up" Census Scientific Advisory Committee. Fall 2017 Meeting.
- Sanchez, Gabriel R., and Barbara Gomez-Aguinaga. 2017. "Latino Rejection of the Trump Campaign." *Aztlan: A Journal of Chicano Studies* 42(2).
- Rodriguez, N., & Hagan, J. M. (2004). Fractured families and communities: Effects of immigration reform in Texas, Mexico, and El Salvador. *Latino Studies*, 2(3), 328-351.
- Stepick, Alex. 1992. "Ethnographic Evaluation of the 1990 Decennial Census Report Series." *Ethnographic Evaluation of the 1990 Decennial Census Report #8*. Prepared under Joint Statistical Agreement #90-08 with Florida International University. Bureau of the Census, Washington D.C.
- Szkupinski Quiroga, S., Medina, D. M., & Glick, J. (2014). In the belly of the beast: Effects of anti-immigration policy on Latino community members. *American Behavioral Scientist*, 58(13), 1723-1742
- Terry, Rodney L. et al. 2017. "Exploring Inconsistent Counts of Racial/Ethnic Minorities in a 2010 Census Ethnographic Evaluation." *Bulletin of Sociological Methodology/Bulletin de Méthodologie Sociologique* 135(1): 32–49.

Barreto Declaration – Census 2020 Presidential Memorandum

Tourangeau, Roger, and Tom W. Smith. 1996. “Asking Sensitive Questions: The Impact of Data Collection Mode, Question Format, and Question Context.” *The Public Opinion Quarterly* 60(2): 275–304.

Tourangeau, Roger, and Ting Yan. 2007. “Sensitive Questions in Surveys.” *Psychological bulletin* 133(5): 859.

U. S. Government Accountability Office. 2003. “Decennial Census: Lessons Learned for Locating and Counting Migrant and Seasonal Farm Workers.” (GAO-03-605). <https://www.gao.gov/products/GAO-03-605> (April 18, 2018).

U.S. Census Bureau. 2013. "U.S. Census Bureau Statistical Quality Standards" July 2013.

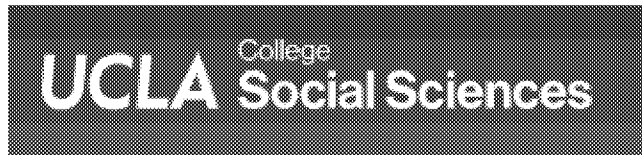
<https://www.census.gov/about/policies/quality/standards.html>

———. 2017b. “Investigating the 2010 Undercount of Young Children – Analysis of Census Coverage Measurement Results.”

Velasco, Alfredo. 1992. “Ethnographic Evaluation of the Behavioral Causes of Undercount In The Community of Sherman Heights, San Diego, California.” Ethnographic Evaluation of the 1990 Decennial Census Report #22. Prepared under Joint Statistical Agreement 89-42 with the Chicano Federation of San Diego County. Bureau of the Census, Washington, D.C.

Wines, Michael. 2018. “Census Bureau’s Own Expert Panel Rebukes Decision to Add Citizenship Question.” *New York Times*. March 30

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:

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*

Barreto, Matt and Gary Segura. 2014. Latino America: How America's Most Dynamic Population is Poised to Transform the Politics of the Nation. Public Affairs Books. (Sept)

Barreto, Matt and David Leal, editors. 2018. Race, Class, and Precinct Quality in American Cities. Springer Press.

Christopher Parker and Matt Barreto. 2013. Change They Can't Believe In: The Tea Party and Reactionary Politics in America. Princeton University Press. *Winner: APSA Best Book Award for Race, Ethnicity, Politics, 2014*

Barreto, Matt. 2010. Ethnic Cues: The Role of Shared Ethnicity in Latino Political Participation. University of Michigan Press

PEER-REVIEWED ARTICLES

73. Reny, Tyler and Matt A. Barreto. 2020. "Xenophobia in the time of pandemic: othering, anti-Asian attitudes, and COVID-19 " *Politics, Groups, and Identities*. 8(2).

72. Flores, Lucy and Matt A. Barreto. 2020. "Latina Voters: The key electoral force" *Journal of Cultural Marketing Strategy*. 4(2).

71. Frasure-Yokley, Lorrie, Janelle Wong, Edward Vargas and Matt A. Barreto 2020. "THE COLLABORATIVE MULTIRACIAL POST-ELECTION SURVEY (CMPS): BUILDING THE ACADEMIC PIPELINE THROUGH DATA ACCESS, PUBLICATION, AND NETWORKING OPPORTUNITIES" *PS: Political Science & Politics*. 53(1)

70. Barreto, Matt, Loren Collingwood, Sergio Garcia-Rios and Kassra Oskooii. 2019. "Estimating Candidate Support: Comparing Iterative EI and EI-RxC Methods" *Sociological Methods and Research*. 48(4).

69. Gonzalez-O'Brien, Benjamin, Matt Barreto and Gabriel Sanchez. 2019. "They're All Out to Get Me! Assessing Inter-Group Competition Among Multiple Populations." *Politics, Groups and Identities*. 7(4).

68. Oskooii, Kassra, Karam Dana and Matt Barreto. 2019. "Beyond generalized ethnocentrism: Islam-specific beliefs and prejudice toward Muslim Americans." *Politics, Groups and Identities* 7(3)

67. Vargas, Edward, Gabriel Sanchez, Barbara Gomez-Aguinaga, and Matt Barreto. 2019. "How Latinos' Perceptions of Environmental Health Threats Impact Policy Preferences." *Social Science Quarterly*. 101(1).

66. Walker, Hannah, Marcel Roman and Matt Barreto. 2019. "The Direct and Indirect Effects of Immigration Enforcement on Latino Political Engagement." *UCLA Law Review*. 67.

65. Gutierrez, Angela, Angela Ocampo, Matt Barreto, and Gary Segura. 2019. "Somos Más : How Racial Threat and Anger Mobilized Latino Voters in the Trump Era" *Political Research Quarterly*. 72(4)

64. Chouhoud, Youssef, Karam Dana, and Matt Barreto. 2019. "American Muslim Political Participation: Between Diversity and Cohesion." *Politics and Religion*. 12(S3).

63. Barreto, Matt, Stephen Nuño, Gabriel Sanchez, and Hannah Walker. 2019. "Race, Class and Barriers to Voting in the 21st Century: The Unequal Impact of Voter ID Laws." *American Politics Research*

62. Barreto, Matt. 2018. "The cycle of under-mobilization of minority voters: A comment on 'Selective recruitment of voter neglect?'" *Journal of Race, Ethnicity, and Politics*. 3(1).
61. Ocampo, Angela, Karam Dana and Matt Barreto. 2018. "The American Muslim Voter: Community Belonging and Political Participation." *Social Science Research*. 69(4).
60. Barreto, Matt, Lorrie Frasure-Yokley, Edward Vargas, Janelle Wong. 2018. "Best practices in collecting online data with Asian, Black, Latino, and White respondents: evidence from the 2016 Collaborative Multiracial Post-election Survey." *Politics, Groups & Identities*. 6(1).
59. Barreto, Matt, Tyler Reny and Bryan Wilcox-Archuleta. 2017. "A debate about survey research methodology and the Latina/o vote: why a bilingual, bicultural, Latino-centered approach matters to accurate data." *Aztlán: A Journal of Chicano Studies*. 42(2).
58. Barreto, Matt and Gary Segura. 2017. "Understanding Latino Voting Strength in 2016 and Beyond: Why Culturally Competent Research Matters." *Journal of Cultural Marketing Strategy*. 2:2
57. Dana, Karam, Bryan Wilcox-Archuleta and Matt Barreto. 2017. "The Political Incorporation of Muslims in America: The Mobilizing Role of Religiosity in Islam." *Journal of Race, Ethnicity & Politics*.
56. Collingwood, Loren, Kassra Oskooii, Sergio Garcia-Rios, and Matt Barreto. 2016. "eiCompare: Comparing Ecological Inference Estimates across EI and EI: RxC." *The R Journal*. 8:2 (Dec).
55. Garcia-Rios, Sergio I. and Matt A. Barreto. 2016. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012" *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 2(3): 78-96.
54. Barreto, Matt, Collingwood, Loren, Christopher Parker, and Francisco Pedraza. 2015. "Racial Attitudes and Race of Interviewer Item Non-Response." *Survey Practice*. 8:3.
53. Barreto, Matt and Gary Segura 2015. "Obama y la seducción del voto Latino." *Foreign Affairs Latinoamérica*. 15:2 (Jul).
52. Barreto, Matt and Loren Collingwood 2015. "Group-based appeals and the Latino vote in 2012: How immigration became a mobilizing issue." *Electoral Studies*. 37 (Mar).
51. Collingwood, Loren, Matt Barreto and Sergio Garcia-Rios. 2014. "Revisiting Latino Voting: Cross-Racial Mobilization in the 2012 Election" *Political Research Quarterly*. 67:4 (Sep).
50. Bergman, Elizabeth, Gary Segura and Matt Barreto. 2014. "Immigration Politics and Electoral Consequences: Anticipating the Dynamics of Latino Vote in the 2014 Election" *California Journal of Politics and Policy*. (Feb)
49. Barreto, Matt and Sergio García-Rios. 2012. "El poder del voto latino en Estados Unidos en 2012" *Foreign Affairs Latinoamérica*. 12:4 (Nov).
48. Collingwood, Loren, Matt Barreto and Todd Donovan. 2012. "Early Primaries, Viability and Changing Preferences for Presidential Candidates." *Presidential Studies Quarterly*. 42:1(Mar).
47. Barreto, Matt, Betsy Cooper, Ben Gonzalez, Chris Towler, and Christopher Parker. 2012. "The Tea Party in the Age of Obama: Mainstream Conservatism or Out-Group Anxiety?." *Political Power and Social Theory*. 22:1(Jan).
46. Dana, Karam, Matt Barreto and Kassra Oskooii. 2011. "Mosques as American Institutions: Mosque Attendance, Religiosity and Integration into the American Political System." *Religions*. 2:2 (Sept).
45. Barreto, Matt, Christian Grose and Ana Henderson. 2011. "Redistricting: Coalition Districts and the Voting Rights Act." *Warren Institute on Law and Social Policy*. (May)
44. Barreto, Matt and Stephen Nuño. 2011. "The Effectiveness of Co-Ethnic Contact on Latino Political Recruitment." *Political Research Quarterly*. 64 (June). 448-459.

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

43. Garcia-Castañón, Marcela, Allison Rank and Matt Barreto. 2011 “Plugged in or tuned out? Youth, Race, and Internet Usage in the 2008 Election.” *Journal of Political Marketing*. 10:2 115-138.
42. Barreto, Matt, Victoria DeFrancesco, and Jennifer Merolla. 2011 “Multiple Dimensions of Mobilization: The Impact of Direct Contact and Political Ads on Latino Turnout in the 2000 Presidential Election.” *Journal of Political Marketing*. 10:1
41. Barreto, Matt, Loren Collingwood, and Sylvia Manzano. 2010. “Measuring Latino Political Influence in National Elections” *Political Research Quarterly*. 63:4 (Dec)
40. Barreto, Matt, and Francisco Pedraza. 2009. “The Renewal and Persistence of Group Identification in American Politics.” *Electoral Studies*. 28 (Dec) 595-605
39. Barreto, Matt and Dino Bozonelos. 2009. “Democrat, Republican, or None of the Above? Religiosity and the Partisan Identification of Muslim Americans” *Politics & Religion* 2 (Aug). 1-31
38. Barreto, Matt, Sylvia Manzano, Ricardo Ramírez and Kathy Rim. 2009. “Immigrant Social Movement Participation: Understanding Involvement in the 2006 Immigration Protest Rallies.” *Urban Affairs Review*. 44: (5) 736-764
37. Grofman, Bernard and Matt Barreto. 2009. “A Reply to Zax’s (2002) Critique of Grofman and Migalski (1988): Double Equation Approaches to Ecological Inferences.” *Sociological Methods and Research*. 37 (May)
36. Barreto, Matt, Stephen Nuño and Gabriel Sanchez. 2009. “The Disproportionate Impact of Voter-ID Requirements on the Electorate – New Evidence from Indiana.” *PS: Political Science & Politics*. 42 (Jan)
35. Barreto, Matt, Luis Fraga, Sylvia Manzano, Valerie Martinez-Ebers, and Gary Segura. 2008. “Should they dance with the one who brung ‘em? Latinos and the 2008 Presidential election” *PS: Political Science & Politics*. 41 (Oct).
34. Barreto, Matt, Mara Marks and Nathan Woods. 2008. “Are All Precincts Created Equal? The Prevalence of Low- Quality Precincts in Low-Income and Minority Communities.” *Political Research Quarterly*. 62
33. Barreto, Matt. 2007. “*Si Se Puede!* Latino Candidates and the Mobilization of Latino Voters.” *American Political Science Review*. 101 (August): 425-441.
32. Barreto, Matt and David Leal. 2007. “Latinos, Military Service, and Support for Bush and Kerry in 2004.” *American Politics Research*. 35 (March): 224-251.
31. Barreto, Matt, Mara Marks and Nathan Woods. 2007. “Homeownership: Southern California’s New Political Fault Line?” *Urban Affairs Review*. 42 (January). 315-341.
30. Barreto, Matt, Matt Streb, Fernando Guerra, and Mara Marks. 2006. “Do Absentee Voters Differ From Polling Place Voters? New Evidence From California.” *Public Opinion Quarterly*. 70 (Summer): 224-34.
29. Barreto, Matt, Fernando Guerra, Mara Marks, Stephen Nuño, and Nathan Woods. 2006. “Controversies in Exit Polling: Implementing a racially stratified homogenous precinct approach.” *PS: Political Science & Politics*. 39 (July) 477-83.
28. Barreto, Matt, Ricardo Ramírez, and Nathan Woods. 2005. “Are Naturalized Voters Driving the California Latino Electorate? Measuring the Impact of IRCA Citizens on Latino Voting.” *Social Science Quarterly*. 86 (December): 792-811.
27. Barreto, Matt. 2005. “Latino Immigrants at the Polls: Foreign-born Voter Turnout in the 2002 Election.” *Political Research Quarterly*. 58 (March): 79-86.
26. Barreto, Matt, Mario Villarreal and Nathan Woods. 2005. “Metropolitan Latino Political Behavior: Turnout and Candidate Preference in Los Angeles.” *Journal of Urban Affairs*. 27(February): 71-91.
25. Leal, David, Matt Barreto, Jongho Lee and Rodolfo de la Garza. 2005. “The Latino Vote in the 2004 Election.” *PS: Political Science & Politics*. 38 (January): 41-49.
24. Marks, Mara, Matt Barreto and Nathan Woods. 2004. “Harmony and Bliss in LA? Race and Racial Attitudes a Decade After the 1992 Riots.” *Urban Affairs Review*. 40 (September): 3-18.

23. Barreto, Matt, Gary Segura and Nathan Woods. 2004. "The Effects of Overlapping Majority-Minority Districts on Latino Turnout." *American Political Science Review*. 98 (February): 65-75.
22. Barreto, Matt and Ricardo Ramírez. 2004. "Minority Participation and the California Recall: Latino, Black, and Asian Voting Trends 1990 – 2003." *PS: Political Science & Politics*. 37 (January): 11-14.
21. Barreto, Matt and José Muñoz. 2003. "Reexamining the 'politics of in-between': political participation among Mexican immigrants in the United States." *Hispanic Journal of Behavioral Sciences*. 25 (November): 427-447.
20. Barreto, Matt. 2003. "National Origin (Mis)Identification Among Latinos in the 2000 Census: The Growth of the "Other Hispanic or Latino" Category." *Harvard Journal of Hispanic Policy*. 15 (June): 39-63.

Edited Volume Book Chapters

19. Barreto, Matt and Gary Segura. 2020. "Latino Reaction and Resistance to Trump: Lessons learned from Pete Wilson and 1994." In Raul Hinojosa and Edward Telles (eds.) Equitable Globalization: Expanding Bridges, Overcoming Walls. Oakland: University of California Press.
18. Barreto, Matt, Albert Morales and Gary Segura. 2019. "The Brown Tide and the Blue Wave in 2018" In Larry Sabato, Kyle Kondik, Geoffrey Skelley (eds.) The Blue Wave. New York: Rowman & Littlefield.
17. Gutierrez, Angela, Angela Ocampo and Matt Barreto. 2018. "Obama's Latino Legacy: From Unknown to Never Forgotten" In Andrew Rudalevige and Bert Rockman (eds.) The Obama Legacy. Lawrence, KS: University of Kansas Press.
16. Barreto, Matt, Thomas Schaller and Gary Segura. 2017. "Latinos and the 2016 Election: How Trump Lost Latinos on Day 1" In Larry Sabato, Kyle Kondik, Geoffrey Skelley (eds.) Trumped: The 2016 Election that Broke All the Rules. New York: Rowman & Littlefield.
15. Walker, Hannah, Gabriel Sanchez, Stephen Nuño, Matt Barreto 2017. "Race and the Right to Vote: The Modern Barrier of Voter ID Laws" In Todd Donovan (ed.) Election Rules and Reforms. New York: Rowman & Littlefield.
14. Barreto, Matt and Christopher Parker. 2015. "Public Opinion and Reactionary Movements: From the Klan to the Tea Party" In Adam Berinsky (ed.) New Directions in Public Opinion. 2nd edition. New York: Routledge Press.
13. Barreto, Matt and Gabriel Sanchez. 2014. "A 'Southern Exception' in Black-Latino Attitudes?." In Anthony Affigne, Evelyn Hu-Dehart, Marion Orr (eds.) Latino Politics en Ciencia Política. New York: New York University Press.
12. Barreto, Matt, Ben Gonzalez, and Gabriel Sanchez. 2014. "Rainbow Coalition in the Golden State? Exposing Myths, Uncovering New Realities in Latino Attitudes Towards Blacks." In Josh Kun and Laura Pulido (eds.) Black and Brown in Los Angeles: Beyond Conflict and Coalition. Berkeley, CA: University of California Press.
11. Barreto, Matt, Loren Collingwood, Ben Gonzalez, and Christopher Parker. 2011. "Tea Party Politics in a Blue State: Dino Rossi and the 2010 Washington Senate Election" In William Miller and Jeremy Walling (eds.) Stuck in the Middle to Lose: Tea Party Effects on 2010 U.S. Senate Elections. Rowman & Littlefield Publishing Group.
10. Jason Morin, Gabriel Sanchez and Matt Barreto. 2011. "Perceptions of Competition Between Latinos and Blacks: The Development of a Relative Measure of Inter-Group Competition." In Edward Telles, Gaspar Rivera-Salgado and Mark Sawyer (eds.) Just Neighbors? Research on African American and Latino Relations in the US. New York: Russell Sage Foundation.
9. Grofman, Bernard, Frank Wayman and Matt Barreto. 2009. "Rethinking partisanship: Some thoughts on a unified theory." In John Bartle and Paolo Bellucci (eds.) Political Parties and Partisanship: Social identity and individual attitudes. New York: Routledge Press.
8. Barreto, Matt, Ricardo Ramírez, Luis Fraga and Fernando Guerra. 2009. "Why California Matters: How California Latinos Influence the Presidential Election." In Rodolfo de la Garza, Louis DeSipio and David Leal (eds.) Beyond the Barrio: Latinos in the 2004 Elections. South Bend, ID: University of Notre Dame Press.

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

7. Francisco Pedraza and Matt Barreto. 2008. "Exit Polls and Ethnic Diversity: How to Improve Estimates and Reduce Bias Among Minority Voters." In Wendy Alvey and Fritz Scheuren (eds.) Elections and Exit Polling. Hoboken, NJ: Wiley and Sons.
6. Adrian Pantoja, Matt Barreto and Richard Anderson. 2008. "Politics *y la Iglesia*: Attitudes Toward the Role of Religion in Politics Among Latino Catholics" In Michael Genovese, Kristin Hayer and Mark J. Rozell (eds.) Catholics and Politics. Washington, D.C: Georgetown University Press..
5. Barreto, Matt. 2007. "The Role of Latino Candidates in Mobilizing Latino Voters: Revisiting Latino Vote Choice." In Rodolfo Espino, David Leal and Kenneth Meier (eds.) Latino Politics: Identity, Mobilization, and Representation. Charlottesville: University of Virginia Press.
4. Abosch, Yishaiya, Matt Barreto and Nathan Woods. 2007. "An Assessment of Racially Polarized Voting For and Against Latinos Candidates in California." In Ana Henderson (ed.) Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation, and Power. Berkeley, CA: UC Berkeley Public Policy Press.
3. Barreto, Matt and Ricardo Ramirez. 2005. "The Race Card and California Politics: Minority Voters and Racial Cues in the 2003 Recall Election." In Shaun Bowler and Bruce Cain (eds.) Clicker Politics: Essays on the California Recall. Englewood-Cliffs: Prentice-Hall.
2. Barreto, Matt and Nathan Woods. 2005. "The Anti-Latino Political Context and its Impact on GOP Detachment and Increasing Latino Voter Turnout in Los Angeles County." In Gary Segura and Shawn Bowler (eds.) Diversity in Democracy: Minority Representation in the United States. Charlottesville: University of Virginia Press.
1. Pachon, Harry, Matt Barreto and Frances Marquez. 2004. "Latino Politics Comes of Age in the Golden State." In Rodolfo de la Garza and Louis DeSipio (eds.) Muted Voices: Latino Politics in the 2000 Election. New York: Rowman & Littlefield

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

RESEARCH AWARDS AND FELLOWSHIPS

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

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

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	Brenan Center for Justice, New York University [with Stephen Nuño 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: Donald Trump, Race, and the Crisis of American Politics. Under Contract, University of Chicago Press, *expected 2020*

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]

Gutierrez, Angela, Angela Ocampo, Matt Barreto and Gary Segura. "From Proposition 187 to Donald Trump: New Evidence that Anti-Immigrant Threat Mobilizes Latino Voters." [Under Review]

Collins, Jonathan, Matt Barreto, Gregory Leslie and Tye Rush. "Racial Efficacy and Voter Enthusiasm Among African Americans Post-Obama" [Under Review]

Oskooii, Kassra, Matt Barreto, and Karam Dana. "No Sharia, No Mosque: Orientalist Notions of Islam and Intolerance Toward Muslims in the United States" [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
- New York, 2018, Expert for Plaintiffs in Census Citizenship Lawsuit, New York v. U.S. Dept of Commerce (also an expert related cases: *California v. Ross* and *Kravitz v. Dept of Commerce*)
- 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
- Kansas, 2016, Expert for Plaintiffs in Kansas voter registration lawsuit, Fish v. Kobach 2:16-cv-02105-JAR
- North Dakota, 2015, Expert for Plaintiffs in North Dakota voter ID lawsuit, Brakebill v. Jaeger 1:16-cv-00008-CSM
- Alabama, 2015, Expert for Plaintiffs in Alabama voter ID lawsuit, Birmingham Ministries v. State of Alabama 2:15-cv-02193-LSC
- Texas, 2014, Testifying Expert for Plaintiffs in Texas voter ID lawsuit, Veasey v. Perry 2:13-cv-00193
- 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
- Pennsylvania, 2012, Testifying Expert for ACLU Foundation of Pennsylvania in voter ID lawsuit, Applewhite v. Commonwealth of Pennsylvania No. 330 MD 2012
- Milwaukee County, WI, 2012, Testifying Expert for ACLU Foundation of Wisconsin in voter ID lawsuit, Frank v. Walker 2:11-cv-01128(LA)
- 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
- Los Angeles County Redistricting Commission, 2011, Consulting Expert for Supervisor Gloria Molina, Racially Polarized voting analysis within L.A. County
- State of California, Citizens Redistricting Commission, 2011, Consulting Expert, Racially Polarized Voting analysis throughout state of California
- 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

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

- 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
- ACLU of Washington, 2008, preliminary analysis of voting patterns in Eastern Washington, related to electability of Latino candidates
- 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:**

UCLA & UW

2005 – Present

- 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**

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 Lanijonu – University of Toronto (UCLA Ph.D. 2018)
- Adria Tinin – *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 Bozonelos – 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.

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)

Expert Declaration of Mr. John Thompson

I. 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.

² Albert E. Fontenot, Jr., 2020 Census Residence Criteria and Residence Situations, 2020 Census Program Memorandum Series: 2018.04, February 5, 2018.

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 deadlines⁴ 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

³ US Census Bureau 2020 Census daily response rate tracker, <https://2020census.gov/en/response-rates.html> (last accessed August 6, 2020).

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

⁵ Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count, <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>, August 3, 2020.

⁶ P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

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.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 them⁹. 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 testimony¹¹ 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

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.

¹¹ Trial Testimony of Dr. John Abowd, Nov. 13, 2018, *New York Immigration Coalition, et al. v. United States Department of Commerce, et al.*, 18-CV-5025-JMF (S.D.N.Y.), at 926-27.

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.”

¹² Committee on National Statistics, Principles and Practices for a Federal Statistical Agency 2 (6th ed. 2017).

- 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

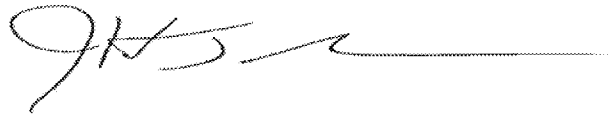
In conclusion, it is my opinion that the issuance of the Memorandum will significantly increase the risk of much larger undercounts for the 2020 Census than measured in previous censuses, including undercounts of immigrant communities. In addition, there is no transparency or documentation of how the 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.

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).

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.

A handwritten signature in black ink, appearing to read 'JH', followed by a long horizontal line extending to the right.

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;
-

John H. Thompson
Page 2

- 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,

John H. Thompson
Page 3

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.

John H. Thompson
Page 4

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, Silver Medal, U.S. Bureau of the Census, 1998

Department of Commerce, Bronze Medal, U.S. Bureau of the Census, 1988

John H. Thompson
Page 5

PAPERS AND PUBLICATIONS

- 2018 Thompson, John H and Yablon, Robert. Issue Brief: "Preparing for the 2020 Census Considerations for State Attorneys General". American Constitution Society., October 10, 2018
- 2012 Thompson, John H. (Panel Member). "Panel Discussion: Considering Changing Sectors in the Research Industry?: Advice From Those Who Have Done It!" AAPOR 67th Annual Conference, Orlando, Florida, May 19, 2012
- 2012 Thompson, John H. (Discussant). "Future is Now: Realignment of Current Survey Management and Operations at the Census Bureau". Population Association of America 2012 Annual Meeting, San Francisco, California, May 4, 2012.
- 2012 Thompson, John H. (Discussant). "Use of Administrative Records in the 2020 Census." Federal Committee on Statistical Methodology, Washington, DC., January 10, 2012
- 2011 Weinberg, Daniel H. and Thompson, John H., "Organization and Administration of the 2010 U.S. Census." In Margo J. Anderson, Constance F. Citro, and Joseph J. Salvo (eds.) *Encyclopedia of the U.S. Census*, Second Edition, CQ Press., July 2011
- 2010 Thompson, John H., "Challenges, Innovation and Quality for the 21st Century" Keynote Speech at the 2010 FCSM Statistical Policy Seminar, Washington, DC, December 14, 2010.
- 2010 Thompson, John H., "The Future of Survey Research: Opportunities and Challenges" Paper presented at the Applied Demography Conference, San Antonio, Texas., January 11, 2010 and at the Population Association of America 2010 Annual meeting, Dallas, Texas, April 15, 2010.
- 2008 Thompson, John H. (Panel Member). "Panel Discussion: The American Community Survey: Promise, Products and Perspectives." Population Association of America Annual Meeting, New Orleans, Louisiana, April 17, 2008.
- 2006 Thompson, John H. (Discussant). "Census 2010: A New Census for the 21st Century." Population Association of America Annual Meeting, Los Angeles, California, March 30, 2006.
- 2004 Thompson, John H., "Interviewer Falsification of Survey Data." Paper presented at the Joint Meetings of the American Statistical Association, Toronto, Canada, August 11, 2004.
- 2003 Thompson, John H., "Is Interviewer Falsification Scientific Misconduct?" Roundtable paper presented at the American Association for Public Opinion Research 58th Annual Conference, Nashville, Tennessee, May 16, 2003.
- 2002 Thompson, John H. (Discussant). "Eliminating the 2010 Census Long Form? – Current Status of the American Community Survey." Population Association of America Annual Meeting, Atlanta, Georgia, May 9, 2002.

John H. Thompson
Page 6

- 2001 Thompson, John H., "Decision on Release of Statistically Corrected Redistricting Data." Invited paper presented at the Joint Meetings of the American Statistical Association, Atlanta Georgia, August 6, 2001.
- 1999 Thompson, John H., "Census 2000 – Innovations and New Technology." Paper presented at the Economic Commission for Europe's Conference of European Statisticians Meeting, Geneva, Switzerland, February 15-17, 1999.
- 1998 Thompson, John H. and Robert E. Fay, "Census 2000: The Statistical Issues." Paper presented at the Joint Meetings of the American Statistical Association, Dallas, Texas, August 9-13, 1998.
- 1996 Thompson, John H. and Karen Mills, "Census 2000 Content: Tradeoffs on Cost, Quality, and Quantity." Paper presented at the Annual Meeting of the Population Association of America, New Orleans, Louisiana, May 9-11, 1996.
- 1995 Thompson, John H., Mary H. Mulry, Susan M. Miskura, "Census 2000: Statistical Issues in Reengineering the Decennial Census." Paper presented at the Annual Meeting of the American Statistical Association, Orlando, Florida, August 13-17, 1995.
- 1992 Fay, Robert E. and John H. Thompson, "The 1990 Post-Enumeration Survey: Statistical Lessons in, Hindsight." Paper presented at the Annual Research Conference, March 22-25, 1992, Arlington, Virginia.
- 1989 Edson, Robert G. and John H. Thompson, "1990 Decennial Census Coverage Improvement Program." Paper presented at the Annual Winter Meetings of the American Statistical Association, San Diego, California, January, 1989.
- 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.
- 1987 Griffin, Richard A. and John H. Thompson, "Confidentiality Techniques for the 1990 Census." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, October, 1987.

U.S. Bureau of the Census, "Programs to Improve Coverage in the 1980 Census," by John H. Thompson. Evaluation and Research Reports, PHC80-E3.
- 1986 Thompson, John H. and David Franklin, "Test Census Results and Applications for the 1990 Planning." Paper presented at the Census Bureau Second Annual Research Conference, Reston, Virginia, March, 1986.
- 1984 Miskura, Susan M., John H. Thompson, Henry F. Woltman, "Uses of Sampling for the Census Count." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

Fan, Milton C., Martha L. Sutt, and John H. Thompson, "Evaluation of the 1980 Census Precanvass Coverage Improvement Program." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

Keeley, Catherine and John H. Thompson, "The 1980 Census Nonhousehold Sources Program." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

John H. Thompson
Page 7

- 1983 Miskura, Susan M. and John H. Thompson, "1980 Census Findings and Their Implications for 1990 Census Planning." Presented at the Joint Statistical Meetings, Toronto, Canada, August, 1983.

Taeuber, Cynthia and John H. Thompson, "1980 Census Data: The Quality of the Data and Some Anomalies." Paper presented at the Annual Meeting of the Population Association of America, April, 1983.
- 1982 Fan, Milton C., John H. Thompson, Jay Kim, and Henry F. Woltman, "Sample Design, Estimation and Presentation of Sampling Errors for the 1980 Census Early Publications National Sample." Paper presented at the Annual Meetings of the American Statistical Association, Chicago, Illinois, August, 1982.
- 1981 Woltman, Henry F., Susan M. Miskura, John H. Thompson, and Peter A. Bounpane, "1980 Census Weighting and Variance Estimation Studies, Design and Methodology." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.

Kim, Jay, John H. Thompson, Henry F. Woltman, and Stephen M. Vajs, "Empirical Results from the 1980 Census Sample Estimation Study." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.

Fan, Milton, C., John H. Thompson, and Susan M. Miskura, "1980 Census Variance Estimation Procedure." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.

Thompson, John H., "Convergence Properties of the Iterative 1980 Census Estimator." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.
- 1978 Thompson, John H., "The Nonhousehold Sources Program." Paper presented at the Annual Meetings of the American Statistical Association, San Diego, California, August, 1978.

Exhibit 58

**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
COMMISSION, et al.,

Plaintiffs,

v.

DONALD 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.”

8. I have also previously provided expert reports in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, No. 159 MM 2017 (PA 2018); *League of Women Voters of Michigan v. Johnson*, No. 2:17-cv-14148 (E.D. 2019); and *PRI et al v. Smith et al.*, No. 18-cv-357 (S.D. Ohio 2018).
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

¹ See <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>.

² For the state populations from 2010-2019, I used the file ‘nst-est2019-01.xlsx’ which I obtained from <https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html>. For the 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>. For the population counts from 1990-1999, I used the data available at <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-1990-2000-state-and-county-totals.html>.

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.³ My population projections are based on these official population estimates for each state for the period from 1990-2019.⁴

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

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.

⁴ For the state populations from 2010-2019, I used the file 'nst-est2019-01.xlsx' which I obtained from <https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html>. For the 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>. For the population counts from 1990-1999, I used the data available at <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-1990-2000-state-and-county-totals.html>.

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

	Model	ME	RMSE	MAE	MPE	MAPE
(1):	Linear model (decade)	-20,821	71,748	32,448	-0.29%	0.57%
(2):	Linear model (4 years)	-12,219	33,933	14,513	-0.11%	0.21%
(3):	Delta in last two years	-2,940	12,129	6,073	-0.02%	0.09%
(4):	State space model	-4,034	12,623	6,766	-0.04%	0.13%

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

State	2010 Population	2019 Population	2020 Population Projection
Alabama	4,779,736	4,903,185	4,918,700
Alaska	710,231	731,545	728,000
Arizona	6,392,017	7,278,717	7,399,400
Arkansas	2,915,918	3,017,804	3,025,900
California	37,253,956	39,512,223	39,724,500
Colorado	5,029,196	5,758,736	5,833,000
Connecticut	3,574,097	3,565,287	3,565,300
Delaware	897,934	973,764	982,000
District of Columbia	601,723	705,749	710,000
Florida	18,801,310	21,477,737	21,706,500
Georgia	9,687,653	10,617,423	10,723,200
Hawaii	1,360,301	1,415,872	1,411,500
Idaho	1,567,582	1,787,065	1,823,600
Illinois	12,830,632	12,671,821	12,622,100
Indiana	6,483,802	6,732,219	6,769,900
Iowa	3,046,355	3,155,070	3,168,400
Kansas	2,853,118	2,913,314	2,915,500
Kentucky	4,339,367	4,467,673	4,474,200
Louisiana	4,533,372	4,648,794	4,650,500
Maine	1,328,361	1,344,212	1,349,400
Maryland	5,773,552	6,045,680	6,071,200
Massachusetts	6,547,629	6,892,503	6,904,900
Michigan	9,883,640	9,986,857	9,986,900
Minnesota	5,303,925	5,639,632	5,676,100
Mississippi	2,967,297	2,976,149	2,972,300
Missouri	5,988,927	6,137,428	6,152,400
Montana	989,415	1,068,778	1,077,400
Nebraska	1,826,341	1,934,408	1,946,500
Nevada	2,700,551	3,080,156	3,132,200
New Hampshire	1,316,470	1,359,711	1,363,300
New Jersey	8,791,894	8,882,190	8,894,300
New Mexico	2,059,179	2,096,829	2,100,400
New York	19,378,102	19,453,561	19,377,200
North Carolina	9,535,483	10,488,084	10,594,600
North Dakota	672,591	762,062	766,100
Ohio	11,536,504	11,689,100	11,706,400
Oklahoma	3,751,351	3,956,971	3,971,200
Oregon	3,831,074	4,217,737	4,260,000
Pennsylvania	12,702,379	12,801,989	12,803,100
Rhode Island	1,052,567	1,059,361	1,059,400
South Carolina	4,625,364	5,148,714	5,213,000
South Dakota	814,180	884,659	891,700
Tennessee	6,346,105	6,829,174	6,886,700
Texas	25,145,561	28,995,881	29,432,600
Utah	2,763,885	3,205,958	3,259,800
Vermont	625,741	623,989	624,100
Virginia	8,001,024	8,535,519	8,570,600
Washington	6,724,540	7,614,893	7,707,400
West Virginia	1,852,994	1,792,147	1,780,000
Wisconsin	5,686,986	5,822,434	5,836,800
Wyoming	563,626	578,759	578,700

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.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.⁷ For the 2020 Census, however, all overseas federal personnel will be counted at their usual residential address in the United States.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.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, 2020.¹⁰
- Second, I allocated these personnel to each state in proportion to the number of service members in each branch based in each state.¹¹ This approach implicitly assumes that each

⁶ “Overseas” is defined as anywhere outside the 50 U.S. States and the District of Columbia.

⁷ See the Census Bureau’s FAQ on Congressional Apportionment in the 2010 Census.

<https://webcache.googleusercontent.com/search?q=cache:WTXwriFql5AJ:https://www.census.gov/population/apportionment/about/faq.html+&cd=2&hl=en&ct=clnk&gl=us&client=safari> and <https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/>.

⁸ See <https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/>.

⁹ See <https://www.doi.gov/sites/doi.gov/files/uploads/oia-02052020-census-and-the-military.pdf>.

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.

¹² 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.

¹³ See 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.

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.¹⁵ It is important to note that the federal overseas population is down by nearly 50% since the 2010 Census.¹⁶ This likely reflects the reduction in the nation's military deployments in conflict areas over the past decade.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."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.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.

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/>.

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>.

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/>.

¹⁸ See <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>.

¹⁹ See <https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/>.

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:

$$\text{Unauthorized Immigrants (U)} = \text{Survey, Total Foreign Born (F)} - \\ \text{Estimated Lawful Immigrant Population (L)}$$

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 Statistics²¹ 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 2017.²² 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.²³ 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-methodology/>.

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 2020.²⁴ 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).²⁵ 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

Model	ME	RMSE	MAE	MPE	MAPE
(1): Linear model (decade)	-21,998.25	90,634.40	31,639.51	-3.34	14.56
(2): Linear model (4 years)	-10,944.23	50,403.96	25,971.15	-3.95	17.59
(3): Delta in last two years	-12,884.62	58,005.64	28,961.54	-0.40	19.24
(4): State space model	-13,688.05	55,204.49	22,794.32	-3.46	15.48

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 6: Estimates of Effect on State Population Enumerations in 2020

State	Baseline 2020 Apportionment Population	Undocumented Immigrants (Pew)	Undocumented Percentage
	(1)	(2)	(3)
Alabama	4,926,400	71,900	1.5%
Alaska	735,700	8,400	1.1%
Arizona	7,410,500	274,400	3.7%
Arkansas	3,028,800	65,300	2.2%
California	39,799,200	2,066,000	5.2%
Colorado	5,846,100	190,100	3.3%
Connecticut	3,568,100	148,300	4.2%
Delaware	984,300	29,700	3%
Florida	21,736,600	796,000	3.7%
Georgia	10,749,300	375,700	3.5%
Hawaii	1,428,900	43,800	3.1%
Idaho	1,825,700	38,300	2.1%
Illinois	12,633,400	409,300	3.2%
Indiana	6,773,300	103,200	1.5%
Iowa	3,169,100	51,000	1.6%
Kansas	2,924,300	81,300	2.8%
Kentucky	4,485,300	44,700	1%
Louisiana	4,657,900	100,100	2.1%
Maine	1,350,400	4,000	0.3%
Maryland	6,105,000	261,600	4.3%
Massachusetts	6,907,400	231,900	3.4%
Michigan	9,989,700	103,800	1%
Minnesota	5,677,700	86,800	1.5%
Mississippi	2,979,500	23,000	0.8%
Missouri	6,160,800	63,100	1%
Montana	1,079,300	4,400	0.4%
Nebraska	1,950,200	55,800	2.9%
Nevada	3,137,300	211,200	6.7%
New Hampshire	1,363,700	10,400	0.8%
New Jersey	8,899,400	493,200	5.5%
New Mexico	2,107,400	59,200	2.8%
New York	19,386,100	679,800	3.5%
North Carolina	10,639,700	330,800	3.1%
North Dakota	770,300	5,900	0.8%
Ohio	11,715,100	94,400	0.8%
Oklahoma	3,981,800	90,100	2.3%
Oregon	4,261,500	109,100	2.6%
Pennsylvania	12,809,600	217,800	1.7%
Rhode Island	1,061,000	32,900	3.1%
South Carolina	5,229,800	101,500	1.9%
South Dakota	893,800	5,700	0.6%
Tennessee	6,888,900	139,200	2%
Texas	29,479,700	1,649,100	5.6%
Utah	3,263,900	106,100	3.3%
Vermont	624,400	3,500	0.6%
Virginia	8,639,600	297,600	3.4%
Washington	7,730,300	274,400	3.5%
West Virginia	1,780,600	4,300	0.2%
Wisconsin	5,838,300	72,900	1.2%
Wyoming	580,300	4,800	0.8%

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.

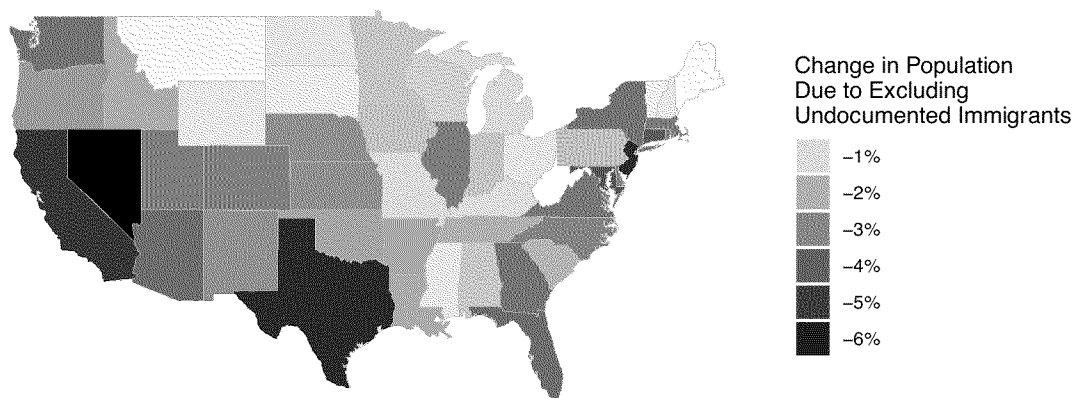


Figure 1: Effects on State Populations

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

State	Baseline Seats (1)	Seats after Exclusion (2)	Seat Delta (3)	Prob. Seat Loss (4)
Alabama	6	7	1	0%
Alaska	1	1	0	0%
Arizona	10	10	-0	0.3%
Arkansas	4	4	0	0%
California	52	51	-1	72.1%
Colorado	8	8	-0	0.3%
Connecticut	5	5	-0	3.4%
Delaware	1	1	0	0%
Florida	29	28	-0	38.4%
Georgia	14	14	0	0%
Hawaii	2	2	0	0%
Idaho	2	2	0	0%
Illinois	17	17	-0	10.1%
Indiana	9	9	0	0%
Iowa	4	4	0	0%
Kansas	4	4	0	0%
Kentucky	6	6	0	0%
Louisiana	6	6	0	0%
Maine	2	2	0	0%
Maryland	8	8	0	0%
Massachusetts	9	9	0	0%
Michigan	13	13	0	0%
Minnesota	7	8	1	0%
Mississippi	4	4	0	0%
Missouri	8	8	0	0%
Montana	2	2	0	0%
Nebraska	3	3	0	0%
Nevada	4	4	0	0%
New Hampshire	2	2	0	0%
New Jersey	12	11	-1	69.8%
New Mexico	3	3	0	0%
New York	26	25	-0	18.9%
North Carolina	14	14	0	0%
North Dakota	1	1	0	0%
Ohio	15	16	1	0%
Oklahoma	5	5	0	0%
Oregon	6	6	0	0%
Pennsylvania	17	17	0	0%
Rhode Island	1	1	0	0%
South Carolina	7	7	0	0%
South Dakota	1	1	0	0%
Tennessee	9	9	0	0%
Texas	39	38	-1	98.3%
Utah	4	4	0	0%
Vermont	1	1	0	0%
Virginia	11	11	0	0%
Washington	10	10	0	0%
West Virginia	2	2	0	0%
Wisconsin	8	8	0	0%
Wyoming	1	1	0	0%

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 than 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 Un documented 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

³⁰ See <https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles>.

Pew's estimate.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 2018.³² 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.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%.

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 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.

State	Main Analysis	Scenario #1 MPI	Scenario #2 CMS	Scenario #3 Pew (80%)	Scenario #4 Pew (60%)	Scenario #5 Pew (150%)
California	72%	100%	93%	49%	36%	92%
Florida	38%	0%	26%	39%	48%	60%
New Jersey	70%	80%	23%	57%	36%	91%
New York	19%	52%	19%	17%	28%	24%
Texas	98%	96%	98%	98%	98%	99.5%

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.

State	Main Analysis	Scenario #6 Alternative Population Forecasts	Scenario #7 Alternative Forecasts of Undoc. Imm.'s
California	72%	84%	75%
Florida	38%	45%	96%
New Jersey	70%	73%	51%
New York	19%	58%	30%
Texas	98%	99.5%	100%

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.

State	Main	Scenario #8
State	Analysis	Undercount
California	72%	67%
Florida	38%	0%
New Jersey	70%	93%
New York	19%	0%
Texas	98%	76%

³⁴ See Statement of John H Thompson, Former Director U.S. Census Bureau (August 2013 – June 2017), For the House Committee on Oversight and Reform, U.S. House of Representatives, July 29, 2020 <https://tinyurl.com/y67ojqjb>.

³⁵ See <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> and <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html>.

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 Center³⁶
- 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.

State	Main Analysis (1)	Pew (2)	CIS (3)	CfP (4)	Academic Study (5)
Arizona	0.3%				X
California	72%	X	X	X	X
Florida	38%	X			X
New Jersey	70%			X	
New York	19%		X		
Texas	98%	X	X	X	X

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

³⁶ See <https://www.pewresearch.org/fact-tank/2020/07/24/how-removing-unauthorized-immigrants-from-census-statistics-could-affect-house-reapportionment/>

³⁷ See https://cis.org/sites/default/files/2019-12/camarota-apportionment-12-19_1.pdf.

³⁸ See <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment/>.

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.

A handwritten signature in cursive script, appearing to read "Chris Warshaw".

Christopher Warshaw

References

Ansolabehere, Stephen, Alan Gerber, and Jim Snyder. 2002. “Equal votes, equal money: Court-ordered redistricting and public expenditures in the American states.” *American Political Science Review* 96 (4): 767–777.

Baker, Bryan. 2018. “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2015.” Department of Homeland Security, December.

Baumle, Amanda K, and Dudley L Poston Jr. 2019. “Apportionment of the US House of Representatives in 2020 under Alternative Immigration-Based Scenarios.” *Population and Development Review* 45 (2): 379–400.

Brown, David J., Misty L. Heggeness, Suzanne M. Dorinski, Lawrence Warren, and Moises Yi. 2018. Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census.

Cascio, Elizabeth U, and Ebonya Washington. 2014. “Valuing the vote: The redistribution of voting rights and state funds following the voting rights act of 1965.” *The Quarterly Journal of Economics* 129 (1): 379–433.

Caughey, Devin, and Christopher Warshaw. 2018. “Policy Preferences and Policy Change: Dynamic Responsiveness in the American States, 1936–2014.” *The American Political Science Review* 112 (2): 249–266.

Election Data Services. 2017. Some Change in Apportionment Allocations With New 2017 Census Estimates, But Greater Change Likely by 2020. Available at https://www.electiondataservices.com/wpcontent/uploads/2017/12/NR_Appor17c2wTablesMapsC1.pdf.

Elis, Roy, Neil Malhotra, and Marc Meredith. 2009. “Apportionment cycles as natural experiments.” *Political Analysis* 17 (4): 358–376.

Hyndman, Rob J, and George Athanasopoulos. 2018. *Forecasting: principles and practice*. O-Texts.

Hyndman, Rob, Anne B Koehler, J Keith Ord, and Ralph D Snyder. 2008. *Forecasting with exponential smoothing: the state space approach*. Springer Science & Business Media.

Passel, Jeffrey S. 2016. Overall Number of US Unauthorized Immigrants Holds Steady Since 2009: Decline in Share From Mexico Mostly Offset by Growth From Asia, Central America and Sub-Saharan African. Pew Research Center.

Treier, Shawn, and Simon Jackman. 2008. “Democracy as a latent variable.” *American Journal of Political Science* 52 (1): 201–217.

Warren, Robert. 2014. “Democratizing data about unauthorized residents in the United States: estimates and public-use data, 2010 to 2013.” *Journal on Migration and Human Security* 2 (4): 305–328.

Warren, Robert. 2019. "US undocumented population continued to fall from 2016 to 2017 and visa overstays significantly exceeded illegal crossings for the seventh consecutive year." *Journal on Migration and Human Security* 7 (1): 19–22.

Warren, Robert, and John Robert Warren. 2013. "Unauthorized immigration to the United States: Annual estimates and components of change, by state, 1990 to 2010." *International Migration Review* 47 (2): 296–329.

Appendix A**1. Estimates of Overseas Federal Personnel**

Table 3: Estimates of Overseas Federal Personnel in each State in 2020.

State	Overseas Personnel
Alabama	7,700
Alaska	7,500
Arizona	11,000
Arkansas	2,900
California	74,900
Colorado	14,200
Connecticut	2,600
Delaware	2,100
Florida	29,500
Georgia	26,800
Hawaii	17,500
Idaho	2,200
Illinois	10,300
Indiana	3,300
Iowa	900
Kansas	8,300
Kentucky	11,200
Louisiana	7,300
Maine	1,100
Maryland	33,600
Massachusetts	2,700
Michigan	2,900
Minnesota	1,600
Mississippi	6,700
Missouri	8,400
Montana	2,000
Nebraska	3,600
Nevada	6,200
New Hampshire	700
New Jersey	5,300
New Mexico	7,000
New York	9,300
North Carolina	44,500
North Dakota	4,000
Ohio	8,600
Oklahoma	10,700
Oregon	1,200
Pennsylvania	6,900
Rhode Island	1,700
South Carolina	16,400
South Dakota	2,000
Tennessee	2,600
Texas	51,500
Utah	4,200
Vermont	300
Virginia	68,800
Washington	23,000
West Virginia	700
Wisconsin	1,600
Wyoming	1,800

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.

State	Undocumented Immigrants
Alabama	71,900 (28,800)
Alaska	8,400 (3,500)
Arizona	274,400 (56,400)
Arkansas	65,300 (20,400)
California	2,066,000 (275,700)
Colorado	190,100 (50,200)
Connecticut	148,300 (67,700)
Delaware	29,700 (12,100)
Florida	796,000 (105,300)
Georgia	375,700 (140,000)
Hawaii	43,800 (19,000)
Idaho	38,300 (9,400)
Illinois	409,300 (70,100)
Indiana	103,200 (48,200)
Iowa	51,000 (20,400)
Kansas	81,300 (27,900)
Kentucky	44,700 (20,400)
Louisiana	100,100 (61,500)
Maine	4,000 (1,900)
Maryland	261,600 (76,300)
Massachusetts	231,900 (69,300)
Michigan	103,800 (37,500)
Minnesota	86,800 (34,200)
Mississippi	23,000 (11,600)
Missouri	63,100 (31,300)
Montana	4,400 (1,700)
Nebraska	55,800 (17,900)
Nevada	211,200 (31,600)
New Hampshire	10,400 (4,400)
New Jersey	493,200 (90,000)
New Mexico	59,200 (16,600)
New York	679,800 (102,000)
North Carolina	330,800 (73,400)
North Dakota	5,900 (3,200)
Ohio	94,400 (43,400)
Oklahoma	90,100 (30,200)
Oregon	109,100 (32,200)
Pennsylvania	217,800 (85,500)
Rhode Island	32,900 (12,000)
South Carolina	101,500 (47,500)
South Dakota	5,700 (2,300)
Tennessee	139,200 (56,000)
Texas	1,649,100 (182,200)
Utah	106,100 (19,100)
Vermont	3,500 (1,600)
Virginia	297,600 (104,600)
Washington	274,400 (82,600)
West Virginia	4,300 (2,000)
Wisconsin	72,900 (31,000)
Wyoming	4,800 (1,900)

3. Unrounded Main Results for Congressional Apportionment

Table 12: Unrounded Estimates of Excluding Undocumented Immigrants on Congressional Apportionment

State	Baseline Seats (1)	Seats after Exclusion (2)	Seat Delta (3)	Prob. Seat Loss (4)
Alabama	6.46	7.00	0.54	0%
Alaska	1.00	1.00	0.00	0%
Arizona	10.00	10.00	-0.00	0.3%
Arkansas	4.00	4.00	0.00	0%
California	52.15	51.32	-0.83	72.1%
Colorado	8.00	8.00	-0.00	0.3%
Connecticut	5.00	4.97	-0.03	3.4%
Delaware	1.00	1.00	0.00	0%
Florida	28.86	28.47	-0.38	38.4%
Georgia	14.00	14.02	0.02	0%
Hawaii	2.00	2.00	0.00	0%
Idaho	2.00	2.12	0.12	0%
Illinois	17.00	16.90	-0.10	10.1%
Indiana	9.00	9.00	0.00	0%
Iowa	4.00	4.00	0.00	0%
Kansas	4.00	4.00	0.00	0%
Kentucky	6.00	6.00	0.00	0%
Louisiana	6.00	6.02	0.02	0%
Maine	2.00	2.00	0.00	0%
Maryland	8.00	8.00	0.00	0%
Massachusetts	9.00	9.00	0.00	0%
Michigan	13.00	13.28	0.28	0%
Minnesota	7.07	8.00	0.92	0%
Mississippi	4.00	4.00	0.00	0%
Missouri	8.00	8.00	0.00	0%
Montana	1.92	2.00	0.08	0%
Nebraska	3.00	3.00	0.00	0%
Nevada	4.00	4.00	0.00	0%
New Hampshire	2.00	2.00	0.00	0%
New Jersey	12.00	11.30	-0.70	69.8%
New Mexico	3.00	3.00	0.00	0%
New York	25.54	25.35	-0.19	18.9%
North Carolina	14.00	14.00	0.00	0%
North Dakota	1.00	1.00	0.00	0%
Ohio	15.00	16.00	1.00	0%
Oklahoma	5.00	5.00	0.00	0%
Oregon	6.00	6.00	0.00	0%
Pennsylvania	17.00	17.00	0.00	0%
Rhode Island	1.00	1.17	0.17	0%
South Carolina	7.00	7.00	0.00	0%
South Dakota	1.00	1.00	0.00	0%
Tennessee	9.00	9.00	0.00	0%
Texas	38.99	37.93	-1.06	98.3%
Utah	4.00	4.00	0.00	0%
Vermont	1.00	1.00	0.00	0%
Virginia	11.00	11.16	0.16	0%
Washington	10.00	10.00	0.00	0%
West Virginia	2.00	2.00	0.00	0%
Wisconsin	8.00	8.00	0.00	0%
Wyoming	1.00	1.00	0.00	0%

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.
5. I am also on the Editorial Board of the *Journal of Politics*. I have previously provided expert reports in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania* and *League of Women Voters of Michigan v. Johnson*. My non-academic writing has been published in the New York Times Upshot.

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

¹ 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.

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>.

13. 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.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 1: Validation of State Population Projections

Model	2010			2017		
	Mean Error	Mean Abs. Error	Mean Abs. Prop. Error	Mean Error	Mean Abs Error	Mean Abs. Prop. Error
Linear model (full period)	22,800	62,860	0.013	7,827	32,003	0.007
Linear model (4 years)	27,399	82,106	0.014	33,420	59,396	0.014
Delta in last two years	20,383	50,663	0.010	140,472	142,506	0.020
State space model	5,826	51,033	0.009	-2,599	33,378	0.008

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 2: Population Projections in Select Counties and Cities

County/City	2010 Population	2017 Population	2020 Population Projection
Phoenix, AZ	1,446,909	1,626,078	1,698,187
Los Angeles County, CA	9,818,605	10,163,507	10,256,275
Monterey County, CA	415,052	437,907	444,016
San Francisco, CA	805,193	884,363	909,143
Miami, FL	399,457	463,347	491,295
Chicago, IL	2,695,620	2,716,450	2,704,974
Prince Georges County, MD	863,420	912,756	931,412
New York NY	8,174,959	8,622,698	8,645,147
Columbus, OH	788,877	879,170	925,408
Philadelphia, PA	1,526,006	1,580,863	1,598,072
Pittsburgh, PA	305,391	302,407	297,243
Central Falls, RI	19,393	19,359	19,250
Providence, RI	177,997	180,393	181,532
Cameron County, TX	406,219	423,725	429,603
El Paso County, TX	800,647	840,410	851,600
Hidalgo County, TX	774,770	860,661	892,083
Seattle, WA	608,664	724,745	780,550

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

State	2010 Population	2017 Population	2020 Population Projection
Alabama	4,779,736	4,874,747	4,917,351
Alaska	710,231	739,795	739,473
Arizona	6,392,017	7,016,270	7,339,157
Arkansas	2,915,918	3,004,279	3,051,838
California	37,253,956	39,536,653	40,505,540
Colorado	5,029,196	5,607,154	5,823,386
Connecticut	3,574,097	3,588,184	3,589,649
Delaware	897,934	961,939	989,662
District of Columbia	601,723	693,972	722,881
Florida	18,801,310	20,984,400	21,967,862
Georgia	9,687,653	10,429,379	10,776,655
Hawaii	1,360,301	1,427,538	1,429,641
Idaho	1,567,582	1,716,943	1,827,695
Illinois	12,830,632	12,802,023	12,701,647
Indiana	6,483,802	6,666,818	6,761,903
Iowa	3,046,355	3,145,711	3,182,994
Kansas	2,853,118	2,913,123	2,925,781
Kentucky	4,339,367	4,454,189	4,508,391
Louisiana	4,533,372	4,684,333	4,684,247
Maine	1,328,361	1,335,907	1,349,155
Maryland	5,773,552	6,052,177	6,187,649
Massachusetts	6,547,629	6,859,819	6,966,760
Michigan	9,883,640	9,962,311	9,962,308
Minnesota	5,303,925	5,576,606	5,690,791
Mississippi	2,967,297	2,984,100	2,984,630
Missouri	5,988,927	6,113,532	6,180,600
Montana	989,415	1,050,493	1,079,083
Nebraska	1,826,341	1,920,076	1,957,570
Nevada	2,700,551	2,998,039	3,174,453
New Hampshire	1,316,470	1,342,795	1,366,068
New Jersey	8,791,894	9,005,644	9,106,936
New Mexico	2,059,179	2,088,070	2,095,989
New York	19,378,102	19,849,399	19,885,662
North Carolina	9,535,483	10,273,419	10,623,613
North Dakota	672,591	755,393	752,711
Ohio	11,536,504	11,658,609	11,713,096
Oklahoma	3,751,351	3,930,864	3,974,666
Oregon	3,831,074	4,142,776	4,269,590
Pennsylvania	12,702,379	12,805,537	12,838,064
Rhode Island	1,052,567	1,059,639	1,059,639
South Carolina	4,625,364	5,024,369	5,213,894
South Dakota	814,180	869,666	891,229
Tennessee	6,346,105	6,715,984	6,915,723
Texas	25,145,561	28,304,596	29,593,219
Utah	2,763,885	3,101,833	3,274,374
Vermont	625,741	623,657	622,506
Virginia	8,001,024	8,470,020	8,632,998
Washington	6,724,540	7,405,743	7,785,568
West Virginia	1,852,994	1,815,857	1,777,893
Wisconsin	5,686,986	5,795,483	5,858,478
Wyoming	563,626	579,315	565,592

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.⁶

This survey was designed by Dr. Matt Barreto and conducted by Pacific Market Research.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).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?’

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.

⁷ Data and statistical code to replicate my analysis of this survey is available in my replication materials.

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

	Latinos			Foreign-born (not Latino)		
	(1)	(2)	(3)	(4)	(5)	(6)
Citizenship Question	-0.059** (0.029)	-0.070** (0.028)	-0.062*** (0.016)	-0.113 (0.072)	-0.164** (0.066)	-0.096** (0.039)
Survey Weights	X	X		X	X	
Controls		X	X		X	X
Observations	2,362	2,362	2,362	488	488	488
R ²			0.043			0.117
Adjusted R ²			0.021			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)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.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.

Table 5: Effect of Undercount on State Population Enumerations in 2020

State	Baseline Apportionment Pop. Projection	5.8% Undercount		10% Undercount		Survey Experiment Foreign-born + Hispanics
		Noncitizens	Noncitizens+ Hispanic	Noncitizens	Noncitizens + Hispanic	
	(1)	(2)	(3)	(4)	(5)	(6)
Alabama	4,928,974	-0.3%	-0.4%	-0.5%	-0.7%	-0.6%
Alaska	745,119	-0.5%	-0.8%	-0.8%	-1.4%	-1.4%
Arizona	7,349,498	-0.9%	-2.1%	-1.5%	-3.6%	-2.6%
Arkansas	3,056,993	-0.4%	-0.6%	-0.7%	-1%	-0.8%
California	40,549,557	-1.7%	-2.9%	-2.9%	-5%	-4.1%
Colorado	5,831,253	-0.7%	-1.5%	-1.2%	-2.7%	-2%
Connecticut	3,593,415	-0.8%	-1.5%	-1.3%	-2.6%	-2.4%
Delaware	991,133	-0.6%	-1%	-1%	-1.7%	-1.5%
Florida	22,017,594	-1%	-2%	-1.7%	-3.4%	-2.7%
Georgia	10,796,611	-0.7%	-0.9%	-1.2%	-1.6%	-1.5%
Hawaii	1,432,921	-1%	-1.6%	-1.7%	-2.8%	-3%
Idaho	1,830,654	-0.4%	-0.9%	-0.8%	-1.6%	-1.2%
Illinois	12,718,521	-0.8%	-1.4%	-1.4%	-2.4%	-2.1%
Indiana	6,770,793	-0.4%	-0.6%	-0.7%	-1.1%	-0.9%
Iowa	3,186,710	-0.4%	-0.6%	-0.7%	-1%	-0.9%
Kansas	2,931,128	-0.6%	-1%	-1%	-1.7%	-1.3%
Kentucky	4,514,011	-0.3%	-0.4%	-0.5%	-0.7%	-0.6%
Louisiana	4,694,542	-0.3%	-0.5%	-0.5%	-0.8%	-0.6%
Maine	1,351,512	-0.2%	-0.3%	-0.3%	-0.5%	-0.6%
Maryland	6,195,838	-0.9%	-1.2%	-1.6%	-2%	-2.1%
Massachusetts	6,972,768	-0.9%	-1.4%	-1.5%	-2.4%	-2.4%
Michigan	9,976,301	-0.4%	-0.6%	-0.6%	-1%	-1.1%
Minnesota	5,696,268	-0.5%	-0.6%	-0.8%	-1.1%	-1.2%
Mississippi	2,990,101	-0.2%	-0.3%	-0.3%	-0.5%	-0.4%
Missouri	6,191,875	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Montana	1,081,584	-0.1%	-0.3%	-0.2%	-0.6%	-0.5%
Nebraska	1,960,312	-0.5%	-0.9%	-0.9%	-1.5%	-1.2%
Nevada	3,178,894	-1.3%	-2.1%	-2.2%	-3.6%	-3%
New Hampshire	1,368,556	-0.3%	-0.5%	-0.5%	-0.8%	-0.9%
New Jersey	9,114,740	-1.2%	-1.9%	-2%	-3.3%	-3%
New Mexico	2,100,036	-0.8%	-3.1%	-1.3%	-5.3%	-3.3%
New York	19,907,138	-1.2%	-1.9%	-2.1%	-3.2%	-3.1%
North Carolina	10,638,762	-0.6%	-0.8%	-1%	-1.4%	-1.2%
North Dakota	754,368	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Ohio	11,729,092	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Oklahoma	3,981,432	-0.5%	-0.8%	-0.8%	-1.4%	-1.1%
Oregon	4,278,356	-0.7%	-1.1%	-1.1%	-1.9%	-1.6%
Pennsylvania	12,854,327	-0.4%	-0.7%	-0.6%	-1.3%	-1.2%
Rhode Island	1,060,979	-0.7%	-1.3%	-1.2%	-2.3%	-2%
South Carolina	5,224,199	-0.3%	-0.5%	-0.6%	-0.9%	-0.8%
South Dakota	894,019	-0.3%	-0.4%	-0.5%	-0.8%	-0.7%
Tennessee	6,930,386	-0.4%	-0.5%	-0.6%	-0.9%	-0.8%
Texas	29,654,648	-1.3%	-2.7%	-2.2%	-4.6%	-3.2%
Utah	3,277,814	-0.6%	-1.1%	-1.1%	-1.9%	-1.4%
Vermont	624,804	-0.2%	-0.3%	-0.3%	-0.5%	-0.7%
Virginia	8,651,354	-0.7%	-1%	-1.2%	-1.7%	-1.8%
Washington	7,799,983	-0.9%	-1.3%	-1.5%	-2.2%	-2.2%
West Virginia	1,781,304	-0.1%	-0.2%	-0.2%	-0.3%	-0.3%
Wisconsin	5,864,100	-0.3%	-0.6%	-0.6%	-1.1%	-0.9%
Wyoming	567,929	-0.3%	-0.8%	-0.5%	-1.3%	-1%

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.

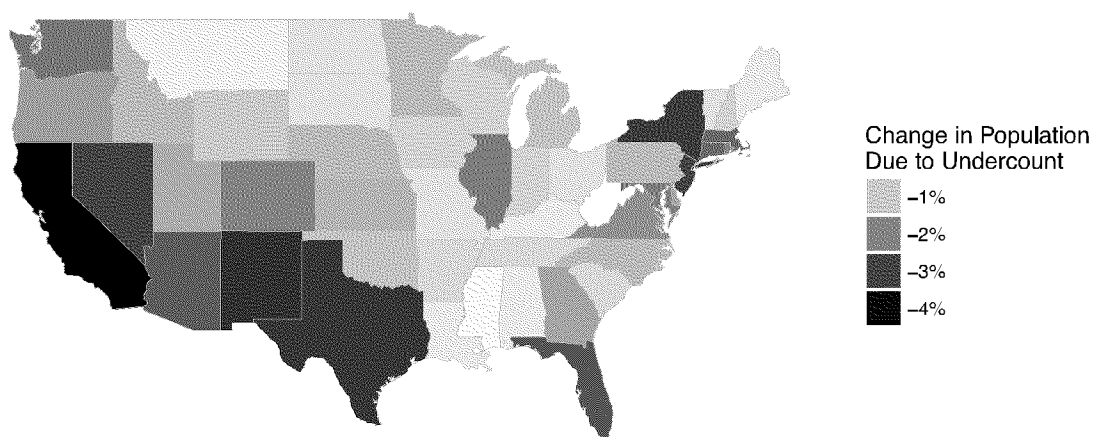


Figure 1: Effects on State Populations

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

State	Baseline Seats	5.8% Undercount		10% Undercount		Survey Experiment Foreign-born + Hispanics
		Noncitizens	Noncitizens+ Hispanic	Noncitizens	Noncitizens + Hispanic	
Alabama	6	0 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)
Alaska	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Arizona	10	0 (-1,0)	0 (-1,0)	0 (-1,0)	-1 (-1,0)	0 (-1,0)
Arkansas	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
California	53	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-2,-1)	-1 (-2,0)
Colorado	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Connecticut	5	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Delaware	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Florida	29	0 (-1,0)	0 (-1,0)	0 (-1,0)	-1 (-1,0)	-1 (-1,0)
Georgia	14	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Hawaii	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Idaho	2	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,1)	0 (0,1)
Illinois	17	0 (-1,0)	0 (0,1)	0 (-1,1)	0 (-1,0)	0 (-1,0)
Indiana	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Iowa	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Kansas	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Kentucky	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Louisiana	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,0)
Maine	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Maryland	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Massachusetts	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Michigan	13	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Minnesota	7	0 (0,1)	0 (0,1)	0 (0,1)	1 (0,1)	1 (0,1)
Mississippi	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Missouri	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Montana	1	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)
Nebraska	3	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Nevada	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Hampshire	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Jersey	12	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Mexico	3	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New York	26	0 (-1,0)	0 (0,0)	0 (-1,0)	0 (-1,0)	0 (-1,0)
North Carolina	14	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
North Dakota	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Ohio	15	0 (0,0)	0 (0,1)	0 (0,1)	1 (0,1)	0 (0,1)
Oklahoma	5	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Oregon	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Pennsylvania	17	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Rhode Island	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
South Carolina	7	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
South Dakota	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Tennessee	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Texas	39	0 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)
Utah	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Vermont	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Virginia	11	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Washington	10	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
West Virginia	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Wisconsin	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Wyoming	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)

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

County	2020 Population	2% Undercount				5.8% Undercount				Survey Experiment			
		Noncitizens		Noncitizens+ Hispanics		Noncitizens		Noncitizens+ Hispanics		Foreign-born+ Hispanics			
		Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change
Phoenix, AZ	1,698,187	9,532	-0.6%	15,939	-0.9%	27,644	-1.6%	46,223	-2.7%	53,388	-3.1%		
Los Angeles County, CA	10,256,275	74,027	-0.7%	118,962	-1.2%	214,679	-2.1%	344,988	-3.4%	469,163	-4.6%		
Monterey County, CA	444,016	3,841	-0.9%	5,525	-1.2%	11,139	-2.5%	16,022	-3.6%	18,215	-4.1%		
San Francisco, CA	909,143	4,640	-0.5%	6,141	-0.7%	13,457	-1.5%	17,808	-2%	37,509	-4.1%		
San Jose, CA	1,045,953	6,843	-0.7%	10,743	-1%	19,845	-1.9%	31,153	-3%	52,766	-5%		
Washington, DC	722,881	1,997	-0.3%	2,690	-0.4%	5,792	-0.8%	7,800	-1.1%	11,859	-1.6%		
Miami, FL	491,295	4,868	-1%	7,734	-1.6%	14,118	-2.9%	22,428	-4.6%	24,713	-5%		
Chicago, IL	2,704,974	12,334	-0.5%	20,052	-0.7%	35,769	-1.3%	58,152	-2.1%	76,859	-2.8%		
Prince Georges County, MD	931,412	4,388	-0.5%	5,054	-0.5%	12,724	-1.4%	14,658	-1.6%	21,592	-2.3%		
New York, NY	8,645,147	55,293	-0.6%	83,728	-1%	160,350	-1.9%	242,811	-2.8%	396,647	-4.6%		
Columbus, OH	925,408	2,375	-0.3%	2,768	-0.3%	6,886	-0.7%	8,027	-0.9%	12,889	-1.4%		
Philadelphia, PA	1,598,072	3,944	-0.2%	7,305	-0.5%	11,438	-0.7%	21,185	-1.3%	32,116	-2%		
Pittsburgh, PA	297,243	480	-0.2%	614	-0.2%	1,392	-0.5%	1,780	-0.6%	3,124	-1.1%		
Central Falls, RI	19,250	190	-1%	313	-1.6%	550	-2.9%	908	-1.7%	920	-4.8%		
Providence, RI	181,532	1,249	-0.7%	1,934	-1.1%	3,622	-2%	5,608	-3.1%	6,833	-3.8%		
Cameron County, TX	429,603	3,535	-0.8%	7,759	-1.8%	10,253	-2.4%	22,501	-5.2%	23,272	-5.4%		
El Paso County, TX	851,600	5,844	-0.7%	14,227	-1.7%	16,947	-2%	41,259	-1.8%	43,069	-5.1%		
Hidalgo County, TX	892,083	8,455	-0.9%	16,540	-1.9%	24,520	-2.7%	47,965	-5.4%	49,626	-5.6%		
Seattle, WA	780,550	2,483	-0.3%	2,987	-0.4%	7,200	-0.9%	8,661	-1.1%	17,083	-2.2%		

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.

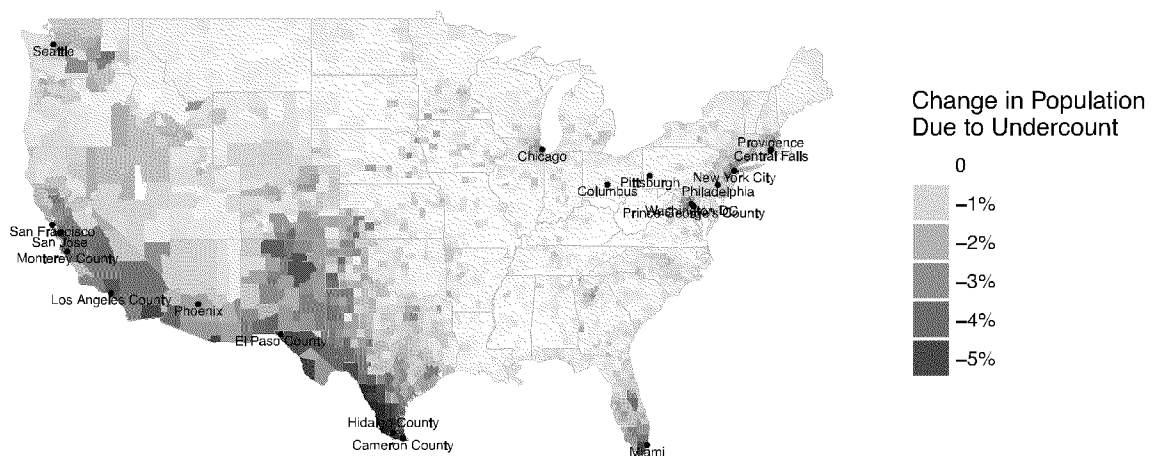


Figure 2: Effects on County Populations

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

	2% Undercount		5.8% Undercount		Survey Experiment
	Noncitizens	Noncitizens+ Hispanics	Noncitizens	Noncitizens+ Hispanics	Foreign-born+ Hispanics
Phoenix, AZ	-0.4%	-0.4%	-0.9%	-0.8%	-0.7%
Los Angeles County, CA	-0.3%	-0.3%	-0.5%	-0.6%	-0.6%
Monterey County, CA	-0.4%	-0.4%	-1%	-0.9%	-0.1%
San Francisco, CA	0%	0.2%	0.1%	0.8%	-0.2%
San Jose, CA	-0.2%	-0.1%	-0.3%	-0.2%	-1.1%
Miami, FL	-0.9%	-1.1%	-2.1%	-2.9%	-2.6%
Chicago, IL	-0.3%	-0.4%	-0.6%	-0.9%	-0.9%
Prince Georges County, MD	-0.3%	-0.3%	-0.6%	-0.5%	-0.4%
New York, NY	-0.3%	-0.4%	-0.8%	-1.1%	-1.6%
Columbus, OH	-0.3%	-0.3%	-0.6%	-0.6%	-0.8%
Philadelphia, PA	-0.2%	-0.3%	-0.5%	-0.7%	-1%
Pittsburgh, PA	-0.2%	-0.1%	-0.2%	0%	0%
Central Falls, RI	-0.9%	-1.3%	-2.3%	-3.5%	-2.9%
Providence, RI	-0.6%	-0.7%	-1.4%	-1.9%	-1.9%
Cameron County, TX	-0.6%	-1.1%	-1.3%	-2.8%	-2.5%
El Paso County, TX	-0.5%	-1%	-0.9%	-2.4%	-2.1%
Hidalgo County, TX	-0.7%	-1.2%	-1.7%	-3%	-2.7%
Seattle, WA	-0.2%	-0.1%	-0.2%	0%	-0.2%

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.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).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.

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.

¹⁵ See https://www.cdc.gov/nchs/data_access/urban_rural.htm

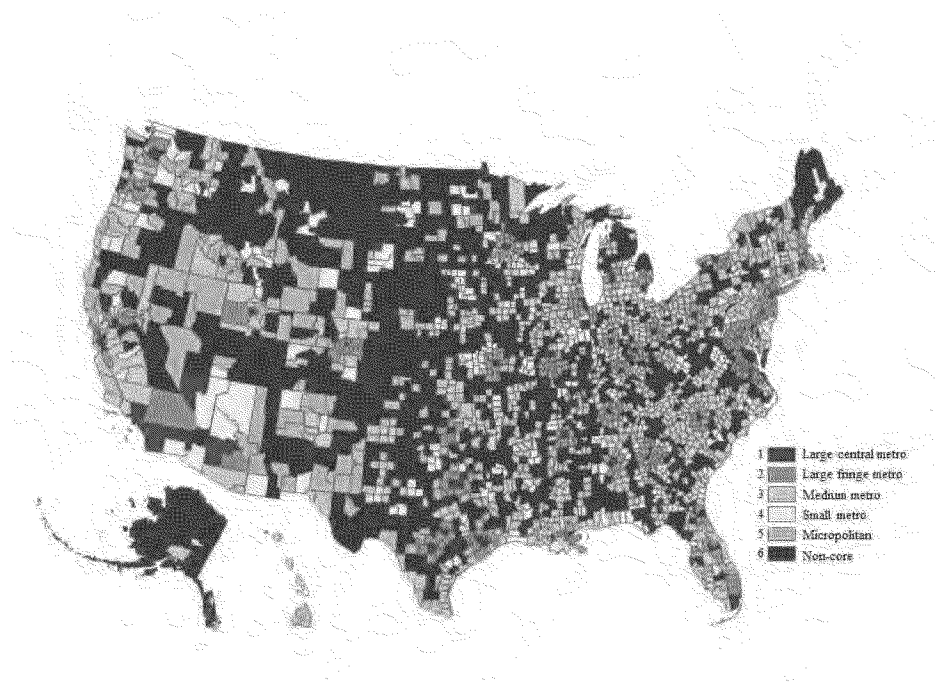


Figure 3: 2013 Urban-Rural Classification Scheme for Counties

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

County	2020 Population Projection	Percentage Change Due to Undercount	Percentage Change in Relative Population
Large central metro	103,025,259	-2.9%	-1.1%
Large fringe metro	83,761,694	-1.8%	.1%
Median metro	69,737,033	-1.5%	.3%
Small metro	30,116,705	-1%	.9%
Micropolitan	27,375,961.605	-.8%	1.1%
Noncore	18,760,860	-.5%	1.4%

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

State	Baseline Apportionment Pop. Projection	Noncitizens	Noncitizens+ Hispanic
Alabama	4,928,974	-0.1%	-0.1%
Alaska	745,119	-0.2%	-0.3%
Arizona	7,349,498	-0.3%	-0.7%
Arkansas	3,056,993	-0.1%	-0.2%
California	40,549,557	-0.6%	-1%
Colorado	5,831,253	-0.2%	-0.5%
Connecticut	3,593,415	-0.3%	-0.5%
Delaware	991,133	-0.2%	-0.3%
Florida	22,017,594	-0.3%	-0.7%
Georgia	10,796,611	-0.2%	-0.3%
Hawaii	1,432,921	-0.3%	-0.6%
Idaho	1,830,654	-0.2%	-0.3%
Illinois	12,718,521	-0.3%	-0.5%
Indiana	6,770,793	-0.1%	-0.2%
Iowa	3,186,710	-0.1%	-0.2%
Kansas	2,931,128	-0.2%	-0.3%
Kentucky	4,514,011	-0.1%	-0.1%
Louisiana	4,694,542	-0.1%	-0.2%
Maine	1,351,512	-0.1%	-0.1%
Maryland	6,195,838	-0.3%	-0.4%
Massachusetts	6,972,768	-0.3%	-0.5%
Michigan	9,976,301	-0.1%	-0.2%
Minnesota	5,696,268	-0.2%	-0.2%
Mississippi	2,990,101	-0.1%	-0.1%
Missouri	6,191,875	-0.1%	-0.1%
Montana	1,081,584	0%	-0.1%
Nebraska	1,960,312	-0.2%	-0.3%
Nevada	3,178,894	-0.4%	-0.7%
New Hampshire	1,368,556	-0.1%	-0.2%
New Jersey	9,114,740	-0.4%	-0.7%
New Mexico	2,100,036	-0.3%	-1.1%
New York	19,907,138	-0.4%	-0.6%
North Carolina	10,638,762	-0.2%	-0.3%
North Dakota	754,368	-0.1%	-0.1%
Ohio	11,729,092	-0.1%	-0.1%
Oklahoma	3,981,432	-0.2%	-0.3%
Oregon	4,278,356	-0.2%	-0.4%
Pennsylvania	12,854,327	-0.1%	-0.3%
Rhode Island	1,060,979	-0.2%	-0.5%
South Carolina	5,224,199	-0.1%	-0.2%
South Dakota	894,019	-0.1%	-0.2%
Tennessee	6,930,386	-0.1%	-0.2%
Texas	29,654,648	-0.4%	-0.9%
Utah	3,277,814	-0.2%	-0.4%
Vermont	624,804	-0.1%	-0.1%
Virginia	8,651,354	-0.2%	-0.3%
Washington	7,799,983	-0.3%	-0.4%
West Virginia	1,781,304	0%	-0.1%
Wisconsin	5,864,100	-0.1%	-0.2%
Wyoming	567,929	-0.1%	-0.3%

Christopher S. Warshaw

Department of Political Science
2115 G Street, N.W.
Monroe Hall 440
Washington, D.C. 20052

Office: 202-994-6290
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)
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)

20. "Accountability for the Local Economy at All Levels of Government in United States Elections." Forthcoming. 2020. *American Political Science Review* .114(3): 660-676. (with Justin de Benedictis-Kessner)
19. "Politics in Forgotten Governments: The Partisan Composition of County Legislatures and County Fiscal Policies." 2020. *Journal of Politics*. 82(2): 460-475. (with Justin de Benedictis-Kessner)
18. "On the Representativeness of Primary Electorates." 2020. *British Journal of Political Science*. 50(2): 677-685. (with John Sides, Chris Tausanovitch, and Lynn Vavreck)
17. "Geography, Uncertainty, and Polarization." 2019. *Political Science Research and Methods*. 7(4): 775-794. (with Nolan McCarty, Jonathan Rodden, Boris Shor, and Chris Tausanovitch)
16. "Policy Ideology in European Mass Publics, 1981–2016." 2019. *American Political Science Review*. 113(3): 674-693. (with Devin Caughey and Tom O'Grady).
15. "Does Global Warming Increase Public Concern About Climate Change?" 2019. *Journal of Politics*. 81(2): 686-691. (with Parrish Bergquist)
14. "Local Elections and Representation in the United States." 2019. *Annual Review of Political Science*. 22(1): 461-479.
13. "The Ideological Nationalization of Party Constituencies in the American States". 2018. *Public Choice*. Keith Poole Symposium. 176(1-2): 133-151. (with James Dunham and Devin Caughey)
12. "Policy Preferences and Policy Change: Dynamic Responsiveness in the American States, 1936-2014." 2018. *American Political Science Review*. 112(2): 249-266. (with Devin Caughey)
11. "Does the Ideological Proximity Between Candidates and Voters Affect Voting in U.S. House Elections?" 2018. *Political Behavior*. 40(1): 223-245. (with Chris Tausanovitch)
10. "Partisan Gerrymandering and the Political Process: Effects on Roll-Call Voting and State Policies." *Election Law Journal*. December, 2017. 16(4): 453-469. Symposium on Partisan Gerrymandering and the Efficiency Gap. (with Devin Caughey and Chris Tausanovitch)
9. "Incremental Democracy: The Policy Effects of Partisan Control of State Government." 2017. *Journal of Politics*. 79(4): 1342-1358. (with Devin Caughey and Yiqing Xu)
8. "Renewable energy policy design and framing influences public support in the United States." 2017. *Nature Energy*. 2(17107). (with Leah Stokes)
7. "Estimating Candidates' Political Orientation in a Polarized Congress." 2017. *Political Analysis*. 25(2): 167-187. (with Chris Tausanovitch)
6. "The Dynamics of State Policy Liberalism, 1936-2014." 2016. *American Journal of Political Science*. 60(4): 899-913. (with Devin Caughey)
5. "Mayoral Partisanship and Municipal Fiscal Policy." 2016. *Journal of Politics*. 78(4): 1124-1138. (with Justin de Benedictis-Kessner)
4. "Dynamic Estimation of Latent Opinion Using a Hierarchical Group-Level IRT Model." 2015. *Political Analysis*. 23(2): 197-211. (with Devin Caughey)
3. "Representation in Municipal Government." 2014. *American Political Science Review*. 108(3): 605-641. (with Chris Tausanovitch)
2. "Measuring Constituent Policy Preferences in Congress, State Legislatures and Cities." 2013. *Journal of Politics*. 75(2): 330-342. (with Chris Tausanovitch)

1. "How Should We Measure District-Level Public Opinion on Individual Issues?" 2012. *Journal of Politics*. 74(1): 203-219. (with Jonathan Rodden)

Editor Reviewed Articles in Journals and Law Reviews

3. "Public Opinion in Subnational Politics." 2019. *Journal of Politics*. 81(1): 352-363. Editor reviewed for Symposium on Subnational Policymaking. (with Devin Caughey)
2. "Spatial variation in messaging effects." 2018. *Nature Climate Change*. News & Views. April, 2018.
1. "Business as Usual? Analyzing the Doctrinal Development of Environmental Standing Doctrine since 1976." 2011. *Harvard Law and Policy Review*. Volume 5.2. (with Gregory Wannier).

Book Chapters

5. "Elections and Parties in Environmental Politics." 2020. *Handbook on U.S. Environmental Policy*. David Konisky, ed. (with Parrish Bergquist)
4. "Latent Constructs in Public Opinion." 2018. *Oxford Handbook on Polling and Polling Methods*. R. Michael Alvarez and Lonna Atkeson, ed. Oxford: Oxford University Press.
3. "The Application of Big Data in Surveys to the Study of Elections, Public Opinion, and Representation." 2016. *Data Analytics in Social Science, Government, and Industry*. R. Michael Alvarez, ed. Cambridge: Cambridge University Press.
2. "The Political Economy of Expropriation and Privatization in the Oil Sector." 2012. *Oil and Governance: State-Owned Enterprises and the World Energy Supply*. David G. Victor, David Hulst, and Mark Thurber, eds. Cambridge: Cambridge University Press.
1. "Democratization and Countermajoritarian Institutions: The Role of Power and Constitutional Design In Self-Enforcing Democracy." 2012. *Comparative Constitutional Design*. Cambridge: Cambridge University Press. (with Susan Alberts and Barry R. Weingast).

Policy Reports

1. Reforming Baltimore's Mayoral Elections. 2020. Abell Foundation Report.
<https://www.abell.org/publications/reforming-baltimores-mayoral-elections>

Unpublished Work

Book Project

"Dynamic Democracy: Citizens, Politicians, and Policymaking in the American States." 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

"How Local Covid Deaths Are Affecting Vote Choice." *New York Times*. July 28, 2020. (with Lynn Vavreck)

"A coronavirus recession would hurt all kinds of Republican candidates – not just Trump." *Washington Post*, Monkey Cage. March 18, 2020. (with Justin de Benedictis-Kessner).

"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

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

dgo: Dynamic Estimation of Group-Level Opinion. 2017. R package. <https://CRAN.R-project.org/package=dgo>. (with James Dunham and Devin Caughey)

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

Christopher S. Warshaw

6

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

Christopher S. Warshaw

7

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, Urban Affairs Review, Journal of Health Politics, Policy and Law, Perspectives on Politics, Cambridge 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

Organizing Committee, Conference on Ideal Point Models at MIT, <http://idealpoint.tahk.us>, 2015

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

Expert, *League of Women Voters of Pennsylvania v. the Commonwealth of Pennsylvania*, Partisan Gerrymandering Case (2017-18)

Expert, *League of Women Voters of Michigan v. Johnson*, Partisan Gerrymandering Case (2018-2019)

Christopher S. Warshaw

8

Expert, *New York Immigration Coalition v. US Dept of Commerce & State of NY v. US Dept of Commerce, Effects of Undercount on Census due to Citizenship Question* (2018)

Expert, *APRI et al. v. v. Smith et al.*, Partisan Gerrymandering Case (2018-2019)

Community Service

Sierra Club: National Board of Directors (2009-2015)

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

2. Millions of undocumented immigrants live in the United States and many have lived in the United States for many years. *See* Office of Immigration Statistics, U.S. Dep't of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 2 (Dec. 2018), https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf.

3. California and Texas are consistently the two states with the largest populations of undocumented residents. *Id.* at 4-5.

4. According to the Department of Homeland Security, California had 2.9 million undocumented residents and Texas had 1.9 million undocumented residents in 2015. *Id.* at 2.

5. As of the most recent Congressional reapportionment following the 2010 Decennial Census, the average population of each U.S. House district is 710,767 people. *See* Kristin D. Burnett, *Congressional Apportionment*, U.S. Census Bureau (Nov. 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-08.pdf> (last visited July 30, 2020).

6. According to the United States Census Bureau, as of July 1, 2019, the population of the United States was estimated to be 328,239,523. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited July 30, 2020).

¹ Citations to “Ex. ___” are to the exhibits to the accompanying Declaration of Matthew Colangelo dated August 7, 2020.

7. If the July 1, 2019 Census Bureau estimate of the total United States population is divided by the total number of seats in Congress (435), the quotient is 754,574. *See id.*

8. The Memorandum states that “[i]ncreasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law.” *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679, 44,680 (July 23, 2020) (the “Memorandum”) (ECF No. 1-1).

9. The Memorandum states: “Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State’s entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.” *Id.*

10. A state in which 2.2 million people represent 6 percent of the population would have a total population of more than 36 million residents.

11. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of California was 37,253,956. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited July 30, 2020).

12. According to the Census Bureau, as of July 1, 2019, the total population of the State of California was 39,512,223. *Id.*

13. The second most populous state in the United States is Texas. *Id.*

14. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of Texas was 25,145,561. *Id.*

15. According to the United States Census Bureau, as of July 1, 2019, the total population of the State of Texas was 28,995,881. *Id.*

16. After California and Texas, the next most populous state is Florida, which, according to the Census Bureau, had a total population of 18,801,310 as of April 1, 2010, and an estimated total population of 21,477,737 as of July 1, 2019. *Id.*

17. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute approximately 7.6 percent of the estimated total population of Texas as of July 1, 2019. *See id.*

18. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute over 10 percent of the estimated total population of Florida as of 2019. *See id.*

19. The Memorandum anticipates that excluding undocumented immigrants from the apportionment base would deprive California of at least one seat in the House of Representatives. *See* 85 Fed. Reg. at 44,680.

20. Dr. Christopher Warshaw modeled the effects of excluding undocumented immigrants from the population count used to calculate Congressional reapportionment after the 2020 Census. *See* Warshaw Decl. at ¶ 11 (Ex. 58).

21. According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that Texas will lose a seat in the House of Representatives is 98.3%. *Id.* § 5.2, Tbl. 7.

22. According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that California will lose a seat in the House of Representatives is 72.1%. *Id.*

**THE POLITICAL INFLUENCE OF PLAINTIFFS CONSTITUENTS WILL BE
DIMINISHED BY THE MEMORANDUM'S EXCLUSION OF UNDOCUMENTED
IMMIGRANTS FROM THE APPORTIONMENT BASE**

23. Plaintiff the City and County of San Francisco, represented by and through its City Attorney, is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county. Gov't Pls.' Am. Compl. ¶ 42 (ECF No. 34).

24. Residents of the City and County of San Francisco will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

25. Plaintiff Monterey County, California is a political subdivision of the State of California. *See* Gov't Pls.' Am. Compl. ¶ 48 (ECF No. 34).

26. Residents of the Monterey County will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

27. Plaintiff Cameron County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 44 (ECF No. 34).

28. Residents of Cameron County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

29. Plaintiff El Paso County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 45 (ECF No. 34).

30. Residents of El Paso County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

31. Plaintiff Hidalgo County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 46 (ECF No. 34).

32. Residents of Hidalgo County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

33. Plaintiff American-Arab Anti-Discrimination Committee ("ADC") is a membership-based not-for-profit organization. Khalaf Decl. ¶ 4 (Ex. 26).

34. ADC has several thousand dues-paying members nationwide, with members in all 50 states including California and Texas. *See New York*, 351 F. Supp. 3d at 608; Khalaf Decl. ¶ 5 (Ex. 26).

35. Dr. Souhail Toubia is a member of ADC and a resident of Orange County, California. Khalaf Decl. ¶ 17 (Ex. 26).

36. George Majeed Khoury is a member of ADC and a resident of San Diego, California. *Id.*

37. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

38. George Majeed Khoury is a member of ADC and a resident of San Diego, California. Khalaf Decl. ¶ 17 (Ex. 26).

39. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

40. Plaintiff FIEL Houston Inc. ("FIEL") is a membership-based not-for-profit organization based in Houston, Texas. Espinosa Decl. ¶ 2 (Ex. 18).

41. Today, FIEL has approximately 11,000 members in the greater Houston area. *Id.* ¶ 3.

42. Deyanira Palacios is a member of FIEL and a resident of Montgomery County, Texas. *Id.* ¶ 19.

43. Because Ms. Palacios resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

44. Karen Ramos is a member of FIEL and a resident of Harris County, Texas. Espinosa Decl. ¶ 20 (Ex. 18).

45. Because Ms. Ramos resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

46. Plaintiff Ahri for Justice ("Ahri") is a membership-based not-for-profit organization based in Los Angeles, California. Seon Decl. ¶ 2 (Ex. 43).

47. Ahri has roughly 220 individual members, with most residing in Southern California, and particularly in Orange and Los Angeles Counties. Some but not all of these members are U.S. citizens. *Id.* ¶ 4.

48. Julie Kim is a member of Ahri and a resident of Orange County, California. *Id.* ¶ 20.

49. Because Ms. Kim resides in California, she will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *Id.*

50. Simon Lee is a member of Ahri and a resident of Los Angeles County, California. *Id.* ¶ 21.

51. Because Mr. Lee resides in California, he will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58); Seon Decl. ¶ 21 (Ex. 43).

DATED: August 7, 2020

Respectfully submitted,

/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
acepedaderieux@aclu.org
jtopaz@aclu.org
slakin@aclu.org

/s/ John A. Freedman

John A. Freedman
R. Stanton Jones**
Daniel F. Jacobson**
Chase Raines**
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 942-5000
John.Freedman@arnoldporter.com
Stanton.Jones@arnoldporter.com
Daniel.Jacobson@arnoldporter.com
Chase.Raines@arnoldporter.com

/s/ Perry Grossman

/s/ Sarah Brannon* ***

Ceridwen Cherry*
American Civil Liberties Union
Foundation
915 15th Street, NW

Washington, DC 20005-2313
(202) 675-2337
sbrannon@aclu.org
ccherry@aclu.org

Julia A. Gomez
Peter Eliasberg*
ACLU Foundation of Southern California
1313 West 8th Street
Los Angeles, CA 90017
(213) 977-9500
jgomez@aclusocal.org
peliasberg@aclusocal.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

Perry Grossman
pgrossman@nyclu.org
New York Civil Liberties Union
Foundation
125 Broad Street
New York, NY 10004
Phone: (212) 607-3329

Andre Segura**
Edgar Saldivar**
Thomas Buser-Clancy**
ACLU Foundation of Texas, Inc.
P.O. Box 8306
Houston, TX 77288
Telephone: (713) 942-9146
Fax: (713) 942-8966
asegura@aclutx.org
esaldivar@aclutx.org
tbuser-clancy@aclutx.org

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
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6057

Steven C. Wu
Deputy Solicitor General
Judith N. Vale
Senior Assistant Solicitor General
Eric R. Haren, *Special Counsel*
Of Counsel

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

The Court has “broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997). Whether a stay is warranted “calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936).

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,

/s/ Robert S. Vance
THE BLOOMSTON FIRM
Robert S. Vance
2151 Highland Avenue South, Suite 310
Birmingham, AL 35205
(205) 212-9700
Robert@thebloomstonfirm.com

**ZARZAUR MUJUMDAR &
DEBROSSE**

Anil A. Mujumdar (ASB-2004-L65M)
Paul H. Rand (ASB-5595-099N)
2332 Second Avenue North
Birmingham, AL 35203
Telephone: (205) 983-7985
Facsimile: (888) 505-0523
Email: anil@zarzaur.com

**LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW**

Ezra D. Rosenberg
Dorian L. Spence
1401 New York Avenue NW, Suite 400
Washington, DC 20005
Telephone: (202) 662-8600
Facsimile: (202) 783-9857
Email: erosenburg@lawyerscommittee.org
dspence@lawyerscommittee.org

DEMOCRACY FORWARD

Robin F. Thurston
John T. Lewis
Democracy Forward Foundation
P.O. Box 34553
Washington, DC 20043
Telephone: (202) 448-9090
Email: rthurston@democracyforward.org
jlewis@democracyforward.org

Attorneys for Defendant-Intervenors City of
Atlanta; City of San José; Arlington County;
and King County

DEBEVOISE & PLIMPTON LLP

Jyotin Hamid
Lauren M. Dolecki
Ming Ming Yang
919 Third Ave
New York, NY 10022
(212) 909-6000
Facsimile: (212) 909-6836
Email: jhamid@debevoise.com

lmdolecki@debevoise.com
mmyang@debevoise.com

CITY OF SAN JOSÉ
Richard Doyle, City Attorney
Nora Frimann, Assistant City Attorney
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San José, CA 95113-1905
Telephone: (408) 535-1900
Facsimile: (408) 998-3131
Email: cao.main@sanjoseca.gov

Attorneys for Defendant-Intervenor
City of San José

COPELAND FRANCO
SCREWS & GILL, P.A.
Robert D. Segall (SEG003)
Post Office Box 347
Montgomery, AL 36101-0347
Phone: (334) 834-1180
Facsimile: (334) 834-3172
Email: segall@copelandfranco.com

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA
James R. Williams, County Counsel
Greta S. Hansen
Raphael N. Rajendra
Marcelo Quiñones
Laura S. Trice
Office of the County Counsel
County of Santa Clara
70 West Hedding Street
East Wing, 9th Floor
San José, CA 95110
Email: raphael.rajendra@cco.sccgov.org
marcelo.quinones@cco.sccgov.org

LAW OFFICE OF
JONATHAN WEISSGLASS
Jonathan Weissglass
410 12th Street, Suite 250-B

Oakland, CA 94607
Telephone: (510) 836-4200
Email: jonathan@weissglass.com

Attorneys for Defendant-Intervenor
County of Santa Clara California

LETITIA JAMES
Attorney General of the State of New York

/s/ Joyce White Vance
Joyce White Vance
101 Paul W. Bryant Drive
Tuscaloosa, AL 35487
jvance@law.ua.edu

/s/ Barry A. Ragsdale
Barry A. Ragsdale
SIROTE & PERMUTT, PC
2311 Highland Avenue South
Birmingham, AL 35205
Phone: (205) 930-5100
Fax: (205) 930-5101
bragsdale@sirote.com

By: /s/ Matthew Colangelo
Matthew Colangelo
Chief Counsel for Federal Initiatives
Elena Goldstein
Deputy Chief, Civil Rights Bureau
Joseph J. Wardenski, *Senior Trial Counsel*
Office of the New York State Attorney
General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6057
Matthew.Colangelo@ag.ny.gov

Attorneys for the State and Other Government
Defendant-Intervenors

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
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.

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

¹ *See* Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525 (February 8, 2018) (to be codified at 15 C.F.R. Ch. I) (“Residence Rule”).

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.*²

Respectfully submitted,

STEVE MARSHALL
Alabama Attorney General

BY:

Morris J. Brooks, Jr.
Pro se
2101 W. Clinton Avenue
Suite 302
Huntsville, AL 35805
(256) 355-9400
(256) 355-9406—Fax

Counsel for Plaintiff
Morris J. Brooks, Jr.

s/ Edmund G. LaCour Jr.
Solicitor General

James W. Davis
Winfield J. Sinclair
Brad A. Chynoweth
Brenton M. Smith
Assistant Attorneys General

OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Post Office Box 300152
Montgomery, AL 36130-0152
Tel: (334) 242-7300
Fax: (334) 353-8400
Edmund.LaCour@AlabamaAG.gov
Jim.Davis@AlabamaAG.gov
Win.Sinclair@AlabamaAG.gov
Brad.Chynoweth@AlabamaAG.gov
Brenton.Smith@AlabamaAG.gov

Counsel for Plaintiff
State of Alabama

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
SOUTHERN DIVISION**

STATE OF ALABAMA, *et al.*,

Plaintiffs,

v.

THE 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.*,

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 Intervenor’s 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 Intervenor’s 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 Nat’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.’” *Nat’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,

ETHAN P. DAVIS
Acting Assistant Attorney General

ALEXANDER K. HAAS
Director, Federal Programs Branch

DIANE KELLEHER
BRAD P. ROSENBERG
Assistant Branch Directors

/s/ Alexander V. Sverdlov
ALEXANDER V. SVERDLOV (NY Bar 4918793)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch

b(6)

Attorneys for Defendants

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. Sverdlov
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

Plaintiffs 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.” Plaintiffs’ First Amended Complaint (Dkt. 112) at ¶ 37. In order to prevent this alleged harm from repetition, Plaintiffs seek an injunction regarding the Census Bureau’s Final 2020 Census Residence Criteria and Residence Situtations Rule (“Residence Rule”) that would prevent Defendants from including undocumented immigrants in the apportionment base. *See* Plaintiffs’ 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 Plaintiffs 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

Thomas A. Saenz (CA Bar No. 159430)*
Andrea Senteno (NY Bar No. 5285341)*
Ernest Herrera (TX Bar No. 24094718)*
MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND
634 S. Spring St. #1100
Los Angeles, CA 90014
Telephone: (213) 629-2512
Facsimile: (213) 629-0266
Email: tsaenz@maldef.org
asenteno@maldef.org
eherrera@maldef.org

Edward Still
Bar. No. ASB-4786- 147W
still@votelaw.com
429 Green Springs Hwy STE 161-304
Birmingham, AL 35209
Telephone: (205) 320-2882
Facsimile: (205) 320-2882

James U. Blacksher
Bar No. ASB-2381-S82J
jblacksher@ns.sympatico.ca
P.O. Box 636
Birmingham, AL 35201
Telephone: (205) 591-7238
Facsimile: (866) 845-4395

Counsel for Martinez Defendant-Intervenors

** Admitted Pro hac vice*

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

/s/ Andrea Senteno

Andrea Senteno

**MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND**

1016 16th Street NW, Suite 100

Washington, DC 20036

Phone: (202) 293-2828

asenteno@maldef.org

Counsel for Martinez Defendant-Intervenors

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Mailroom (202) 225-6051
Reception (202) 225-6074
<http://oversight.house.gov>

August 4, 2020

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.¹ 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.²

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

¹ U.S. Census Bureau, *Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count* (Aug. 3, 2020) (online at www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html).

² *Oversight Committee Held Emergency Hearing on Trump Administration's Unconstitutional Politicization of 2020 Census* (July 29, 2020) (online at <https://oversight.house.gov/news/press-releases/oversight-committee-held-emergency-hearing-on-trump-administration-s>).

this point.”³ 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.”⁴

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.”⁵ 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.”⁶

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.

³ *Republicans Signal They’re Willing To Cut The Census Counting Short*, National Public Radio (July 28, 2020) (online at www.npr.org/2020/07/28/895744449/republicans-signal-theyre-willing-to-cut-short-census-counting).

⁴ *‘We’re Running Out of Time’: Census Turns to Congress to Push Deadlines*, National Public Radio (May 27, 2020) (online at www.npr.org/sections/coronavirus-live-updates/2020/05/27/863290458/we-re-running-out-of-time-census-turns-to-congress-to-push-deadlines).

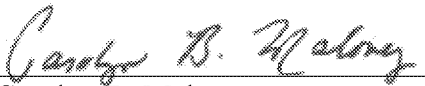
⁵ Committee on Oversight and Reform, *Counting Every Person: Safeguarding the 2020 Census Against the Trump Administration’s Unconstitutional Attacks* (July 29, 2020) (online at <https://oversight.house.gov/legislation/hearings/counting-every-person-safeguarding-the-2020-census-against-the-trump>).

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**

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
BACKGROUND	2
I. Constitutional and statutory framework.....	2
II. The Presidential Memorandum.....	4
III. Events precipitating the Presidential Memorandum.....	5
ARGUMENT.....	7
I. Standard of review.....	7
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.....	8
III. Defendants’ decision to exclude undocumented immigrants from the apportionment base violates Article I and the Fourteenth Amendment.....	10
A. The Constitution explicitly requires the population base for apportionment to include the whole number of persons in each State.....	10
B. Apportioning Representatives based on numbers other than the actual enumeration from the decennial census is also unconstitutional.....	24
IV. The Memorandum is <i>ultra vires</i> under the statutory scheme Congress enacted to implement the required decennial census and reapportionment of House seats.....	27
A. The Memorandum violates the statutory requirements to count the total population, and to report and use that total for apportionment purposes.....	27
B. The Memorandum violates the Census Act by producing apportionment figures that are not based solely on the decennial census.....	33
C. The Memorandum violates 2 U.S.C. § 2a by producing apportionment figures that are not based solely on a ministerial calculation.....	36
D. This Court has equitable authority to correct the Presidential Memorandum’s <i>ultra vires</i> mandates.....	38

V. Alternatively, a preliminary injunction is warranted to prevent irreparable harm. 40

 A. The Presidential Memorandum will deter immigrants and their households
 from responding to the 2020 census. 42

 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..... 47

 C. Plaintiffs will be irreparably harmed by Defendants’ efforts to reallocate
 political power away from their jurisdictions. 49

 D. The balance of equities and public interest favor a preliminary injunction..... 50

CONCLUSION..... 52

TABLE OF AUTHORITIES

	Page(s)
Constitutional Provisions	
U.S. Const. amend. XIV	24
U.S. Const. amend. XIV, § 2	<i>passim</i>
U.S. Const. art I, § 2.....	<i>passim</i>
U.S. Const. art. II, § 1	3
Cases	
<i>ACLU v. Ashcroft</i> , 322 F.3d 240 (3d Cir. 2003).....	51
<i>Am. Sch. of Magnetic Healing v. McAnnulty</i> , 187 U.S. 94 (1902).....	38
<i>Armstrong v. Exceptional Child Center</i> , 575 U.S. 320 (2015).....	38, 40
<i>Bowen v. Mich. Acad. of Family Physicians</i> , 476 U.S. 667 (1986).....	38
<i>Carey v. Klutznick</i> , 637 F.2d 834 (2d Cir. 1980).....	49
<i>Carroll v. Safford</i> , 44 U.S. 441 (1845).....	38
<i>Chamber of Commerce v. Reich</i> , 74 F.3d 1322 (D.C. Cir. 1996)	39
<i>Dalton v. Specter</i> , 511 U.S. 462 (1994).....	40
<i>Dart v. United States</i> , 848 F.2d 217 (D.C. Cir. 1988)	39
<i>Dep't of Commerce v. Montana</i> , 503 U.S. 442, 1992 WL 672929 (1992).....	29, 30, 36, 37
<i>Dep't of Commerce v. New York</i> , 139 S. Ct. 2551 (2019).....	5, 18, 34, 40

<i>Dep't of Commerce v. U.S. House of Representatives</i> , 525 U.S. 316 (1999).....	<i>passim</i>
<i>Evenwel v. Abbott</i> , 136 S. Ct. 1120 (2016).....	<i>passim</i>
<i>Faiveley Transport. Malmö AB v. Wabtec Corp.</i> , 559 F.3d 110 (2d Cir. 2009).....	41
<i>Fed'n for Am. Immigration Reform (FAIR) v. Klutznick</i> , 486 F. Supp. 564 (D.D.C. 1980).....	12, 13, 19, 20
<i>Franklin v. Massachusetts</i> , 505 U.S. 788 (1992).....	<i>passim</i>
<i>Garza v. County of Los Angeles</i> , 918 F.2d 763 (9th Cir. 1990)	14
<i>Greene v. United States</i> , 79 F.3d 1348 (2d Cir. 1996).....	30
<i>Haim v. Islamic Republic of Iran</i> , 784 F. Supp. 2d 1 (D.D.C. 2011)	41
<i>Hake v. Citibank, N.A.</i> , No. 19-MC-125 (JGK), 2020 WL 1467132 (S.D.N.Y. Mar. 26, 2020)	41
<i>Hawaii v. Trump</i> , 878 F.3d 662 (9th Cir. 2017), <i>rev'd on other grounds</i> , 138 S. Ct. 2392 (2018).....	39
<i>Lamar, Archer & Cofrin, LLP v. Appling</i> , 138 S. Ct. 1752 (2018).....	30
<i>League of Women Voters of Fla. v. Browning</i> , 863 F. Supp. 2d 1155 (N.D. Fla. 2012).....	46
<i>Leedom v. Kyne</i> , 358 U.S. 184 (1958).....	38
<i>Lorillard v. Pons</i> , 434 U.S. 575 (1978).....	31
<i>Make the Road N.Y. v. Cuccinelli</i> , 419 F. Supp. 3d 647 (S.D.N.Y. 2019).....	50
<i>Mittleman v. Postal Regulatory Comm'n</i> , 757 F.3d 300 (D.C. Cir. 2014).....	39

<i>Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela</i> , 863 F.3d 96 (2d Cir. 2017).....	30
<i>Mountain States Legal Found. v. Bush</i> , 306 F. 3d. 1122 (D.C. Cir. 2002).....	38, 39
<i>Mullins v. City of New York</i> , 626 F.3d 47 (2d Cir. 2010).....	41
<i>New York Progress & Prot. PAC v. Walsh</i> , 733 F.3d 483 (2d Cir. 2013).....	51
<i>New York v. U.S. Dep’t of Commerce</i> , 351 F. Supp. 3d 502 (S.D.N.Y. 2019), <i>aff’d</i> 139 S. Ct. 2551 (2019)	<i>passim</i>
<i>New York v. U.S. Dep’t of Homeland Sec.</i> , --- F.3d ---, 2020 WL 4457951 (2d Cir. Aug. 4, 2020)	30
<i>Plyler v. Doe</i> , 457 U.S. 202 (1982).....	12
<i>Ramos v. Nielsen</i> , 336 F. Supp. 3d 1075 (N.D. Cal. 2018)	7
<i>Saget v. Trump</i> , 345 F. Supp. 3d 287 (E.D.N.Y. 2018)	7
<i>Sale v. Haitian Ctrs. Council</i> , 509 U.S. 155 (1993).....	39
<i>U.S. House of Representatives v. U.S. Dep’t of Commerce</i> , 11 F. Supp. 2d 76 (D.D.C. 1998)	50
<i>Utah v. Evans</i> , 536 U.S. 452 (2002).....	24, 25, 27
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964).....	14, 15, 17
<i>Whitmore v. Arkansas</i> , 495 U.S. 149 (1990).....	49
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	8, 50
<i>Wisconsin v. City of New York</i> , 517 U.S. 1 (1996).....	18, 24

<i>XL Specialty Ins. Co. v. Level Glob. Inv'rs, L.P.</i> , 874 F. Supp. 2d 263 (S.D.N.Y. 2012).....	41
--	----

Statutes

2 U.S.C. § 2(a)	5
2 U.S.C. § 2a	<i>passim</i>
2 U.S.C. § 2a(a).....	<i>passim</i>
2 U.S.C. § 2a(b)	3
2 U.S.C. § 141	30
3 U.S.C. § 3	3
13 U.S.C. § 2	3
13 U.S.C. § 4	3
13 U.S.C. § 141	3, 28, 36
13 U.S.C. § 141(a)	2, 3, 27, 28
13 U.S.C. § 141(b)	<i>passim</i>
Act of June 18, 1929, § 2	28
Act of June 18, 1929, § 22	28, 31
Indian Citizenship Act of 1924, Pub. L. No. 68 -175, 43 Stat. 253	13
Pub. L. No. 71-962, § 6(b)	30
Pub. L. No. 76-481	19
Pub. L. No. 77-291, § 1	29

Rules & Regulations

83 Fed. Reg. at 5533	23, 25
Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).....	7
Exec. Order No. 13,880, 84 Fed. Reg. 33,821 (July 11, 2019).....	51
Fed. R. Civ. P. 56(a)	8

<i>Final 2020 Census Residence Criteria and Residence Situations</i> , 83 Fed. Reg. 5525 (Feb. 8, 2018).....	21, 32
<i>Final 2020 Census Residence Criteria and Residence Situations</i> , 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018).....	32
Letter from Assistant Attorney Gen. Carol T. Crawford to Honorable Jeff Bingaman (Sept. 22, 1989), 135 Cong. Rec. S22,521 (daily ed. Sept. 29, 1989).....	20
<i>Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census</i> , 85 Fed. Reg. 44,679, 44,680 (July 23, 2020).....	<i>passim</i>
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
<i>1980 Census: Counting Illegal Aliens: Hearing Before the S. Subcomm. on Energy, Nuclear Proliferation, & Fed. Services of the Comm. on Gov'tal Affairs (1980 Census)</i> , 96th Cong. 10 (1980).....	20
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
<i>Hearing Before the H. Comm. on Oversight & Reform</i> , 116th Cong. 31 (Mar. 14, 2019).....	21

<i>Hearing Before the H. Comm. on Oversight & Reform</i> , 116th Cong. 12 (Feb. 12, 2020)	21
S. Rep. No. 2, 71st Cong., 1st Sess.	36
<i>Statement from the President Regarding Apportionment</i> (July 21, 2020), https://www.whitehouse.gov/briefings-statements/statement-president-regarding-apportionment/	6
Other Authorities	
1 The Records of the Federal Convention of 1787 (Max Farrand ed., 1911)	14
Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/inhabitant	22
The Federalist No. 36.	25
The Federalist No. 54.	14
The Founders' Constitution 102-03 (P. Kurland & R. Lerner eds. 1987)	25
<i>Full Transcript: Trump's 2020 State of the Union Address</i> , N.Y. Times (Feb. 5, 2020)	7
Joseph T. Sneed III, <i>Footprints on the Rocks of the Mountain: An Account of the Enactment of the Fourteenth Amendment</i> 28 (1997)	15, 41
Julie Hirschfeld Davis, <i>Trump Calls Some Unauthorized Immigrants 'Animals' in Rant</i> , N.Y. Times (May 16, 2018)	7
Nick Miroff, <i>Trump suspends Global Entry, traveler programs for New York residents over 'sanctuary' policies</i> , Wash. Post (last updated Feb 6, 2020)	7
<i>Remarks by President Trump at Signing of H.R. 3401</i> (July 1, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-3401/	6
<i>Remarks by President Trump Before Marine One Departure</i> (July 5, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/	6
<i>Remarks by President Trump on Citizenship and the Census</i> (July 11, 2019), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/	6, 51

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>.....46

U.S. Census Bureau, *2020 Census: Nonresponse Followup*, (June 19, 2020), <https://www.census.gov/newsroom/press-kits/2020/nonresponse-followup.html>.....45

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.*

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

⁴ *N.Y. Immig. Coal. Pls.’ Mot for Sanctions*, 18-CV-2921 (JMF), ECF No. 635-1 at 124–31 (July 16, 2019); *Defs.’ Opp. to Ltr. Mot. to Compel*, 18-CV-2921 (JMF), ECF No. 451 at 3 (Oct. 30, 2018); *Pls.’ Jt. Proposed Post-Trial Findings of Fact*, 18-CV-2921 (JMF), ECF No. 545 at 52–53 (Nov. 21, 2018) (citing exhibits).

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/>.

⁶ *Remarks by President Trump Before Marine One Departure* (July 5, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-51/>.

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.”¹⁰

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).

federal grants. *See* Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017). In his 2020 State of the Union address, Defendant Trump denounced “the sanctuary city of New York,” and the next day, the Acting Secretary of Homeland Security announced that New York State residents would be prohibited from enrolling or re-enrolling in Trusted Traveler programs in retaliation for New York’s sanctuary laws. Transcript, *Trump’s 2020 State of the Union Address*, N.Y. Times (Feb. 5, 2020), <https://www.nytimes.com/2020/02/05/us/politics/state-of-union-transcript.html>; Nick Miroff, *Trump suspends Global Entry, traveler programs for New York residents over ‘sanctuary’ policies*, Wash. Post (Feb. 5, 2020), https://www.washingtonpost.com/immigration/trump-suspends-global-entry-traveler-programs-for-new-york-residents-over-sanctuary-policies/2020/02/05/e2755790-4890-11ea-9475-535736e48788_story.html.

¹⁰ Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant*, N.Y. Times (May 16, 2018), <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>.

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, Plaintiffs’ 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 Plaintiffs 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 Plaintiffs 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

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, ““*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).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.

Cong. Globe, 39th Cong., 1st Sess. 2767, at 359 (1866).

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.

Cong. Globe, 39th Cong., 1st Sess. 2766–67 (1866).

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 plaintiffs 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

aggregate number of inhabitants, which includes aliens, legal and illegal.” *1980 Census: Counting Illegal Aliens: Hearing Before the S. Subcomm. on Energy, Nuclear Proliferation, & Fed. Services of the Comm. on Gov’tal Affairs (1980 Census)*, 96th Cong. 10 (1980).

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)).¹⁴

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.

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).¹⁵ 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>.

nothing in the [Presidential Memorandum] alters that counting process.” Joint Letter 9, *New York v. Trump*, 20-CV-5770 (JMF), ECF No. 37 (S.D.N.Y. filed Aug. 3, 2020).¹⁶

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.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 797.²¹

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”).

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. McAnnulty*, 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. Malmö 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); 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

²³ U.S. Census Bureau, *2020 Census: Nonresponse Followup*, <https://www.census.gov/newsroom/press-kits/2020/nonresponse-followup.html> (June 19, 2020).

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 (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 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

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,

LETITIA JAMES
Attorney General of the State of New York

Steven C. Wu
Deputy Solicitor General
Judith N. Vale
Senior Assistant Solicitor General
Eric R. Haren, *Special Counsel*
Of Counsel

By: /s/ Matthew Colangelo
Matthew Colangelo
Chief Counsel for Federal Initiatives
Morenike Fajana, *Special Counsel*
Elena Goldstein
Deputy Chief, Civil Rights Bureau
Fiona J. Kaye, *Assistant Attorney General*
Office of the New York State Attorney
General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6057
Matthew.Colangelo@ag.ny.gov

Attorneys for the Plaintiffs in 20-CV-5770

/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
acepedaderieux@aclu.org
jtopaz@aclu.org
slakin@aclu.org

/s/ Sarah Brannon* ***

Ceridwen Cherry*
American Civil Liberties Union
Foundation
915 15th Street, NW
Washington, DC 20005-2313
(202) 675-2337
sbrannon@aclu.org
ccherry@aclu.org

Julia A. Gomez
Peter Eliasberg**
ACLU Foundation of Southern California
1313 West 8th Street
Los Angeles, CA 90017
(213) 977-9500
jgomez@aclusocal.org
peliasberg@aclusocal.org

/s/ John A. Freedman

John A. Freedman
R. Stanton Jones**
Daniel F. Jacobson**
Chase Raines**
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 942-5000
John.Freedman@arnoldporter.com
Stanton.Jones@arnoldporter.com
Daniel.Jacobson@arnoldporter.com
Chase.Raines@arnoldporter.com

/s/ Perry Grossman

Perry Grossman
pgrossman@nyclu.org
New York Civil Liberties Union
Foundation
125 Broad Street
New York, NY 10004
Phone: (212) 607-3329
Andre Segura**
Edgar Saldivar**
Thomas Buser-Clancy**
ACLU Foundation of Texas, Inc.
P.O. Box 8306
Houston, TX 77288
Telephone: (713) 942-9146
Fax: (713) 942-8966
asegura@aclutx.org
esaldivar@aclutx.org
tbuser-clancy@aclutx.org

Attorneys for the Plaintiffs in 20-CV-5781

* 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).

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.

3. Throughout my career, I have taught courses on Immigration Policy, Racial and Ethnic Politics, Electoral Politics, Public Opinion, Voting Rights, Chicano/Latino History, Introduction to Statistical Analysis, and Advanced Statistical Analysis to Ph.D. students.

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 Telemundo¹ 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

¹ Telemundo. “Trump Ordena Al Censo Que No Incluya a Los Indocumentados En El Recuento Que Determina El Reparto De Escaños Del Congreso,” July 21, 2020. <https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-tmna3823616>.

² https://latinodecisions.com/wp-content/uploads/2019/06/NALEO_AV_Undoc_Results.pdf

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 immigrant³ 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 uncouned.

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

⁴ 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/>

⁵ 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/>

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

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

⁸ <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)⁹. 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.¹⁰ Major Spanish-language media and

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)

¹⁰ Alex Daughery, *Florida Could Lose Power in Washington if Trump's New Immigration Order is Enacted*, MIAMI HERALD (July 21, 2020), <https://www.miamiherald.com/news/politics-government/article244382462.html>; Alexandra Alper and Nick Brown, *Trump Issues Memo To Stop Counting Undocumented Migrants In Next Round Of Redistricting*, HUFFINGTON POST (July 21, 2020), https://www.huffpost.com/entry/trump-executive-order-immigrants-redistricting_n_5f1709e0c5b615860bb7f415; Chris Megerian, *Trump Tries New Move to Restrict Census, Could Cut California's Seats in Congress*, L.A. TIMES (July 21, 2020), <https://www.latimes.com/politics/story/2020-07-21/trump-new-tack-restrict-immigrants-census>; David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA

Barreto Declaration – Census 2020 Presidential Memorandum

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

TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002/>; Jill Colvin and Kevin Freking, *Trump to Exclude Those in US Illegally From Congressional Reapportionment Count*, CHICAGO SUN-TIMES (July 21, 2020), <https://chicago.suntimes.com/2020/7/21/21333076/trump-to-illegally-from-congressional-reapportionment-count>; Katie Rogers and Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Kevin Freking and Mike Schneider, *Trump's New Immigration Fight: How to Redraw House Districts*, HOUSTON CHRONICLE (July 21, 2020), <https://www.chron.com/news/article/Trump-seeks-to-bar-illegal-alien-from-15423258.php>; Kevin Liptak et al., *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html>; Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants From a Portion of the 2020 Census*, SEATTLE TIMES (July 21, 2020), <https://www.seattletimes.com/nation-world/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/>

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), <https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-reparto-de-esca%C3%B1os-del-congreso>; *Trump Firma Decreto Para Excluir a Indocumentados del Censo 2020*, TELEMUNDO SAN ANTONIO (July 21, 2020), <https://www.telemundosanantonio.com/noticias/la-casa-blanca/presidente-trump-decreto-indocumentados-2020/2068275/>.

¹² *Trump Ordena al Censo No Contar a Los Indocumentados en un Memo de Dudosa Legalidad y Difícil de Cumplir*, UNIVISION (July 21, 2020), <https://www.univision.com/noticias/elecciones-en-eeuu-2020/trump-ordena-al-censo-no-contar-a-los-indocumentados-en-un-memo-de-dudosa-legalidad-y-dificil-de-cumplir>.

¹³ Ju Carpy, *Trump Firma Memo Para Excluir a Migrantes del Censo*, AZTECA AMERICA (July 21, 2020), <https://aztecaamerica.com/2020/07/21/trump-firma-memo-para-excluir-a-migrantes-del-censo/>.

¹⁴ Maria Teresa Sarabia, *Inmigrantes Indocumentados No Serán Contados*, ESTRELLA TV (July 21, 2020), <http://noticiario.estrellatv.com/noticias/inmigrantes-indocumentados-no-seran-contados-noticiario-estrella-tv/>

¹⁵ *Owned Stations*, TELEMUNDO, <https://www.nbcuniv.com/owned-stations/telemundo-station-group/about?network=5266626> (last visited July 31, 2020); *Local Media*, UNIVISION COMMUNICATIONS INC., <https://corporate.univision.com/partner-with-us/local/> (last visited July 31, 2020); *TV*, ESTRELLA TV, <http://www.estrellamedia.com/programming/tv> (last visited July 31, 2020); *Azteca America*, GRUPO SALINAS, <https://www.gruposalinas.com/en/aztecaUS> (last visited July 31, 2020).

¹⁶ Jesús García, *Trump Firma Memorando Para Excluir a Inmigrantes Indocumentados del Censo*, La Opinion (July 21, 2020), <https://laopinion.com/2020/07/21/trump-firma-memorando-para-excluir-a-inmigrantes-indocumentados-del-censo/>; Jesús García, *Trump Firma Memorando Para Excluir a Inmigrantes Indocumentados del Censo*, El Diario (July 21, 2020), <https://eldiario.com/2020/07/21/trump-firma-memorando-para-excluir-a-inmigrantes-indocumentados-del-censo/>; Kevin Freking and Mike Schneider, *Trump Firma Memo Que Afectaría Conteo de Migrantes*, El Nuevo Herald (July 21, 2020), <https://www.elnuevoherald.com/noticias/estados-unidos/article244382772.html>; <https://www.msn.com/es-nix/noticias/mundo/ordena-trump-excluir-a-indocumentados-del-censo-en-eu/ar-BB171eMI>; <https://cnnespanol.cnn.com/video/centro-elecciones-indocumentados-migrantes-trump-memorando-constitucion-estados-unidos-dusa-vo/>; <https://cnnespanol.cnn.com/2020/07/21/trump-firma-orden-para-excluir-inmigrantes-indocumentados-en-el-censo-2020/>; <https://es-us.noticias.yahoo.com/trump-firma-memorandum-excluir-indocumentados-193912301.html>; <https://www.dallasnews.com/espanol/al-dia/estados-unidos/2020/07/21/donald-trump-pedira-al-censo-2020-que-no>

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.¹⁷ 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.¹⁸

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 si, fomenta el miedo en nuestras comunidades. Una vez más, le dice a nuestra comunidad inmigrante, no se cuentan, no los necesitamos.”* “This memo obviously causes fear among this particular population, I ask you, could fear be one of the reasons

[cuente-a-los-indocumentados-segun-funcionario-de-la-casa-blanca/](https://www.cuente-a-los-indocumentados-segun-funcionario-de-la-casa-blanca/) ; <https://laoferta.com/2020/07/21/trump-ordena-excluir-a-indocumentados-de-distribucion-electoral-tras-censo/> ; <https://www.lavanguardia.com/trump-firma-memorandum-que-busca-excluir-a-indocumentados-del-censo-2020/> ; <https://www.excelsiorcalifornia.com/2020/07/22/trump-abre-nueva-polemica-al-ordenar-enxcluir-a-indocumentados-de-censo/>

¹⁷ <https://www.telemundo62.com/videos/videos-noticias/implicaciones-de-remover-a-los-indocumentados-del-censo-2020/2063236/> ; <https://www.univision.com/local/los-angeles-kmex/que-implicaciones-tiene-la-orden-de-trump-que-busca-excluir-a-los-indocumentados-del-censo-2020-video> ; <https://www.univision.com/local/philadelphia-wuwp/lideres-reaccionan-ante-peticion-de-trump-para-excluir-a-personas-indocumentadas-del-censo-2020-video>

¹⁸ <https://www.chron.com/news/article/Orden-de-Trump-afecta-censo-en-California-15434405.php> ; <https://eldiariouny.com/2020/07/21/enorme-oposicion-a-orden-de-trump-que-afectaria-a-millones-de-inmigrantes-y-que-califican-de-ilegal/> ; Mike Schneider, Orden de Trump afecta censo en California, Florida y Texas, El Nuevo Herald (July 25, 2020), <https://www.elnuevoherald.com/article244496782.html>

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 eliminarnos 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

¹⁹ Telemundo 62. “Implicaciones De Remover a Los Indocumentados Del Censo 2020.” Telemundo 62. Telemundo 62, July 22, 2020. <https://www.telemundo62.com/videos/videos-noticias/implicaciones-de-remover-a-los-indocumentados-del-censo-2020/2063236/>.

²⁰ Univision. “Líderes Reaccionan Ante Petición De Trump Para Excluir a Personas Indocumentadas Del Censo 2020.” Univision, July 22, 2020. <https://www.univision.com/local/philadelphia-wuwp/lideres-reaccionan-ante-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! Yahoo! Accessed July 29, 2020. <https://es-us.noticias.yahoo.com/coalici%C3%B3n-fiscales-demanda-presidente-trump-230425578.html>.

²² Mike Schneider. “Orden De Trump Afecta Censo En California, Florida y Texas.” Houston Chronicle. Associated Press, July 29, 2020. <https://www.chron.com/news/article/Orden-de-Trump-afecta-censo-en-California-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 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

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

²⁷ Barreto, Matt. Garcia-Rios, Sergio. “Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012.” RSF: The Russell Sage Foundation Journal of the Social Sciences. January 06, 2016

²⁸ Barreto, Matt. Garcia-Rios, Sergio. “Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012.” RSF: The Russell Sage Foundation Journal of the Social Sciences. January 06, 2016, p. 78.

²⁹ Subervi-Vélez, Federico A., ed. 2008. *The Mass Media and Latino Politics: Studies of U.S. Media Content, Campaign Strategies and Survey Research: 1984–2004*. New York: Routledge.

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 2020³⁰ 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.³¹ Over the course of 2018, USCIS reported 287,709 total requests for DACA renewal were made by undocumented immigrants.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 2019.³³ 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.³⁴ A research paper

³¹ Approximate Count of DACA Receipts: Since January 10, 2018, As of Mar. 31, 2018

https://www.uscis.gov/sites/default/files/document/data/DACA_Receipts_Since_Injunction_Mar_31_2018.pdf

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

https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2020_qtr2.pdf

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

https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2020_qtr2.pdf

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.

90. Table 7: Percent of Non-Responders Who Change to Responders at Q7 / Q8

	Total	White	Latino	Black	AAPI	Other
Q8 Yes – with citizenship	45.2	49.5	38.9	62.2	0.2	17.2
Q7 Yes – without citizenship	84.3	89.3	80.1	78.6	53.3	94.9
Difference	-39.1	-39.7	-41.2	-16.5	-53.1	-77.7

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.

³⁵ Jacome, Elisa. "The Effect of Immigration Enforcement on Crime Reporting: Evidence from the Priority Enforcement Program." *Available at SSRN 3263086* (2018).

³⁶ See Tr. 687-89; Trial Ex. 677, *NY v. Dep't Commerce*, 351 F. Supp. 3d 502 (S.D.N.Y. 2019), *aff'd* 139 S. Ct. 2551 (2019). Barreto expert declaration *NY v. Dept Commerce*, September 7, 2018.

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. Menjívar 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

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

Barreto Declaration – Census 2020 Presidential Memorandum

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.

A handwritten signature in black ink, reading "Matt A. Barreto", written over a horizontal line.

Matthew A. Barreto

Barreto Declaration – Census 2020 Presidential Memorandum

August 7, 2020

p42

References

- Abrego, L. J. (2011). Legal consciousness of undocumented Latinos: Fear and stigma as barriers to claims-making for first-and 1.5-generation immigrants. *Law & Society Review*, 45(2), 337-370.
- Amuedo-Dorantes, C., & Arenas-Arroyo, E. (2019). Immigration enforcement, police trust, and domestic violence. *Unpublished manuscript. Retrieved on October, 28, 2019.*
- Arbona, C., Olvera, N., Rodrigues, N., Hagan, J., Linares, A., & Wiesner, M. (2010). Acculturative stress among documented and undocumented Latino immigrants in the United States. *Hispanic Journal of Behavioral Sciences*, 32 (3), 362-384. doi: 10.1177/0739986310373210
- Asad, Asad L. (2020). “On the Radar: System Embeddedness and Latin American Immigrants’ Perceived Risk of Deportation”. In: *Law & Society Review* 54.1. Publisher: Wiley Online Library, pp. 133–167.
- Bhaskar, Renuka, Leticia E. Fernandez, and Sonya R. Porter (2018). “Assimilation and coverage of the foreign-born population in administrative records”. In: *Statistical Journal of the IAOS* 34.2. Publisher: IOS Press, pp. 191–201.
- Desai, Sarah, Jessica Houston Su, and Robert M. Adelman (2019). “Legacies of Marginalization: System Avoidance among the Adult Children of Unauthorized Immigrants in the United States”. In: *International Migration Review*. Publisher: SAGE Publications Sage CA: Los Angeles, CA, p. 0197918319885640.
- Dreby, Joanna (2015). *Everyday illegal: When policies undermine immigrant families*. University of California Press.
- Félix, A., González, C., & Ramírez, R. (2008). Political protest, ethnic media, and Latino naturalization. *American Behavioral Scientist*, 52(4), 618-634.
- Gee, Lisa Christensen, Matthew Gardner, and Meg Wiehe (2016). “Undocumented immigrants’ state & local tax contributions”. In: *The Institute on Taxation and Economic Policy*.
- Kissam, Edward (Jan. 1, 2019). “How low response among Latino immigrants will lead to differential undercount if the United States’ 2020 census includes a question on sensitive citizenship”. In: *Statistical Journal of the IAOS* 35.2. Publisher: IOS Press, pp. 221–243. issn: 1874-7655. doi: 10.3233/SJI-190505.
- Kissam, Edward et al. (2019). “San Joaquin Valley Latino Immigrants: Implications of Survey Findings for Census 2020”. In: *San Joaquin Valley Health Fund*.
- Levine, Sam (2020). Trump orders undocumented immigrants excluded from key census count. *the Guardian*. Library Catalog: www.theguardian.com Section: US news.

Barreto Declaration – Census 2020 Presidential Memorandum

Liptak, Kevin et al. (2020). Trump signs order targeting undocumented immigrants in the US census. CNN. Library Catalog: www.cnn.com. url: <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html>

Smith, Mike (2020). Community groups vow to help undocumented immigrants count in 2020 census in New Mexico. Carlsbad Current-Argus. Library Catalog: www.currentargus.com.

Torres-Ardila, Fabian, Daniela Bravo, and Franklin Ortiz (2020). “Increasing Latino Participation Rates in the 2020 Census in Chelsea, MA”.

Vargas, Edward D. (2015). “Immigration enforcement and mixed-status families: the effects of risk of deportation on Medicaid use”. In: *Children and youth services review* 57. Publisher: Elsevier, pp. 83–89.

Wang, Hansi Lo (2020). Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen. NPR.org. Library Catalog: www.npr.org.

Watson, Tara (2014). “Inside the refrigerator: Immigration enforcement and chilling effects in Medicaid participation”. In: *American Economic Journal: Economic Policy* 6.3, pp. 313–38.

Yoshikawa, Hirokazu (2011). *Immigrants raising citizens: Undocumented parents and their children*. Russell Sage Foundation.

Abowd, John, Depositions on August 15, 2018 (hereinafter Abowd Deposition) and August 29, 2018 (Abowd 30(b)(6)).

Andridge, Rebecca R. and Little, Roderick J. 2010. “A Review of Hot Deck Imputation for Survey Non-Response.” *International Statistical Review* 78(1): 40-64.

Ball, John C. 1967. “The Reliability and Validity of Interview Data Obtained from 59 Narcotic Drug Addicts.” *American Journal of Sociology* 72(6): 650–654.

Berk, Marc L., and Claudia L. Schur. 2001. “The Effect of Fear on Access to Care among Undocumented Latino Immigrants.” *Journal of immigrant health* 3(3): 151–156.

Bradburn, Norman M., Seymour Sudman, Ed Blair, and Carol Stocking. 1978. “Question Threat and Response Bias.” *Public Opinion Quarterly* 42(2): 221–234.

Casey Foundation. 2018. “2018 Kids Count Data Book.”

Center for Survey Measurement. 2017. “MEMORANDUM FOR Associate Directorate for Research and Methodology (ADRM).”

Claes-Magnus Cassell et al., 1977. *Foundations of inference in survey sampling*.

De La Puente, Manuel. 1995. “Using Ethnography to Explain Why People Are Missed or Erroneously Included by the Census: Evidence from Small Area Ethnographic Studies.” *Center for Survey Methods Research, US Census Bureau*.

———. 2004. *Census 2000 Ethnographic Studies*. Bureau of the Census.

Barreto Declaration – Census 2020 Presidential Memorandum

- Ericksen, Eugene P., and Teresa K. Defonso. 1993. “Guest Commentary: Beyond the Net Undercount: How to Measure Census Error.” *Chance* 6(4): 38–14.
- Federal Committee on Statistical Methodology. 1990. Statistical Working Paper 17 – Survey Coverage. <http://www.fcsm.gov/working-papers/wp17.html>
- Frost, Amanda. 2017. “Can the Government Deport Immigrants Using Information It Encouraged Them to Provide?”
- García, A. S. (2019). *Legal passing: Navigating undocumented life and local immigration law*. University of California Press.
- Groves, Robert M. And Mick P. Couper. 1998. Nonresponse in Household Interview Surveys. New York, NY: John Wiley and Sons
- Groves, Robert . 2004. Survey Errors and Survey Costs, 2nd ed.
- Groves, Robert, Floyd J. Fowler Jr., Mick P. Couper James M. Lepkowski, Eleanor Singer, and Roger Tourangeau. 2004. Survey Methodology. New York, NY: John Wiley and Sons. (Cites 3873)
- Hagan, J. M., Rodriguez, N., & Castro, B. (2011). Social effects of mass deportations by the United States government, 2000–10. *Ethnic and Racial Studies*, 34(8), 1374-1391
- Kalton, Graham. 1983. “Compensation for Missing Survey Data.” University of Michigan Survey Research Center Research Report Series.
- Lohr, Sharon L. 1999. Sampling: Design and Analysis. New York, NY: Brooks/Cole.
- Kissam, Edward. 2017. “Differential Undercount of Mexican Immigrant Families in the US Census.” *Statistical Journal of the IAOS* 33(3): 797–816.
- Krysan, Maria. 1998. “Privacy and the Expression of White Racial Attitudes: A Comparison across Three Contexts.” *Public Opinion Quarterly*: 506–544.
- Lajevardi, Nazita, and Kassra AR Oskooii. 2018. “Old-Fashioned Racism, Contemporary Islamophobia, and the Isolation of Muslim Americans in the Age of Trump.” *Journal of Race, Ethnicity and Politics* 3(1): 112–152.
- National Research Council. 2002. *The 2000 Census: Interim Assessment*. National Academies Press.
- . 2004. *The 2000 Census: Counting under Adversity*. National Academies Press.
- Menjívar, C. (2011). The power of the law: Central Americans’ legality and everyday life in Phoenix, Arizona. *Latino Studies*, 9(4), 377-395
- Meyers, Mikelyn. 2017. “Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census.”

- Michelson, Melissa R., and Jessica L. Lavariega Monforti. 2018. "Back in the Shadows, Back in the Streets." *PS, Political Science & Politics* 51(2): 282
- Montoya, Martin. 1992. "Ethnographic Evaluation of the Behavioral Causes of Undercount: Woodburn, Oregon." *Ethnographic Evaluation of the 1990 Decennial Census Report #25*. Prepared under Joint Statistical Agreement 90-06 with the University of Oregon. Bureau of the Census, Washington D.C.
- Cruz Nichols, Vanessa, Alana MW LeBrón, and Francisco I. Pedraza. 2018. "Spillover Effects: Immigrant Policing and Government Skepticism in Matters of Health for Latinos." *Public Administration Review* 78(3): 432–443.
- O'Hare, William, Yeris Mayol-Garcia, Elizabeth Wildsmith, and Alicia Torres. 2016. "The Invisible Ones: How Latino Children Are Left Out of Our Nation's Census Count."
- Oskooii, Kassra AR. 2016. "How Discrimination Impacts Sociopolitical Behavior: A Multidimensional Perspective." *Political Psychology* 37(5): 613–640.
- Pedraza, Francisco I., and Maricruz Ariana Osorio. 2017. "Courtied and Deported: The Salience of Immigration Issues and Avoidance of Police, Health Care, and Education Services among Latinos." *Aztlan: A Journal of Chicano Studies* 42(2): 249–266.
- Rubin, Donald B. 1976. "Inference and Missing Data." *Biometrika* 63(3): 581-592.
- Raines, Marvin D. 2001. "Gaining Cooperation from a Multi-Cultural Society of Respondents: A Review of the US Census Bureau's Efforts to Count the Newly Immigrated Population." *Statistical Journal of the United Nations Economic Commission for Europe* 18(2, 3): 217–226.
- Rao, Krishna. 2017. "Discussion of 2018 End-to-End Census Test: Nonresponse Follow-up" Census Scientific Advisory Committee. Fall 2017 Meeting.
- Sanchez, Gabriel R., and Barbara Gomez-Aguinaga. 2017. "Latino Rejection of the Trump Campaign." *Aztlan: A Journal of Chicano Studies* 42(2).
- Rodriguez, N., & Hagan, J. M. (2004). Fractured families and communities: Effects of immigration reform in Texas, Mexico, and El Salvador. *Latino Studies*, 2(3), 328-351.
- Stepick, Alex. 1992. "Ethnographic Evaluation of the 1990 Decennial Census Report Series." *Ethnographic Evaluation of the 1990 Decennial Census Report #8*. Prepared under Joint Statistical Agreement #90-08 with Florida International University. Bureau of the Census, Washington D.C.
- Szkupinski Quiroga, S., Medina, D. M., & Glick, J. (2014). In the belly of the beast: Effects of anti-immigration policy on Latino community members. *American Behavioral Scientist*, 58(13), 1723-1742
- Terry, Rodney L. et al. 2017. "Exploring Inconsistent Counts of Racial/Ethnic Minorities in a 2010 Census Ethnographic Evaluation." *Bulletin of Sociological Methodology/Bulletin de Méthodologie Sociologique* 135(1): 32–49.

Barreto Declaration – Census 2020 Presidential Memorandum

Tourangeau, Roger, and Tom W. Smith. 1996. “Asking Sensitive Questions: The Impact of Data Collection Mode, Question Format, and Question Context.” *The Public Opinion Quarterly* 60(2): 275–304.

Tourangeau, Roger, and Ting Yan. 2007. “Sensitive Questions in Surveys.” *Psychological bulletin* 133(5): 859.

U. S. Government Accountability Office. 2003. “Decennial Census: Lessons Learned for Locating and Counting Migrant and Seasonal Farm Workers.” (GAO-03-605). <https://www.gao.gov/products/GAO-03-605> (April 18, 2018).

U.S. Census Bureau. 2013. "U.S. Census Bureau Statistical Quality Standards" July 2013.

<https://www.census.gov/about/policies/quality/standards.html>

———. 2017b. “Investigating the 2010 Undercount of Young Children – Analysis of Census Coverage Measurement Results.”

Velasco, Alfredo. 1992. “Ethnographic Evaluation of the Behavioral Causes of Undercount In The Community of Sherman Heights, San Diego, California.” Ethnographic Evaluation of the 1990 Decennial Census Report #22. Prepared under Joint Statistical Agreement 89-42 with the Chicano Federation of San Diego County. Bureau of the Census, Washington, D.C.

Wines, Michael. 2018. “Census Bureau’s Own Expert Panel Rebukes Decision to Add Citizenship Question.” *New York Times*. March 30

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:

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*

Barreto, Matt and Gary Segura. 2014. Latino America: How America's Most Dynamic Population is Poised to Transform the Politics of the Nation. Public Affairs Books. (Sept)

Barreto, Matt and David Leal, editors. 2018. Race, Class, and Precinct Quality in American Cities. Springer Press.

Christopher Parker and Matt Barreto. 2013. Change They Can't Believe In: The Tea Party and Reactionary Politics in America. Princeton University Press. *Winner: APSA Best Book Award for Race, Ethnicity, Politics, 2014*

Barreto, Matt. 2010. Ethnic Cues: The Role of Shared Ethnicity in Latino Political Participation. University of Michigan Press

PEER-REVIEWED ARTICLES

73. Reny, Tyler and Matt A. Barreto. 2020. "Xenophobia in the time of pandemic: othering, anti-Asian attitudes, and COVID-19 " *Politics, Groups, and Identities*. 8(2).

72. Flores, Lucy and Matt A. Barreto. 2020. "Latina Voters: The key electoral force" *Journal of Cultural Marketing Strategy*. 4(2).

71. Frasure-Yokley, Lorrie, Janelle Wong, Edward Vargas and Matt A. Barreto 2020. "THE COLLABORATIVE MULTIRACIAL POST-ELECTION SURVEY (CMPS): BUILDING THE ACADEMIC PIPELINE THROUGH DATA ACCESS, PUBLICATION, AND NETWORKING OPPORTUNITIES" *PS: Political Science & Politics*. 53(1)

70. Barreto, Matt, Loren Collingwood, Sergio Garcia-Rios and Kassra Oskooii. 2019. "Estimating Candidate Support: Comparing Iterative EI and EI-RxC Methods" *Sociological Methods and Research*. 48(4).

69. Gonzalez-O'Brien, Benjamin, Matt Barreto and Gabriel Sanchez. 2019. "They're All Out to Get Me! Assessing Inter-Group Competition Among Multiple Populations." *Politics, Groups and Identities*. 7(4).

68. Oskooii, Kassra, Karam Dana and Matt Barreto. 2019. "Beyond generalized ethnocentrism: Islam-specific beliefs and prejudice toward Muslim Americans." *Politics, Groups and Identities* 7(3)

67. Vargas, Edward, Gabriel Sanchez, Barbara Gomez-Aguinaga, and Matt Barreto. 2019. "How Latinos' Perceptions of Environmental Health Threats Impact Policy Preferences." *Social Science Quarterly*. 101(1).

66. Walker, Hannah, Marcel Roman and Matt Barreto. 2019. "The Direct and Indirect Effects of Immigration Enforcement on Latino Political Engagement." *UCLA Law Review*. 67.

65. Gutierrez, Angela, Angela Ocampo, Matt Barreto, and Gary Segura. 2019. "Somos Más : How Racial Threat and Anger Mobilized Latino Voters in the Trump Era" *Political Research Quarterly*. 72(4)

64. Chouhoud, Youssef, Karam Dana, and Matt Barreto. 2019. "American Muslim Political Participation: Between Diversity and Cohesion." *Politics and Religion*. 12(S3).

63. Barreto, Matt, Stephen Nuño, Gabriel Sanchez, and Hannah Walker. 2019. "Race, Class and Barriers to Voting in the 21st Century: The Unequal Impact of Voter ID Laws." *American Politics Research*

62. Barreto, Matt. 2018. "The cycle of under-mobilization of minority voters: A comment on 'Selective recruitment of voter neglect?'" *Journal of Race, Ethnicity, and Politics*. 3(1).
61. Ocampo, Angela, Karam Dana and Matt Barreto. 2018. "The American Muslim Voter: Community Belonging and Political Participation." *Social Science Research*. 69(4).
60. Barreto, Matt, Lorrie Frasure-Yokley, Edward Vargas, Janelle Wong. 2018. "Best practices in collecting online data with Asian, Black, Latino, and White respondents: evidence from the 2016 Collaborative Multiracial Post-election Survey." *Politics, Groups & Identities*. 6(1).
59. Barreto, Matt, Tyler Reny and Bryan Wilcox-Archuleta. 2017. "A debate about survey research methodology and the Latina/o vote: why a bilingual, bicultural, Latino-centered approach matters to accurate data." *Aztlán: A Journal of Chicano Studies*. 42(2).
58. Barreto, Matt and Gary Segura. 2017. "Understanding Latino Voting Strength in 2016 and Beyond: Why Culturally Competent Research Matters." *Journal of Cultural Marketing Strategy*. 2:2
57. Dana, Karam, Bryan Wilcox-Archuleta and Matt Barreto. 2017. "The Political Incorporation of Muslims in America: The Mobilizing Role of Religiosity in Islam." *Journal of Race, Ethnicity & Politics*.
56. Collingwood, Loren, Kassra Oskooii, Sergio Garcia-Rios, and Matt Barreto. 2016. "eiCompare: Comparing Ecological Inference Estimates across EI and EI: RxC." *The R Journal*. 8:2 (Dec).
55. Garcia-Rios, Sergio I. and Matt A. Barreto. 2016. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012" *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 2(3): 78-96.
54. Barreto, Matt, Collingwood, Loren, Christopher Parker, and Francisco Pedraza. 2015. "Racial Attitudes and Race of Interviewer Item Non-Response." *Survey Practice*. 8:3.
53. Barreto, Matt and Gary Segura 2015. "Obama y la seducción del voto Latino." *Foreign Affairs Latinoamérica*. 15:2 (Jul).
52. Barreto, Matt and Loren Collingwood 2015. "Group-based appeals and the Latino vote in 2012: How immigration became a mobilizing issue." *Electoral Studies*. 37 (Mar).
51. Collingwood, Loren, Matt Barreto and Sergio Garcia-Rios. 2014. "Revisiting Latino Voting: Cross-Racial Mobilization in the 2012 Election" *Political Research Quarterly*. 67:4 (Sep).
50. Bergman, Elizabeth, Gary Segura and Matt Barreto. 2014. "Immigration Politics and Electoral Consequences: Anticipating the Dynamics of Latino Vote in the 2014 Election" *California Journal of Politics and Policy*. (Feb)
49. Barreto, Matt and Sergio García-Rios. 2012. "El poder del voto latino en Estados Unidos en 2012" *Foreign Affairs Latinoamérica*. 12:4 (Nov).
48. Collingwood, Loren, Matt Barreto and Todd Donovan. 2012. "Early Primaries, Viability and Changing Preferences for Presidential Candidates." *Presidential Studies Quarterly*. 42:1(Mar).
47. Barreto, Matt, Betsy Cooper, Ben Gonzalez, Chris Towler, and Christopher Parker. 2012. "The Tea Party in the Age of Obama: Mainstream Conservatism or Out-Group Anxiety?." *Political Power and Social Theory*. 22:1(Jan).
46. Dana, Karam, Matt Barreto and Kassra Oskooii. 2011. "Mosques as American Institutions: Mosque Attendance, Religiosity and Integration into the American Political System." *Religions*. 2:2 (Sept).
45. Barreto, Matt, Christian Grose and Ana Henderson. 2011. "Redistricting: Coalition Districts and the Voting Rights Act." *Warren Institute on Law and Social Policy*. (May)
44. Barreto, Matt and Stephen Nuño. 2011. "The Effectiveness of Co-Ethnic Contact on Latino Political Recruitment." *Political Research Quarterly*. 64 (June). 448-459.

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

43. Garcia-Castañón, Marcela, Allison Rank and Matt Barreto. 2011 “Plugged in or tuned out? Youth, Race, and Internet Usage in the 2008 Election.” *Journal of Political Marketing*. 10:2 115-138.
42. Barreto, Matt, Victoria DeFrancesco, and Jennifer Merolla. 2011 “Multiple Dimensions of Mobilization: The Impact of Direct Contact and Political Ads on Latino Turnout in the 2000 Presidential Election.” *Journal of Political Marketing*. 10:1
41. Barreto, Matt, Loren Collingwood, and Sylvia Manzano. 2010. “Measuring Latino Political Influence in National Elections” *Political Research Quarterly*. 63:4 (Dec)
40. Barreto, Matt, and Francisco Pedraza. 2009. “The Renewal and Persistence of Group Identification in American Politics.” *Electoral Studies*. 28 (Dec) 595-605
39. Barreto, Matt and Dino Bozonelos. 2009. “Democrat, Republican, or None of the Above? Religiosity and the Partisan Identification of Muslim Americans” *Politics & Religion* 2 (Aug). 1-31
38. Barreto, Matt, Sylvia Manzano, Ricardo Ramírez and Kathy Rim. 2009. “Immigrant Social Movement Participation: Understanding Involvement in the 2006 Immigration Protest Rallies.” *Urban Affairs Review*. 44: (5) 736-764
37. Grofman, Bernard and Matt Barreto. 2009. “A Reply to Zax’s (2002) Critique of Grofman and Migalski (1988): Double Equation Approaches to Ecological Inferences.” *Sociological Methods and Research*. 37 (May)
36. Barreto, Matt, Stephen Nuño and Gabriel Sanchez. 2009. “The Disproportionate Impact of Voter-ID Requirements on the Electorate – New Evidence from Indiana.” *PS: Political Science & Politics*. 42 (Jan)
35. Barreto, Matt, Luis Fraga, Sylvia Manzano, Valerie Martinez-Ebers, and Gary Segura. 2008. “Should they dance with the one who brung ‘em? Latinos and the 2008 Presidential election” *PS: Political Science & Politics*. 41 (Oct).
34. Barreto, Matt, Mara Marks and Nathan Woods. 2008. “Are All Precincts Created Equal? The Prevalence of Low- Quality Precincts in Low-Income and Minority Communities.” *Political Research Quarterly*. 62
33. Barreto, Matt. 2007. “*Si Se Puede!* Latino Candidates and the Mobilization of Latino Voters.” *American Political Science Review*. 101 (August): 425-441.
32. Barreto, Matt and David Leal. 2007. “Latinos, Military Service, and Support for Bush and Kerry in 2004.” *American Politics Research*. 35 (March): 224-251.
31. Barreto, Matt, Mara Marks and Nathan Woods. 2007. “Homeownership: Southern California’s New Political Fault Line?” *Urban Affairs Review*. 42 (January). 315-341.
30. Barreto, Matt, Matt Streb, Fernando Guerra, and Mara Marks. 2006. “Do Absentee Voters Differ From Polling Place Voters? New Evidence From California.” *Public Opinion Quarterly*. 70 (Summer): 224-34.
29. Barreto, Matt, Fernando Guerra, Mara Marks, Stephen Nuño, and Nathan Woods. 2006. “Controversies in Exit Polling: Implementing a racially stratified homogenous precinct approach.” *PS: Political Science & Politics*. 39 (July) 477-83.
28. Barreto, Matt, Ricardo Ramírez, and Nathan Woods. 2005. “Are Naturalized Voters Driving the California Latino Electorate? Measuring the Impact of IRCA Citizens on Latino Voting.” *Social Science Quarterly*. 86 (December): 792-811.
27. Barreto, Matt. 2005. “Latino Immigrants at the Polls: Foreign-born Voter Turnout in the 2002 Election.” *Political Research Quarterly*. 58 (March): 79-86.
26. Barreto, Matt, Mario Villarreal and Nathan Woods. 2005. “Metropolitan Latino Political Behavior: Turnout and Candidate Preference in Los Angeles.” *Journal of Urban Affairs*. 27(February): 71-91.
25. Leal, David, Matt Barreto, Jongho Lee and Rodolfo de la Garza. 2005. “The Latino Vote in the 2004 Election.” *PS: Political Science & Politics*. 38 (January): 41-49.
24. Marks, Mara, Matt Barreto and Nathan Woods. 2004. “Harmony and Bliss in LA? Race and Racial Attitudes a Decade After the 1992 Riots.” *Urban Affairs Review*. 40 (September): 3-18.

23. Barreto, Matt, Gary Segura and Nathan Woods. 2004. "The Effects of Overlapping Majority-Minority Districts on Latino Turnout." *American Political Science Review*. 98 (February): 65-75.
22. Barreto, Matt and Ricardo Ramírez. 2004. "Minority Participation and the California Recall: Latino, Black, and Asian Voting Trends 1990 – 2003." *PS: Political Science & Politics*. 37 (January): 11-14.
21. Barreto, Matt and José Muñoz. 2003. "Reexamining the 'politics of in-between': political participation among Mexican immigrants in the United States." *Hispanic Journal of Behavioral Sciences*. 25 (November): 427-447.
20. Barreto, Matt. 2003. "National Origin (Mis)Identification Among Latinos in the 2000 Census: The Growth of the "Other Hispanic or Latino" Category." *Harvard Journal of Hispanic Policy*. 15 (June): 39-63.

Edited Volume Book Chapters

19. Barreto, Matt and Gary Segura. 2020. "Latino Reaction and Resistance to Trump: Lessons learned from Pete Wilson and 1994." In Raul Hinojosa and Edward Telles (eds.) Equitable Globalization: Expanding Bridges, Overcoming Walls. Oakland: University of California Press.
18. Barreto, Matt, Albert Morales and Gary Segura. 2019. "The Brown Tide and the Blue Wave in 2018" In Larry Sabato, Kyle Kondik, Geoffrey Skelley (eds.) The Blue Wave. New York: Rowman & Littlefield.
17. Gutierrez, Angela, Angela Ocampo and Matt Barreto. 2018. "Obama's Latino Legacy: From Unknown to Never Forgotten" In Andrew Rudalevige and Bert Rockman (eds.) The Obama Legacy. Lawrence, KS: University of Kansas Press.
16. Barreto, Matt, Thomas Schaller and Gary Segura. 2017. "Latinos and the 2016 Election: How Trump Lost Latinos on Day 1" In Larry Sabato, Kyle Kondik, Geoffrey Skelley (eds.) Trumped: The 2016 Election that Broke All the Rules. New York: Rowman & Littlefield.
15. Walker, Hannah, Gabriel Sanchez, Stephen Nuño, Matt Barreto 2017. "Race and the Right to Vote: The Modern Barrier of Voter ID Laws" In Todd Donovan (ed.) Election Rules and Reforms. New York: Rowman & Littlefield.
14. Barreto, Matt and Christopher Parker. 2015. "Public Opinion and Reactionary Movements: From the Klan to the Tea Party" In Adam Berinsky (ed.) New Directions in Public Opinion. 2nd edition. New York: Routledge Press.
13. Barreto, Matt and Gabriel Sanchez. 2014. "A 'Southern Exception' in Black-Latino Attitudes?." In Anthony Affigne, Evelyn Hu-Dehart, Marion Orr (eds.) Latino Politics en Ciencia Política. New York: New York University Press.
12. Barreto, Matt, Ben Gonzalez, and Gabriel Sanchez. 2014. "Rainbow Coalition in the Golden State? Exposing Myths, Uncovering New Realities in Latino Attitudes Towards Blacks." In Josh Kun and Laura Pulido (eds.) Black and Brown in Los Angeles: Beyond Conflict and Coalition. Berkeley, CA: University of California Press.
11. Barreto, Matt, Loren Collingwood, Ben Gonzalez, and Christopher Parker. 2011. "Tea Party Politics in a Blue State: Dino Rossi and the 2010 Washington Senate Election" In William Miller and Jeremy Walling (eds.) Stuck in the Middle to Lose: Tea Party Effects on 2010 U.S. Senate Elections. Rowman & Littlefield Publishing Group.
10. Jason Morin, Gabriel Sanchez and Matt Barreto. 2011. "Perceptions of Competition Between Latinos and Blacks: The Development of a Relative Measure of Inter-Group Competition." In Edward Telles, Gaspar Rivera-Salgado and Mark Sawyer (eds.) Just Neighbors? Research on African American and Latino Relations in the US. New York: Russell Sage Foundation.
9. Grofman, Bernard, Frank Wayman and Matt Barreto. 2009. "Rethinking partisanship: Some thoughts on a unified theory." In John Bartle and Paolo Bellucci (eds.) Political Parties and Partisanship: Social identity and individual attitudes. New York: Routledge Press.
8. Barreto, Matt, Ricardo Ramírez, Luis Fraga and Fernando Guerra. 2009. "Why California Matters: How California Latinos Influence the Presidential Election." In Rodolfo de la Garza, Louis DeSipio and David Leal (eds.) Beyond the Barrio: Latinos in the 2004 Elections. South Bend, ID: University of Notre Dame Press.

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

7. Francisco Pedraza and Matt Barreto. 2008. "Exit Polls and Ethnic Diversity: How to Improve Estimates and Reduce Bias Among Minority Voters." In Wendy Alvey and Fritz Scheuren (eds.) Elections and Exit Polling. Hoboken, NJ: Wiley and Sons.
6. Adrian Pantoja, Matt Barreto and Richard Anderson. 2008. "Politics y la Iglesia: Attitudes Toward the Role of Religion in Politics Among Latino Catholics" In Michael Genovese, Kristin Hayer and Mark J. Rozell (eds.) Catholics and Politics. Washington, D.C: Georgetown University Press..
5. Barreto, Matt. 2007. "The Role of Latino Candidates in Mobilizing Latino Voters: Revisiting Latino Vote Choice." In Rodolfo Espino, David Leal and Kenneth Meier (eds.) Latino Politics: Identity, Mobilization, and Representation. Charlottesville: University of Virginia Press.
4. Abosch, Yishaiya, Matt Barreto and Nathan Woods. 2007. "An Assessment of Racially Polarized Voting For and Against Latinos Candidates in California." In Ana Henderson (ed.) Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation, and Power. Berkeley, CA: UC Berkeley Public Policy Press.
3. Barreto, Matt and Ricardo Ramirez. 2005. "The Race Card and California Politics: Minority Voters and Racial Cues in the 2003 Recall Election." In Shaun Bowler and Bruce Cain (eds.) Clicker Politics: Essays on the California Recall. Englewood-Cliffs: Prentice-Hall.
2. Barreto, Matt and Nathan Woods. 2005. "The Anti-Latino Political Context and its Impact on GOP Detachment and Increasing Latino Voter Turnout in Los Angeles County." In Gary Segura and Shawn Bowler (eds.) Diversity in Democracy: Minority Representation in the United States. Charlottesville: University of Virginia Press.
1. Pachon, Harry, Matt Barreto and Frances Marquez. 2004. "Latino Politics Comes of Age in the Golden State." In Rodolfo de la Garza and Louis DeSipio (eds.) Muted Voices: Latino Politics in the 2000 Election. New York: Rowman & Littlefield

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

RESEARCH AWARDS AND FELLOWSHIPS

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

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

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	Brenan Center for Justice, New York University [with Stephen Nuño 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: Donald Trump, Race, and the Crisis of American Politics. Under Contract, University of Chicago Press, *expected 2020*

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]

Gutierrez, Angela, Angela Ocampo, Matt Barreto and Gary Segura. "From Proposition 187 to Donald Trump: New Evidence that Anti-Immigrant Threat Mobilizes Latino Voters." [Under Review]

Collins, Jonathan, Matt Barreto, Gregory Leslie and Tye Rush. "Racial Efficacy and Voter Enthusiasm Among African Americans Post-Obama" [Under Review]

Oskooii, Kassra, Matt Barreto, and Karam Dana. "No Sharia, No Mosque: Orientalist Notions of Islam and Intolerance Toward Muslims in the United States" [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
- New York, 2018, Expert for Plaintiffs in Census Citizenship Lawsuit, New York v. U.S. Dept of Commerce (also an expert related cases: *California v. Ross* and *Kravitz v. Dept of Commerce*)
- 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
- Kansas, 2016, Expert for Plaintiffs in Kansas voter registration lawsuit, Fish v. Kobach 2:16-cv-02105-JAR
- North Dakota, 2015, Expert for Plaintiffs in North Dakota voter ID lawsuit, Brakebill v. Jaeger 1:16-cv-00008-CSM
- Alabama, 2015, Expert for Plaintiffs in Alabama voter ID lawsuit, Birmingham Ministries v. State of Alabama 2:15-cv-02193-LSC
- Texas, 2014, Testifying Expert for Plaintiffs in Texas voter ID lawsuit, Veasey v. Perry 2:13-cv-00193
- 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
- Pennsylvania, 2012, Testifying Expert for ACLU Foundation of Pennsylvania in voter ID lawsuit, Applewhite v. Commonwealth of Pennsylvania No. 330 MD 2012
- Milwaukee County, WI, 2012, Testifying Expert for ACLU Foundation of Wisconsin in voter ID lawsuit, Frank v. Walker 2:11-cv-01128(LA)
- 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
- Los Angeles County Redistricting Commission, 2011, Consulting Expert for Supervisor Gloria Molina, Racially Polarized voting analysis within L.A. County
- State of California, Citizens Redistricting Commission, 2011, Consulting Expert, Racially Polarized Voting analysis throughout state of California
- 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

M.A. BARRETO / UCLA / CURRICULUM VITAE / MAR 2020

- 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
- ACLU of Washington, 2008, preliminary analysis of voting patterns in Eastern Washington, related to electability of Latino candidates
- 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:**

UCLA & UW

2005 – Present

- 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**

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 Lanijonu – University of Toronto (UCLA Ph.D. 2018)
- Adria Tinin – *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 Bozonelos – 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.

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)

Expert Declaration of Mr. John Thompson

I. 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.

² Albert E. Fontenot, Jr., 2020 Census Residence Criteria and Residence Situations, 2020 Census Program Memorandum Series: 2018.04, February 5, 2018.

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 deadlines⁴ 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

³ US Census Bureau 2020 Census daily response rate tracker, <https://2020census.gov/en/response-rates.html> (last accessed August 6, 2020).

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

⁵ Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count, <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>, August 3, 2020.

⁶ P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

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.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 them⁹. 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 testimony¹¹ 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

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.

¹¹ Trial Testimony of Dr. John Abowd, Nov. 13, 2018, *New York Immigration Coalition, et al. v. United States Department of Commerce, et al.*, 18-CV-5025-JMF (S.D.N.Y.), at 926-27.

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.”

¹² Committee on National Statistics, Principles and Practices for a Federal Statistical Agency 2 (6th ed. 2017).

- 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

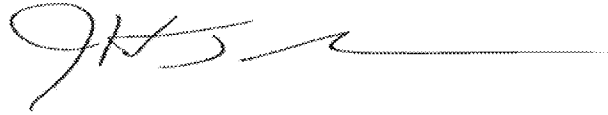
In conclusion, it is my opinion that the issuance of the Memorandum will significantly increase the risk of much larger undercounts for the 2020 Census than measured in previous censuses, including undercounts of immigrant communities. In addition, there is no transparency or documentation of how the 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.

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).

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.

A handwritten signature in black ink, appearing to read 'JH', followed by a long horizontal line extending to the right.

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;
-

John H. Thompson
Page 2

- 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,

John H. Thompson
Page 3

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.

John H. Thompson
Page 4

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, Silver Medal, U.S. Bureau of the Census, 1998

Department of Commerce, Bronze Medal, U.S. Bureau of the Census, 1988

PAPERS AND PUBLICATIONS

- 2018 Thompson, John H and Yablon, Robert. Issue Brief: "Preparing for the 2020 Census Considerations for State Attorneys General". American Constitution Society., October 10, 2018
- 2012 Thompson, John H. (Panel Member). "Panel Discussion: Considering Changing Sectors in the Research Industry?: Advice From Those Who Have Done It!" AAPOR 67th Annual Conference, Orlando, Florida, May 19, 2012
- 2012 Thompson, John H. (Discussant). "Future is Now: Realignment of Current Survey Management and Operations at the Census Bureau". Population Association of America 2012 Annual Meeting, San Francisco, California, May 4, 2012.
- 2012 Thompson, John H. (Discussant). "Use of Administrative Records in the 2020 Census." Federal Committee on Statistical Methodology, Washington, DC., January 10, 2012
- 2011 Weinberg, Daniel H. and Thompson, John H., "Organization and Administration of the 2010 U.S. Census." In Margo J. Anderson, Constance F. Citro, and Joseph J. Salvo (eds.) *Encyclopedia of the U.S. Census*, Second Edition, CQ Press., July 2011
- 2010 Thompson, John H., "Challenges, Innovation and Quality for the 21st Century" Keynote Speech at the 2010 FCSM Statistical Policy Seminar, Washington, DC, December 14, 2010.
- 2010 Thompson, John H., "The Future of Survey Research: Opportunities and Challenges" Paper presented at the Applied Demography Conference, San Antonio, Texas., January 11, 2010 and at the Population Association of America 2010 Annual meeting, Dallas, Texas, April 15, 2010.
- 2008 Thompson, John H. (Panel Member). "Panel Discussion: The American Community Survey: Promise, Products and Perspectives." Population Association of America Annual Meeting, New Orleans, Louisiana, April 17, 2008.
- 2006 Thompson, John H. (Discussant). "Census 2010: A New Census for the 21st Century." Population Association of America Annual Meeting, Los Angeles, California, March 30, 2006.
- 2004 Thompson, John H., "Interviewer Falsification of Survey Data." Paper presented at the Joint Meetings of the American Statistical Association, Toronto, Canada, August 11, 2004.
- 2003 Thompson, John H., "Is Interviewer Falsification Scientific Misconduct?" Roundtable paper presented at the American Association for Public Opinion Research 58th Annual Conference, Nashville, Tennessee, May 16, 2003.
- 2002 Thompson, John H. (Discussant). "Eliminating the 2010 Census Long Form? – Current Status of the American Community Survey." Population Association of America Annual Meeting, Atlanta, Georgia, May 9, 2002.

John H. Thompson
Page 6

- 2001 Thompson, John H., "Decision on Release of Statistically Corrected Redistricting Data." Invited paper presented at the Joint Meetings of the American Statistical Association, Atlanta Georgia, August 6, 2001.
- 1999 Thompson, John H., "Census 2000 – Innovations and New Technology." Paper presented at the Economic Commission for Europe's Conference of European Statisticians Meeting, Geneva, Switzerland, February 15-17, 1999.
- 1998 Thompson, John H. and Robert E. Fay, "Census 2000: The Statistical Issues." Paper presented at the Joint Meetings of the American Statistical Association, Dallas, Texas, August 9-13, 1998.
- 1996 Thompson, John H. and Karen Mills, "Census 2000 Content: Tradeoffs on Cost, Quality, and Quantity." Paper presented at the Annual Meeting of the Population Association of America, New Orleans, Louisiana, May 9-11, 1996.
- 1995 Thompson, John H., Mary H. Mulry, Susan M. Miskura, "Census 2000: Statistical Issues in Reengineering the Decennial Census." Paper presented at the Annual Meeting of the American Statistical Association, Orlando, Florida, August 13-17, 1995.
- 1992 Fay, Robert E. and John H. Thompson, "The 1990 Post-Enumeration Survey: Statistical Lessons in, Hindsight." Paper presented at the Annual Research Conference, March 22-25, 1992, Arlington, Virginia.
- 1989 Edson, Robert G. and John H. Thompson, "1990 Decennial Census Coverage Improvement Program." Paper presented at the Annual Winter Meetings of the American Statistical Association, San Diego, California, January, 1989.
- 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.
- 1987 Griffin, Richard A. and John H. Thompson, "Confidentiality Techniques for the 1990 Census." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, October, 1987.

U.S. Bureau of the Census, "Programs to Improve Coverage in the 1980 Census," by John H. Thompson. Evaluation and Research Reports, PHC80-E3.
- 1986 Thompson, John H. and David Franklin, "Test Census Results and Applications for the 1990 Planning." Paper presented at the Census Bureau Second Annual Research Conference, Reston, Virginia, March, 1986.
- 1984 Miskura, Susan M., John H. Thompson, Henry F. Woltman, "Uses of Sampling for the Census Count." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

Fan, Milton C., Martha L. Sutt, and John H. Thompson, "Evaluation of the 1980 Census Precanvass Coverage Improvement Program." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

Keeley, Catherine and John H. Thompson, "The 1980 Census Nonhousehold Sources Program." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

John H. Thompson
Page 7

- 1983 Miskura, Susan M. and John H. Thompson, "1980 Census Findings and Their Implications for 1990 Census Planning." Presented at the Joint Statistical Meetings, Toronto, Canada, August, 1983.

Taeuber, Cynthia and John H. Thompson, "1980 Census Data: The Quality of the Data and Some Anomalies." Paper presented at the Annual Meeting of the Population Association of America, April, 1983.
- 1982 Fan, Milton C., John H. Thompson, Jay Kim, and Henry F. Woltman, "Sample Design, Estimation and Presentation of Sampling Errors for the 1980 Census Early Publications National Sample." Paper presented at the Annual Meetings of the American Statistical Association, Chicago, Illinois, August, 1982.
- 1981 Woltman, Henry F., Susan M. Miskura, John H. Thompson, and Peter A. Bounpane, "1980 Census Weighting and Variance Estimation Studies, Design and Methodology." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.

Kim, Jay, John H. Thompson, Henry F. Woltman, and Stephen M. Vajs, "Empirical Results from the 1980 Census Sample Estimation Study." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.

Fan, Milton, C., John H. Thompson, and Susan M. Miskura, "1980 Census Variance Estimation Procedure." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.

Thompson, John H., "Convergence Properties of the Iterative 1980 Census Estimator." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.
- 1978 Thompson, John H., "The Nonhousehold Sources Program." Paper presented at the Annual Meetings of the American Statistical Association, San Diego, California, August, 1978.

Exhibit 58

**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
COMMISSION, et al.,

Plaintiffs,

v.

DONALD 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.”

8. I have also previously provided expert reports in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, No. 159 MM 2017 (PA 2018); *League of Women Voters of Michigan v. Johnson*, No. 2:17-cv-14148 (E.D. 2019); and *PRI et al v. Smith et al.*, No. 18-cv-357 (S.D. Ohio 2018).
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

¹ See <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>.

² For the state populations from 2010-2019, I used the file ‘nst-est2019-01.xlsx’ which I obtained from <https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html>. For the 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>. For the population counts from 1990-1999, I used the data available at <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-1990-2000-state-and-county-totals.html>.

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.³ My population projections are based on these official population estimates for each state for the period from 1990-2019.⁴

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

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.

⁴ For the state populations from 2010-2019, I used the file 'nst-est2019-01.xlsx' which I obtained from <https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html>. For the 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>. For the population counts from 1990-1999, I used the data available at <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-1990-2000-state-and-county-totals.html>.

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

	Model	ME	RMSE	MAE	MPE	MAPE
(1):	Linear model (decade)	-20,821	71,748	32,448	-0.29%	0.57%
(2):	Linear model (4 years)	-12,219	33,933	14,513	-0.11%	0.21%
(3):	Delta in last two years	-2,940	12,129	6,073	-0.02%	0.09%
(4):	State space model	-4,034	12,623	6,766	-0.04%	0.13%

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

State	2010 Population	2019 Population	2020 Population Projection
Alabama	4,779,736	4,903,185	4,918,700
Alaska	710,231	731,545	728,000
Arizona	6,392,017	7,278,717	7,399,400
Arkansas	2,915,918	3,017,804	3,025,900
California	37,253,956	39,512,223	39,724,500
Colorado	5,029,196	5,758,736	5,833,000
Connecticut	3,574,097	3,565,287	3,565,300
Delaware	897,934	973,764	982,000
District of Columbia	601,723	705,749	710,000
Florida	18,801,310	21,477,737	21,706,500
Georgia	9,687,653	10,617,423	10,723,200
Hawaii	1,360,301	1,415,872	1,411,500
Idaho	1,567,582	1,787,065	1,823,600
Illinois	12,830,632	12,671,821	12,622,100
Indiana	6,483,802	6,732,219	6,769,900
Iowa	3,046,355	3,155,070	3,168,400
Kansas	2,853,118	2,913,314	2,915,500
Kentucky	4,339,367	4,467,673	4,474,200
Louisiana	4,533,372	4,648,794	4,650,500
Maine	1,328,361	1,344,212	1,349,400
Maryland	5,773,552	6,045,680	6,071,200
Massachusetts	6,547,629	6,892,503	6,904,900
Michigan	9,883,640	9,986,857	9,986,900
Minnesota	5,303,925	5,639,632	5,676,100
Mississippi	2,967,297	2,976,149	2,972,300
Missouri	5,988,927	6,137,428	6,152,400
Montana	989,415	1,068,778	1,077,400
Nebraska	1,826,341	1,934,408	1,946,500
Nevada	2,700,551	3,080,156	3,132,200
New Hampshire	1,316,470	1,359,711	1,363,300
New Jersey	8,791,894	8,882,190	8,894,300
New Mexico	2,059,179	2,096,829	2,100,400
New York	19,378,102	19,453,561	19,377,200
North Carolina	9,535,483	10,488,084	10,594,600
North Dakota	672,591	762,062	766,100
Ohio	11,536,504	11,689,100	11,706,400
Oklahoma	3,751,351	3,956,971	3,971,200
Oregon	3,831,074	4,217,737	4,260,000
Pennsylvania	12,702,379	12,801,989	12,803,100
Rhode Island	1,052,567	1,059,361	1,059,400
South Carolina	4,625,364	5,148,714	5,213,000
South Dakota	814,180	884,659	891,700
Tennessee	6,346,105	6,829,174	6,886,700
Texas	25,145,561	28,995,881	29,432,600
Utah	2,763,885	3,205,958	3,259,800
Vermont	625,741	623,989	624,100
Virginia	8,001,024	8,535,519	8,570,600
Washington	6,724,540	7,614,893	7,707,400
West Virginia	1,852,994	1,792,147	1,780,000
Wisconsin	5,686,986	5,822,434	5,836,800
Wyoming	563,626	578,759	578,700

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.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.⁷ For the 2020 Census, however, all overseas federal personnel will be counted at their usual residential address in the United States.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.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, 2020.¹⁰
- Second, I allocated these personnel to each state in proportion to the number of service members in each branch based in each state.¹¹ This approach implicitly assumes that each

⁶ “Overseas” is defined as anywhere outside the 50 U.S. States and the District of Columbia.

⁷ See the Census Bureau’s FAQ on Congressional Apportionment in the 2010 Census.

<https://webcache.googleusercontent.com/search?q=cache:WTXwriFql5AJ:https://www.census.gov/population/apportionment/about/faq.html+&cd=2&hl=en&ct=clnk&gl=us&client=safari> and <https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/>.

⁸ See <https://www.prb.org/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/>.

⁹ See <https://www.doi.gov/sites/doi.gov/files/uploads/oia-02052020-census-and-the-military.pdf>.

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.

¹² 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.

¹³ See 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.

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.¹⁵ It is important to note that the federal overseas population is down by nearly 50% since the 2010 Census.¹⁶ This likely reflects the reduction in the nation's military deployments in conflict areas over the past decade.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."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.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.

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/>.

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>.

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/>.

¹⁸ See <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>.

¹⁹ See <https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/>.

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:

$$\text{Unauthorized Immigrants (U)} = \text{Survey, Total Foreign Born (F)} - \\ \text{Estimated Lawful Immigrant Population (L)}$$

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 Statistics²¹ 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 2017.²² 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.²³ 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-methodology/>.

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 2020.²⁴ 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).²⁵ 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

Model	ME	RMSE	MAE	MPE	MAPE
(1): Linear model (decade)	-21,998.25	90,634.40	31,639.51	-3.34	14.56
(2): Linear model (4 years)	-10,944.23	50,403.96	25,971.15	-3.95	17.59
(3): Delta in last two years	-12,884.62	58,005.64	28,961.54	-0.40	19.24
(4): State space model	-13,688.05	55,204.49	22,794.32	-3.46	15.48

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 6: Estimates of Effect on State Population Enumerations in 2020

State	Baseline 2020 Apportionment Population	Undocumented Immigrants (Pew)	Undocumented Percentage
	(1)	(2)	(3)
Alabama	4,926,400	71,900	1.5%
Alaska	735,700	8,400	1.1%
Arizona	7,410,500	274,400	3.7%
Arkansas	3,028,800	65,300	2.2%
California	39,799,200	2,066,000	5.2%
Colorado	5,846,100	190,100	3.3%
Connecticut	3,568,100	148,300	4.2%
Delaware	984,300	29,700	3%
Florida	21,736,600	796,000	3.7%
Georgia	10,749,300	375,700	3.5%
Hawaii	1,428,900	43,800	3.1%
Idaho	1,825,700	38,300	2.1%
Illinois	12,633,400	409,300	3.2%
Indiana	6,773,300	103,200	1.5%
Iowa	3,169,100	51,000	1.6%
Kansas	2,924,300	81,300	2.8%
Kentucky	4,485,300	44,700	1%
Louisiana	4,657,900	100,100	2.1%
Maine	1,350,400	4,000	0.3%
Maryland	6,105,000	261,600	4.3%
Massachusetts	6,907,400	231,900	3.4%
Michigan	9,989,700	103,800	1%
Minnesota	5,677,700	86,800	1.5%
Mississippi	2,979,500	23,000	0.8%
Missouri	6,160,800	63,100	1%
Montana	1,079,300	4,400	0.4%
Nebraska	1,950,200	55,800	2.9%
Nevada	3,137,300	211,200	6.7%
New Hampshire	1,363,700	10,400	0.8%
New Jersey	8,899,400	493,200	5.5%
New Mexico	2,107,400	59,200	2.8%
New York	19,386,100	679,800	3.5%
North Carolina	10,639,700	330,800	3.1%
North Dakota	770,300	5,900	0.8%
Ohio	11,715,100	94,400	0.8%
Oklahoma	3,981,800	90,100	2.3%
Oregon	4,261,500	109,100	2.6%
Pennsylvania	12,809,600	217,800	1.7%
Rhode Island	1,061,000	32,900	3.1%
South Carolina	5,229,800	101,500	1.9%
South Dakota	893,800	5,700	0.6%
Tennessee	6,888,900	139,200	2%
Texas	29,479,700	1,649,100	5.6%
Utah	3,263,900	106,100	3.3%
Vermont	624,400	3,500	0.6%
Virginia	8,639,600	297,600	3.4%
Washington	7,730,300	274,400	3.5%
West Virginia	1,780,600	4,300	0.2%
Wisconsin	5,838,300	72,900	1.2%
Wyoming	580,300	4,800	0.8%

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.

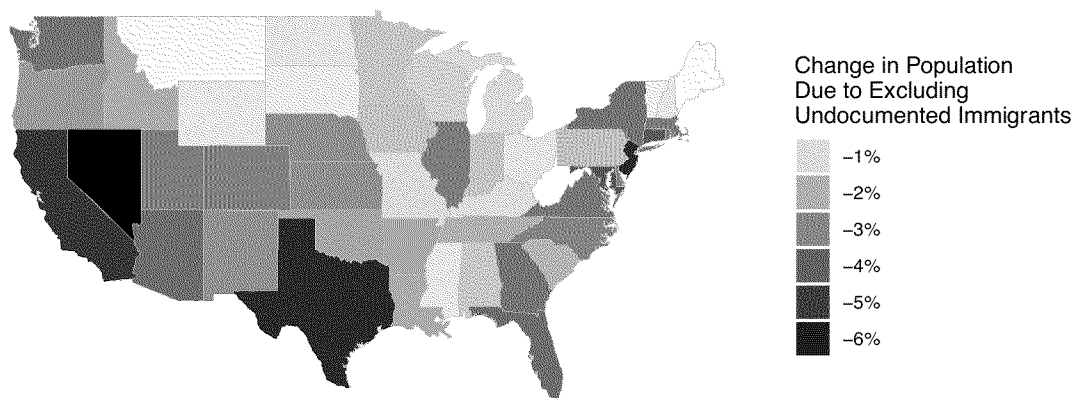


Figure 1: Effects on State Populations

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

State	Baseline Seats (1)	Seats after Exclusion (2)	Seat Delta (3)	Prob. Seat Loss (4)
Alabama	6	7	1	0%
Alaska	1	1	0	0%
Arizona	10	10	-0	0.3%
Arkansas	4	4	0	0%
California	52	51	-1	72.1%
Colorado	8	8	-0	0.3%
Connecticut	5	5	-0	3.4%
Delaware	1	1	0	0%
Florida	29	28	-0	38.4%
Georgia	14	14	0	0%
Hawaii	2	2	0	0%
Idaho	2	2	0	0%
Illinois	17	17	-0	10.1%
Indiana	9	9	0	0%
Iowa	4	4	0	0%
Kansas	4	4	0	0%
Kentucky	6	6	0	0%
Louisiana	6	6	0	0%
Maine	2	2	0	0%
Maryland	8	8	0	0%
Massachusetts	9	9	0	0%
Michigan	13	13	0	0%
Minnesota	7	8	1	0%
Mississippi	4	4	0	0%
Missouri	8	8	0	0%
Montana	2	2	0	0%
Nebraska	3	3	0	0%
Nevada	4	4	0	0%
New Hampshire	2	2	0	0%
New Jersey	12	11	-1	69.8%
New Mexico	3	3	0	0%
New York	26	25	-0	18.9%
North Carolina	14	14	0	0%
North Dakota	1	1	0	0%
Ohio	15	16	1	0%
Oklahoma	5	5	0	0%
Oregon	6	6	0	0%
Pennsylvania	17	17	0	0%
Rhode Island	1	1	0	0%
South Carolina	7	7	0	0%
South Dakota	1	1	0	0%
Tennessee	9	9	0	0%
Texas	39	38	-1	98.3%
Utah	4	4	0	0%
Vermont	1	1	0	0%
Virginia	11	11	0	0%
Washington	10	10	0	0%
West Virginia	2	2	0	0%
Wisconsin	8	8	0	0%
Wyoming	1	1	0	0%

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 Un documented 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

³⁰ See <https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles>.

Pew's estimate.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 2018.³² 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.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%.

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 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.

State	Main Analysis	Scenario #1 MPI	Scenario #2 CMS	Scenario #3 Pew (80%)	Scenario #4 Pew (60%)	Scenario #5 Pew (150%)
California	72%	100%	93%	49%	36%	92%
Florida	38%	0%	26%	39%	48%	60%
New Jersey	70%	80%	23%	57%	36%	91%
New York	19%	52%	19%	17%	28%	24%
Texas	98%	96%	98%	98%	98%	99.5%

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.

State	Main Analysis	Scenario #6 Alternative Population Forecasts	Scenario #7 Alternative Forecasts of Undoc. Imm.'s
California	72%	84%	75%
Florida	38%	45%	96%
New Jersey	70%	73%	51%
New York	19%	58%	30%
Texas	98%	99.5%	100%

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.

State	Main	Scenario #8
State	Analysis	Undercount
California	72%	67%
Florida	38%	0%
New Jersey	70%	93%
New York	19%	0%
Texas	98%	76%

³⁴ See Statement of John H Thompson, Former Director U.S. Census Bureau (August 2013 – June 2017), For the House Committee on Oversight and Reform, U.S. House of Representatives, July 29, 2020 <https://tinyurl.com/y67ojqjb>.

³⁵ See <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> and <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html>.

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 Center³⁶
- 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.

State	Main Analysis (1)	Pew (2)	CIS (3)	CfP (4)	Academic Study (5)
Arizona	0.3%				X
California	72%	X	X	X	X
Florida	38%	X			X
New Jersey	70%			X	
New York	19%		X		
Texas	98%	X	X	X	X

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

³⁶ See <https://www.pewresearch.org/fact-tank/2020/07/24/how-removing-unauthorized-immigrants-from-census-statistics-could-affect-house-reapportionment/>

³⁷ See https://cis.org/sites/default/files/2019-12/camarota-apportionment-12-19_1.pdf.

³⁸ See <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment/>.

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.

A handwritten signature in cursive script, appearing to read "Chris Warshaw".

Christopher Warshaw

References

Ansolabehere, Stephen, Alan Gerber, and Jim Snyder. 2002. “Equal votes, equal money: Court-ordered redistricting and public expenditures in the American states.” *American Political Science Review* 96 (4): 767–777.

Baker, Bryan. 2018. “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2015.” Department of Homeland Security, December.

Baumle, Amanda K, and Dudley L Poston Jr. 2019. “Apportionment of the US House of Representatives in 2020 under Alternative Immigration-Based Scenarios.” *Population and Development Review* 45 (2): 379–400.

Brown, David J., Misty L. Heggeness, Suzanne M. Dorinski, Lawrence Warren, and Moises Yi. 2018. Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census.

Cascio, Elizabeth U, and Ebonya Washington. 2014. “Valuing the vote: The redistribution of voting rights and state funds following the voting rights act of 1965.” *The Quarterly Journal of Economics* 129 (1): 379–433.

Caughey, Devin, and Christopher Warshaw. 2018. “Policy Preferences and Policy Change: Dynamic Responsiveness in the American States, 1936–2014.” *The American Political Science Review* 112 (2): 249–266.

Election Data Services. 2017. Some Change in Apportionment Allocations With New 2017 Census Estimates, But Greater Change Likely by 2020. Available at https://www.electiondataservices.com/wpcontent/uploads/2017/12/NR_Appor17c2wTablesMapsC1.pdf.

Elis, Roy, Neil Malhotra, and Marc Meredith. 2009. “Apportionment cycles as natural experiments.” *Political Analysis* 17 (4): 358–376.

Hyndman, Rob J, and George Athanasopoulos. 2018. *Forecasting: principles and practice*. O-Texs.

Hyndman, Rob, Anne B Koehler, J Keith Ord, and Ralph D Snyder. 2008. *Forecasting with exponential smoothing: the state space approach*. Springer Science & Business Media.

Passel, Jeffrey S. 2016. Overall Number of US Unauthorized Immigrants Holds Steady Since 2009: Decline in Share From Mexico Mostly Offset by Growth From Asia, Central America and Sub-Saharan African. Pew Research Center.

Treier, Shawn, and Simon Jackman. 2008. “Democracy as a latent variable.” *American Journal of Political Science* 52 (1): 201–217.

Warren, Robert. 2014. “Democratizing data about unauthorized residents in the United States: estimates and public-use data, 2010 to 2013.” *Journal on Migration and Human Security* 2 (4): 305–328.

Warren, Robert. 2019. "US undocumented population continued to fall from 2016 to 2017 and visa overstays significantly exceeded illegal crossings for the seventh consecutive year." *Journal on Migration and Human Security* 7 (1): 19–22.

Warren, Robert, and John Robert Warren. 2013. "Unauthorized immigration to the United States: Annual estimates and components of change, by state, 1990 to 2010." *International Migration Review* 47 (2): 296–329.

Appendix A**1. Estimates of Overseas Federal Personnel**

Table 3: Estimates of Overseas Federal Personnel in each State in 2020.

State	Overseas Personnel
Alabama	7,700
Alaska	7,500
Arizona	11,000
Arkansas	2,900
California	74,900
Colorado	14,200
Connecticut	2,600
Delaware	2,100
Florida	29,500
Georgia	26,800
Hawaii	17,500
Idaho	2,200
Illinois	10,300
Indiana	3,300
Iowa	900
Kansas	8,300
Kentucky	11,200
Louisiana	7,300
Maine	1,100
Maryland	33,600
Massachusetts	2,700
Michigan	2,900
Minnesota	1,600
Mississippi	6,700
Missouri	8,400
Montana	2,000
Nebraska	3,600
Nevada	6,200
New Hampshire	700
New Jersey	5,300
New Mexico	7,000
New York	9,300
North Carolina	44,500
North Dakota	4,000
Ohio	8,600
Oklahoma	10,700
Oregon	1,200
Pennsylvania	6,900
Rhode Island	1,700
South Carolina	16,400
South Dakota	2,000
Tennessee	2,600
Texas	51,500
Utah	4,200
Vermont	300
Virginia	68,800
Washington	23,000
West Virginia	700
Wisconsin	1,600
Wyoming	1,800

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.

State	Undocumented Immigrants
Alabama	71,900 (28,800)
Alaska	8,400 (3,500)
Arizona	274,400 (56,400)
Arkansas	65,300 (20,400)
California	2,066,000 (275,700)
Colorado	190,100 (50,200)
Connecticut	148,300 (67,700)
Delaware	29,700 (12,100)
Florida	796,000 (105,300)
Georgia	375,700 (140,000)
Hawaii	43,800 (19,000)
Idaho	38,300 (9,400)
Illinois	409,300 (70,100)
Indiana	103,200 (48,200)
Iowa	51,000 (20,400)
Kansas	81,300 (27,900)
Kentucky	44,700 (20,400)
Louisiana	100,100 (61,500)
Maine	4,000 (1,900)
Maryland	261,600 (76,300)
Massachusetts	231,900 (69,300)
Michigan	103,800 (37,500)
Minnesota	86,800 (34,200)
Mississippi	23,000 (11,600)
Missouri	63,100 (31,300)
Montana	4,400 (1,700)
Nebraska	55,800 (17,900)
Nevada	211,200 (31,600)
New Hampshire	10,400 (4,400)
New Jersey	493,200 (90,000)
New Mexico	59,200 (16,600)
New York	679,800 (102,000)
North Carolina	330,800 (73,400)
North Dakota	5,900 (3,200)
Ohio	94,400 (43,400)
Oklahoma	90,100 (30,200)
Oregon	109,100 (32,200)
Pennsylvania	217,800 (85,500)
Rhode Island	32,900 (12,000)
South Carolina	101,500 (47,500)
South Dakota	5,700 (2,300)
Tennessee	139,200 (56,000)
Texas	1,649,100 (182,200)
Utah	106,100 (19,100)
Vermont	3,500 (1,600)
Virginia	297,600 (104,600)
Washington	274,400 (82,600)
West Virginia	4,300 (2,000)
Wisconsin	72,900 (31,000)
Wyoming	4,800 (1,900)

3. Unrounded Main Results for Congressional Apportionment

Table 12: Unrounded Estimates of Excluding Undocumented Immigrants on Congressional Apportionment

State	Baseline Seats (1)	Seats after Exclusion (2)	Seat Delta (3)	Prob. Seat Loss (4)
Alabama	6.46	7.00	0.54	0%
Alaska	1.00	1.00	0.00	0%
Arizona	10.00	10.00	-0.00	0.3%
Arkansas	4.00	4.00	0.00	0%
California	52.15	51.32	-0.83	72.1%
Colorado	8.00	8.00	-0.00	0.3%
Connecticut	5.00	4.97	-0.03	3.4%
Delaware	1.00	1.00	0.00	0%
Florida	28.86	28.47	-0.38	38.4%
Georgia	14.00	14.02	0.02	0%
Hawaii	2.00	2.00	0.00	0%
Idaho	2.00	2.12	0.12	0%
Illinois	17.00	16.90	-0.10	10.1%
Indiana	9.00	9.00	0.00	0%
Iowa	4.00	4.00	0.00	0%
Kansas	4.00	4.00	0.00	0%
Kentucky	6.00	6.00	0.00	0%
Louisiana	6.00	6.02	0.02	0%
Maine	2.00	2.00	0.00	0%
Maryland	8.00	8.00	0.00	0%
Massachusetts	9.00	9.00	0.00	0%
Michigan	13.00	13.28	0.28	0%
Minnesota	7.07	8.00	0.92	0%
Mississippi	4.00	4.00	0.00	0%
Missouri	8.00	8.00	0.00	0%
Montana	1.92	2.00	0.08	0%
Nebraska	3.00	3.00	0.00	0%
Nevada	4.00	4.00	0.00	0%
New Hampshire	2.00	2.00	0.00	0%
New Jersey	12.00	11.30	-0.70	69.8%
New Mexico	3.00	3.00	0.00	0%
New York	25.54	25.35	-0.19	18.9%
North Carolina	14.00	14.00	0.00	0%
North Dakota	1.00	1.00	0.00	0%
Ohio	15.00	16.00	1.00	0%
Oklahoma	5.00	5.00	0.00	0%
Oregon	6.00	6.00	0.00	0%
Pennsylvania	17.00	17.00	0.00	0%
Rhode Island	1.00	1.17	0.17	0%
South Carolina	7.00	7.00	0.00	0%
South Dakota	1.00	1.00	0.00	0%
Tennessee	9.00	9.00	0.00	0%
Texas	38.99	37.93	-1.06	98.3%
Utah	4.00	4.00	0.00	0%
Vermont	1.00	1.00	0.00	0%
Virginia	11.00	11.16	0.16	0%
Washington	10.00	10.00	0.00	0%
West Virginia	2.00	2.00	0.00	0%
Wisconsin	8.00	8.00	0.00	0%
Wyoming	1.00	1.00	0.00	0%

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.
5. I am also on the Editorial Board of the *Journal of Politics*. I have previously provided expert reports in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania* and *League of Women Voters of Michigan v. Johnson*. My non-academic writing has been published in the New York Times Upshot.

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

¹ 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.

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>.

13. 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.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 1: Validation of State Population Projections

Model	2010			2017		
	Mean Error	Mean Abs. Error	Mean Abs. Prop. Error	Mean Error	Mean Abs Error	Mean Abs. Prop. Error
Linear model (full period)	22,800	62,860	0.013	7,827	32,003	0.007
Linear model (4 years)	27,399	82,106	0.014	33,420	59,396	0.014
Delta in last two years	20,383	50,663	0.010	140,472	142,506	0.020
State space model	5,826	51,033	0.009	-2,599	33,378	0.008

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 2: Population Projections in Select Counties and Cities

County/City	2010 Population	2017 Population	2020 Population Projection
Phoenix, AZ	1,446,909	1,626,078	1,698,187
Los Angeles County, CA	9,818,605	10,163,507	10,256,275
Monterey County, CA	415,052	437,907	444,016
San Francisco, CA	805,193	884,363	909,143
Miami, FL	399,457	463,347	491,295
Chicago, IL	2,695,620	2,716,450	2,704,974
Price Georges County, MD	863,420	912,756	931,412
New York NY	8,174,959	8,622,698	8,645,147
Columbus, OH	788,877	879,170	925,408
Philadelphia, PA	1,526,006	1,580,863	1,598,072
Pittsburgh, PA	305,391	302,407	297,243
Central Falls, RI	19,393	19,359	19,250
Providence, RI	177,997	180,393	181,532
Cameron County, TX	406,219	423,725	429,603
El Paso County, TX	800,647	840,410	851,600
Hidalgo County, TX	774,770	860,661	892,083
Seattle, WA	608,664	724,745	780,550

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

State	2010 Population	2017 Population	2020 Population Projection
Alabama	4,779,736	4,874,747	4,917,351
Alaska	710,231	739,795	739,473
Arizona	6,392,017	7,016,270	7,339,157
Arkansas	2,915,918	3,004,279	3,051,838
California	37,253,956	39,536,653	40,505,540
Colorado	5,029,196	5,607,154	5,823,386
Connecticut	3,574,097	3,588,184	3,589,649
Delaware	897,934	961,939	989,662
District of Columbia	601,723	693,972	722,881
Florida	18,801,310	20,984,400	21,967,862
Georgia	9,687,653	10,429,379	10,776,655
Hawaii	1,360,301	1,427,538	1,429,641
Idaho	1,567,582	1,716,943	1,827,695
Illinois	12,830,632	12,802,023	12,701,647
Indiana	6,483,802	6,666,818	6,761,903
Iowa	3,046,355	3,145,711	3,182,994
Kansas	2,853,118	2,913,123	2,925,781
Kentucky	4,339,367	4,454,189	4,508,391
Louisiana	4,533,372	4,684,333	4,684,247
Maine	1,328,361	1,335,907	1,349,155
Maryland	5,773,552	6,052,177	6,187,649
Massachusetts	6,547,629	6,859,819	6,966,760
Michigan	9,883,640	9,962,311	9,962,308
Minnesota	5,303,925	5,576,606	5,690,791
Mississippi	2,967,297	2,984,100	2,984,630
Missouri	5,988,927	6,113,532	6,180,600
Montana	989,415	1,050,493	1,079,083
Nebraska	1,826,341	1,920,076	1,957,570
Nevada	2,700,551	2,998,039	3,174,453
New Hampshire	1,316,470	1,342,795	1,366,068
New Jersey	8,791,894	9,005,644	9,106,936
New Mexico	2,059,179	2,088,070	2,095,989
New York	19,378,102	19,849,399	19,885,662
North Carolina	9,535,483	10,273,419	10,623,613
North Dakota	672,591	755,393	752,711
Ohio	11,536,504	11,658,609	11,713,096
Oklahoma	3,751,351	3,930,864	3,974,666
Oregon	3,831,074	4,142,776	4,269,590
Pennsylvania	12,702,379	12,805,537	12,838,064
Rhode Island	1,052,567	1,059,639	1,059,639
South Carolina	4,625,364	5,024,369	5,213,894
South Dakota	814,180	869,666	891,229
Tennessee	6,346,105	6,715,984	6,915,723
Texas	25,145,561	28,304,596	29,593,219
Utah	2,763,885	3,101,833	3,274,374
Vermont	625,741	623,657	622,506
Virginia	8,001,024	8,470,020	8,632,998
Washington	6,724,540	7,405,743	7,785,568
West Virginia	1,852,994	1,815,857	1,777,893
Wisconsin	5,686,986	5,795,483	5,858,478
Wyoming	563,626	579,315	565,592

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.⁶

This survey was designed by Dr. Matt Barreto and conducted by Pacific Market Research.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).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?’

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.

⁷ Data and statistical code to replicate my analysis of this survey is available in my replication materials.

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

	Latinos			Foreign-born (not Latino)		
	(1)	(2)	(3)	(4)	(5)	(6)
Citizenship Question	-0.059** (0.029)	-0.070** (0.028)	-0.062*** (0.016)	-0.113 (0.072)	-0.164** (0.066)	-0.096** (0.039)
Survey Weights	X	X		X	X	
Controls		X	X		X	X
Observations	2,362	2,362	2,362	488	488	488
R ²			0.043			0.117
Adjusted R ²			0.021			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)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.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.

Table 5: Effect of Undercount on State Population Enumerations in 2020

State	Baseline Apportionment Pop. Projection	5.8% Undercount		10% Undercount		Survey Experiment Foreign-born + Hispanics
		Noncitizens	Noncitizens+ Hispanic	Noncitizens	Noncitizens + Hispanic	
	(1)	(2)	(3)	(4)	(5)	(6)
Alabama	4,928,974	-0.3%	-0.4%	-0.5%	-0.7%	-0.6%
Alaska	745,119	-0.5%	-0.8%	-0.8%	-1.4%	-1.4%
Arizona	7,349,498	-0.9%	-2.1%	-1.5%	-3.6%	-2.6%
Arkansas	3,056,993	-0.4%	-0.6%	-0.7%	-1%	-0.8%
California	40,549,557	-1.7%	-2.9%	-2.9%	-5%	-4.1%
Colorado	5,831,253	-0.7%	-1.5%	-1.2%	-2.7%	-2%
Connecticut	3,593,415	-0.8%	-1.5%	-1.3%	-2.6%	-2.4%
Delaware	991,133	-0.6%	-1%	-1%	-1.7%	-1.5%
Florida	22,017,594	-1%	-2%	-1.7%	-3.4%	-2.7%
Georgia	10,796,611	-0.7%	-0.9%	-1.2%	-1.6%	-1.5%
Hawaii	1,432,921	-1%	-1.6%	-1.7%	-2.8%	-3%
Idaho	1,830,654	-0.4%	-0.9%	-0.8%	-1.6%	-1.2%
Illinois	12,718,521	-0.8%	-1.4%	-1.4%	-2.4%	-2.1%
Indiana	6,770,793	-0.4%	-0.6%	-0.7%	-1.1%	-0.9%
Iowa	3,186,710	-0.4%	-0.6%	-0.7%	-1%	-0.9%
Kansas	2,931,128	-0.6%	-1%	-1%	-1.7%	-1.3%
Kentucky	4,514,011	-0.3%	-0.4%	-0.5%	-0.7%	-0.6%
Louisiana	4,694,542	-0.3%	-0.5%	-0.5%	-0.8%	-0.6%
Maine	1,351,512	-0.2%	-0.3%	-0.3%	-0.5%	-0.6%
Maryland	6,195,838	-0.9%	-1.2%	-1.6%	-2%	-2.1%
Massachusetts	6,972,768	-0.9%	-1.4%	-1.5%	-2.4%	-2.4%
Michigan	9,976,301	-0.4%	-0.6%	-0.6%	-1%	-1.1%
Minnesota	5,696,268	-0.5%	-0.6%	-0.8%	-1.1%	-1.2%
Mississippi	2,990,101	-0.2%	-0.3%	-0.3%	-0.5%	-0.4%
Missouri	6,191,875	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Montana	1,081,584	-0.1%	-0.3%	-0.2%	-0.6%	-0.5%
Nebraska	1,960,312	-0.5%	-0.9%	-0.9%	-1.5%	-1.2%
Nevada	3,178,894	-1.3%	-2.1%	-2.2%	-3.6%	-3%
New Hampshire	1,368,556	-0.3%	-0.5%	-0.5%	-0.8%	-0.9%
New Jersey	9,114,740	-1.2%	-1.9%	-2%	-3.3%	-3%
New Mexico	2,100,036	-0.8%	-3.1%	-1.3%	-5.3%	-3.3%
New York	19,907,138	-1.2%	-1.9%	-2.1%	-3.2%	-3.1%
North Carolina	10,638,762	-0.6%	-0.8%	-1%	-1.4%	-1.2%
North Dakota	754,368	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Ohio	11,729,092	-0.2%	-0.4%	-0.4%	-0.7%	-0.7%
Oklahoma	3,981,432	-0.5%	-0.8%	-0.8%	-1.4%	-1.1%
Oregon	4,278,356	-0.7%	-1.1%	-1.1%	-1.9%	-1.6%
Pennsylvania	12,854,327	-0.4%	-0.7%	-0.6%	-1.3%	-1.2%
Rhode Island	1,060,979	-0.7%	-1.3%	-1.2%	-2.3%	-2%
South Carolina	5,224,199	-0.3%	-0.5%	-0.6%	-0.9%	-0.8%
South Dakota	894,019	-0.3%	-0.4%	-0.5%	-0.8%	-0.7%
Tennessee	6,930,386	-0.4%	-0.5%	-0.6%	-0.9%	-0.8%
Texas	29,654,648	-1.3%	-2.7%	-2.2%	-4.6%	-3.2%
Utah	3,277,814	-0.6%	-1.1%	-1.1%	-1.9%	-1.4%
Vermont	624,804	-0.2%	-0.3%	-0.3%	-0.5%	-0.7%
Virginia	8,651,354	-0.7%	-1%	-1.2%	-1.7%	-1.8%
Washington	7,799,983	-0.9%	-1.3%	-1.5%	-2.2%	-2.2%
West Virginia	1,781,304	-0.1%	-0.2%	-0.2%	-0.3%	-0.3%
Wisconsin	5,864,100	-0.3%	-0.6%	-0.6%	-1.1%	-0.9%
Wyoming	567,929	-0.3%	-0.8%	-0.5%	-1.3%	-1%

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.

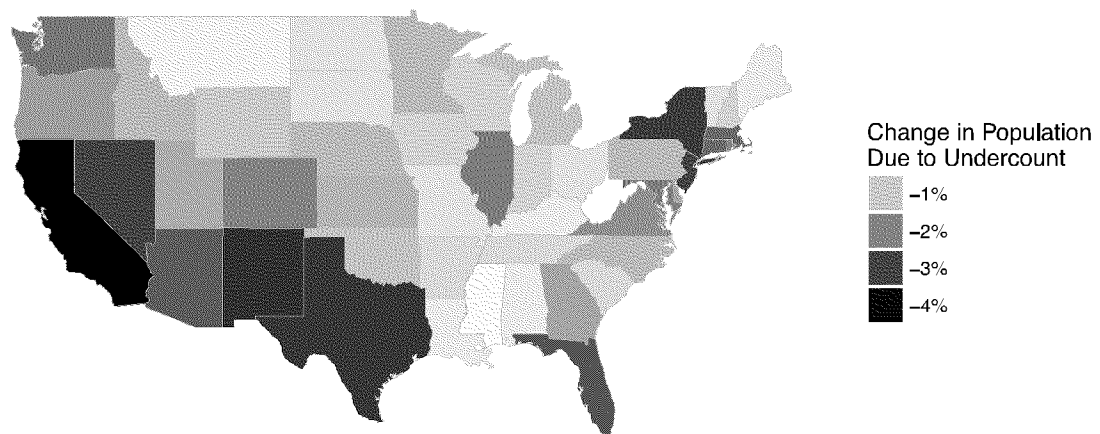


Figure 1: Effects on State Populations

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

State	Baseline Seats	5.8% Undercount		10% Undercount		Survey Experiment Foreign-born + Hispanics
		Noncitizens	Noncitizens+ Hispanic	Noncitizens	Noncitizens + Hispanic	
Alabama	6	0 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)
Alaska	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Arizona	10	0 (-1,0)	0 (-1,0)	0 (-1,0)	-1 (-1,0)	0 (-1,0)
Arkansas	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
California	53	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-2,-1)	-1 (-2,0)
Colorado	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Connecticut	5	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Delaware	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Florida	29	0 (-1,0)	0 (-1,0)	0 (-1,0)	-1 (-1,0)	-1 (-1,0)
Georgia	14	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Hawaii	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Idaho	2	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,1)	0 (0,1)
Illinois	17	0 (-1,0)	0 (0,1)	0 (-1,1)	0 (-1,0)	0 (-1,0)
Indiana	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Iowa	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Kansas	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Kentucky	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Louisiana	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,1)	0 (0,0)
Maine	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Maryland	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Massachusetts	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Michigan	13	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Minnesota	7	0 (0,1)	0 (0,1)	0 (0,1)	1 (0,1)	1 (0,1)
Mississippi	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Missouri	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Montana	1	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)	1 (0,1)
Nebraska	3	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Nevada	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Hampshire	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Jersey	12	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New Mexico	3	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
New York	26	0 (-1,0)	0 (0,0)	0 (-1,0)	0 (-1,0)	0 (-1,0)
North Carolina	14	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
North Dakota	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Ohio	15	0 (0,0)	0 (0,1)	0 (0,1)	1 (0,1)	0 (0,1)
Oklahoma	5	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Oregon	6	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Pennsylvania	17	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Rhode Island	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
South Carolina	7	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
South Dakota	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Tennessee	9	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Texas	39	0 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)	-1 (-1,0)
Utah	4	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Vermont	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Virginia	11	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Washington	10	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
West Virginia	2	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Wisconsin	8	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)
Wyoming	1	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)	0 (0,0)

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

County	2020 Population	2% Undercount				5.8% Undercount				Survey Experiment			
		Noncitizens		Noncitizens+ Hispanics		Noncitizens		Noncitizens+ Hispanics		Foreign-born+ Hispanics			
		Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change	Abs. Change	% Change
Phoenix, AZ	1,698,187	9,532	-0.6%	15,939	-0.9%	27,644	-1.6%	46,223	-2.7%	53,388	-3.1%		
Los Angeles County, CA	10,256,275	74,027	-0.7%	118,962	-1.2%	214,679	-2.1%	344,988	-3.4%	469,163	-4.6%		
Monterey County, CA	444,016	3,841	-0.9%	5,525	-1.2%	11,139	-2.5%	16,022	-3.6%	18,215	-4.1%		
San Francisco, CA	909,143	4,640	-0.5%	6,141	-0.7%	13,457	-1.5%	17,808	-2%	37,509	-4.1%		
San Jose, CA	1,045,953	6,843	-0.7%	10,743	-1%	19,845	-1.9%	31,153	-3%	52,766	-5%		
Washington, DC	722,881	1,997	-0.3%	2,690	-0.4%	5,792	-0.8%	7,800	-1.1%	11,859	-1.6%		
Miami, FL	491,295	4,868	-1%	7,734	-1.6%	14,118	-2.9%	22,428	-4.6%	24,713	-5%		
Chicago, IL	2,704,974	12,334	-0.5%	20,052	-0.7%	35,769	-1.3%	58,152	-2.1%	76,859	-2.8%		
Prince Georges County, MD	931,412	4,388	-0.5%	5,054	-0.5%	12,724	-1.4%	14,658	-1.6%	21,592	-2.3%		
New York, NY	8,645,147	55,293	-0.6%	83,728	-1%	160,350	-1.9%	242,811	-2.8%	396,647	-4.6%		
Columbus, OH	925,408	2,375	-0.3%	2,768	-0.3%	6,886	-0.7%	8,027	-0.9%	12,889	-1.4%		
Philadelphia, PA	1,598,072	3,944	-0.2%	7,305	-0.5%	11,438	-0.7%	21,185	-1.3%	32,116	-2%		
Pittsburgh, PA	297,243	480	-0.2%	614	-0.2%	1,392	-0.5%	1,780	-0.6%	3,124	-1.1%		
Central Falls, RI	19,250	190	-1%	313	-1.6%	550	-2.9%	908	-1.7%	920	-4.8%		
Providence, RI	181,532	1,249	-0.7%	1,934	-1.1%	3,622	-2%	5,608	-3.1%	6,833	-3.8%		
Cameron County, TX	429,603	3,535	-0.8%	7,759	-1.8%	10,253	-2.4%	22,501	-5.2%	23,272	-5.4%		
El Paso County, TX	851,600	5,844	-0.7%	14,227	-1.7%	16,947	-2%	41,259	-1.8%	43,069	-5.1%		
Hidalgo County, TX	892,083	8,455	-0.9%	16,540	-1.9%	24,520	-2.7%	47,965	-5.4%	49,626	-5.6%		
Seattle, WA	780,550	2,483	-0.3%	2,987	-0.4%	7,200	-0.9%	8,661	-1.1%	17,083	-2.2%		

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.

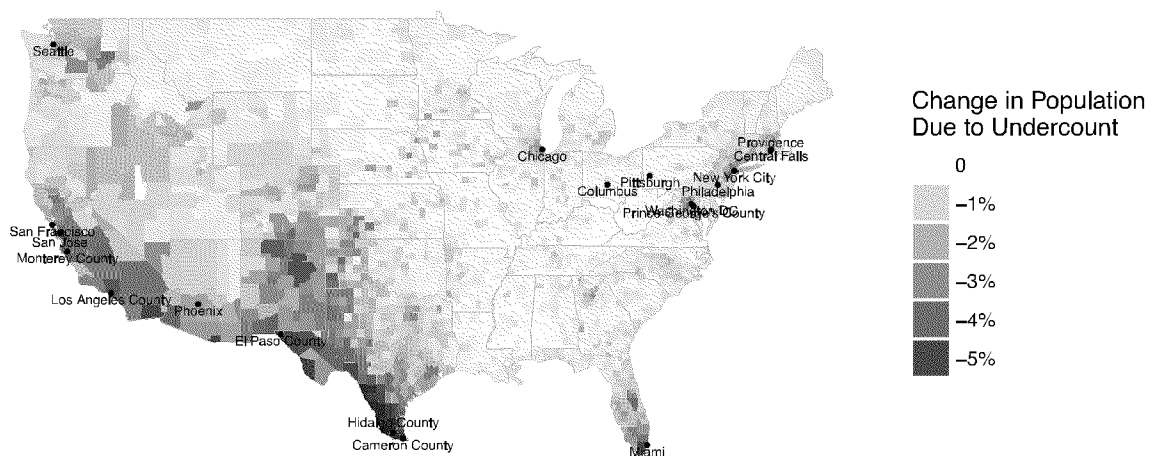


Figure 2: Effects on County Populations

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

	2% Undercount		5.8% Undercount		Survey Experiment
	Noncitizens	Noncitizens+ Hispanics	Noncitizens	Noncitizens+ Hispanics	Foreign-born+ Hispanics
Phoenix, AZ	-0.4%	-0.4%	-0.9%	-0.8%	-0.7%
Los Angeles County, CA	-0.3%	-0.3%	-0.5%	-0.6%	-0.6%
Monterey County, CA	-0.4%	-0.4%	-1%	-0.9%	-0.1%
San Francisco, CA	0%	0.2%	0.1%	0.8%	-0.2%
San Jose, CA	-0.2%	-0.1%	-0.3%	-0.2%	-1.1%
Miami, FL	-0.9%	-1.1%	-2.1%	-2.9%	-2.6%
Chicago, IL	-0.3%	-0.4%	-0.6%	-0.9%	-0.9%
Prince Georges County, MD	-0.3%	-0.3%	-0.6%	-0.5%	-0.4%
New York, NY	-0.3%	-0.4%	-0.8%	-1.1%	-1.6%
Columbus, OH	-0.3%	-0.3%	-0.6%	-0.6%	-0.8%
Philadelphia, PA	-0.2%	-0.3%	-0.5%	-0.7%	-1%
Pittsburgh, PA	-0.2%	-0.1%	-0.2%	0%	0%
Central Falls, RI	-0.9%	-1.3%	-2.3%	-3.5%	-2.9%
Providence, RI	-0.6%	-0.7%	-1.4%	-1.9%	-1.9%
Cameron County, TX	-0.6%	-1.1%	-1.3%	-2.8%	-2.5%
El Paso County, TX	-0.5%	-1%	-0.9%	-2.4%	-2.1%
Hidalgo County, TX	-0.7%	-1.2%	-1.7%	-3%	-2.7%
Seattle, WA	-0.2%	-0.1%	-0.2%	0%	-0.2%

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.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).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.

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.

¹⁵ See https://www.cdc.gov/nchs/data_access/urban_rural.htm

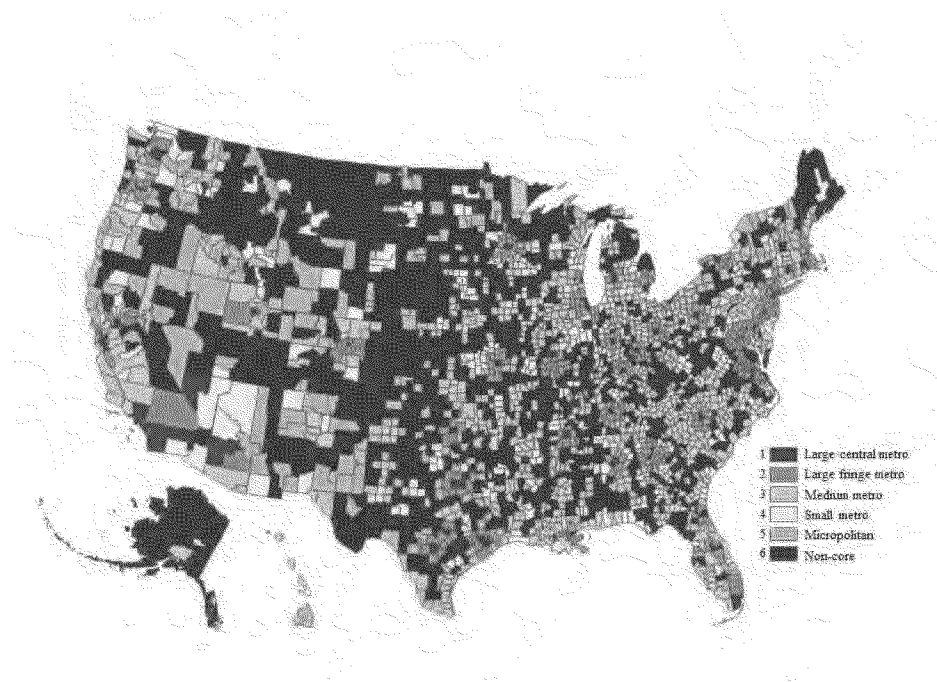


Figure 3: 2013 Urban-Rural Classification Scheme for Counties

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

County	2020 Population Projection	Percentage Change Due to Undercount	Percentage Change in Relative Population
Large central metro	103,025,259	-2.9%	-1.1%
Large fringe metro	83,761,694	-1.8%	.1%
Median metro	69,737,033	-1.5%	.3%
Small metro	30,116,705	-1%	.9%
Micropolitan	27,375,961.605	-.8%	1.1%
Noncore	18,760,860	-.5%	1.4%

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

State	Baseline Apportionment Pop. Projection	Noncitizens	Noncitizens+ Hispanic
Alabama	4,928,974	-0.1%	-0.1%
Alaska	745,119	-0.2%	-0.3%
Arizona	7,349,498	-0.3%	-0.7%
Arkansas	3,056,993	-0.1%	-0.2%
California	40,549,557	-0.6%	-1%
Colorado	5,831,253	-0.2%	-0.5%
Connecticut	3,593,415	-0.3%	-0.5%
Delaware	991,133	-0.2%	-0.3%
Florida	22,017,594	-0.3%	-0.7%
Georgia	10,796,611	-0.2%	-0.3%
Hawaii	1,432,921	-0.3%	-0.6%
Idaho	1,830,654	-0.2%	-0.3%
Illinois	12,718,521	-0.3%	-0.5%
Indiana	6,770,793	-0.1%	-0.2%
Iowa	3,186,710	-0.1%	-0.2%
Kansas	2,931,128	-0.2%	-0.3%
Kentucky	4,514,011	-0.1%	-0.1%
Louisiana	4,694,542	-0.1%	-0.2%
Maine	1,351,512	-0.1%	-0.1%
Maryland	6,195,838	-0.3%	-0.4%
Massachusetts	6,972,768	-0.3%	-0.5%
Michigan	9,976,301	-0.1%	-0.2%
Minnesota	5,696,268	-0.2%	-0.2%
Mississippi	2,990,101	-0.1%	-0.1%
Missouri	6,191,875	-0.1%	-0.1%
Montana	1,081,584	0%	-0.1%
Nebraska	1,960,312	-0.2%	-0.3%
Nevada	3,178,894	-0.4%	-0.7%
New Hampshire	1,368,556	-0.1%	-0.2%
New Jersey	9,114,740	-0.4%	-0.7%
New Mexico	2,100,036	-0.3%	-1.1%
New York	19,907,138	-0.4%	-0.6%
North Carolina	10,638,762	-0.2%	-0.3%
North Dakota	754,368	-0.1%	-0.1%
Ohio	11,729,092	-0.1%	-0.1%
Oklahoma	3,981,432	-0.2%	-0.3%
Oregon	4,278,356	-0.2%	-0.4%
Pennsylvania	12,854,327	-0.1%	-0.3%
Rhode Island	1,060,979	-0.2%	-0.5%
South Carolina	5,224,199	-0.1%	-0.2%
South Dakota	894,019	-0.1%	-0.2%
Tennessee	6,930,386	-0.1%	-0.2%
Texas	29,654,648	-0.4%	-0.9%
Utah	3,277,814	-0.2%	-0.4%
Vermont	624,804	-0.1%	-0.1%
Virginia	8,651,354	-0.2%	-0.3%
Washington	7,799,983	-0.3%	-0.4%
West Virginia	1,781,304	0%	-0.1%
Wisconsin	5,864,100	-0.1%	-0.2%
Wyoming	567,929	-0.1%	-0.3%

Christopher S. Warshaw

Department of Political Science
2115 G Street, N.W.
Monroe Hall 440
Washington, D.C. 20052

Office: 202-994-6290
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)
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)

20. "Accountability for the Local Economy at All Levels of Government in United States Elections." Forthcoming. 2020. *American Political Science Review* .114(3): 660-676. (with Justin de Benedictis-Kessner)
19. "Politics in Forgotten Governments: The Partisan Composition of County Legislatures and County Fiscal Policies." 2020. *Journal of Politics*. 82(2): 460-475. (with Justin de Benedictis-Kessner)
18. "On the Representativeness of Primary Electorates." 2020. *British Journal of Political Science*. 50(2): 677-685. (with John Sides, Chris Tausanovitch, and Lynn Vavreck)
17. "Geography, Uncertainty, and Polarization." 2019. *Political Science Research and Methods*. 7(4): 775-794. (with Nolan McCarty, Jonathan Rodden, Boris Shor, and Chris Tausanovitch)
16. "Policy Ideology in European Mass Publics, 1981–2016." 2019. *American Political Science Review*. 113(3): 674-693. (with Devin Caughey and Tom O'Grady).
15. "Does Global Warming Increase Public Concern About Climate Change?" 2019. *Journal of Politics*. 81(2): 686-691. (with Parrish Bergquist)
14. "Local Elections and Representation in the United States." 2019. *Annual Review of Political Science*. 22(1): 461-479.
13. "The Ideological Nationalization of Party Constituencies in the American States". 2018. *Public Choice*. Keith Poole Symposium. 176(1-2): 133-151. (with James Dunham and Devin Caughey)
12. "Policy Preferences and Policy Change: Dynamic Responsiveness in the American States, 1936-2014." 2018. *American Political Science Review*. 112(2): 249-266. (with Devin Caughey)
11. "Does the Ideological Proximity Between Candidates and Voters Affect Voting in U.S. House Elections?" 2018. *Political Behavior*. 40(1): 223-245. (with Chris Tausanovitch)
10. "Partisan Gerrymandering and the Political Process: Effects on Roll-Call Voting and State Policies." *Election Law Journal*. December, 2017. 16(4): 453-469. Symposium on Partisan Gerrymandering and the Efficiency Gap. (with Devin Caughey and Chris Tausanovitch)
9. "Incremental Democracy: The Policy Effects of Partisan Control of State Government." 2017. *Journal of Politics*. 79(4): 1342-1358. (with Devin Caughey and Yiqing Xu)
8. "Renewable energy policy design and framing influences public support in the United States." 2017. *Nature Energy*. 2(17107). (with Leah Stokes)
7. "Estimating Candidates' Political Orientation in a Polarized Congress." 2017. *Political Analysis*. 25(2): 167-187. (with Chris Tausanovitch)
6. "The Dynamics of State Policy Liberalism, 1936-2014." 2016. *American Journal of Political Science*. 60(4): 899-913. (with Devin Caughey)
5. "Mayoral Partisanship and Municipal Fiscal Policy." 2016. *Journal of Politics*. 78(4): 1124-1138. (with Justin de Benedictis-Kessner)
4. "Dynamic Estimation of Latent Opinion Using a Hierarchical Group-Level IRT Model." 2015. *Political Analysis*. 23(2): 197-211. (with Devin Caughey)
3. "Representation in Municipal Government." 2014. *American Political Science Review*. 108(3): 605-641. (with Chris Tausanovitch)
2. "Measuring Constituent Policy Preferences in Congress, State Legislatures and Cities." 2013. *Journal of Politics*. 75(2): 330-342. (with Chris Tausanovitch)

1. "How Should We Measure District-Level Public Opinion on Individual Issues?" 2012. *Journal of Politics*. 74(1): 203-219. (with Jonathan Rodden)

Editor Reviewed Articles in Journals and Law Reviews

3. "Public Opinion in Subnational Politics." 2019. *Journal of Politics*. 81(1): 352-363. Editor reviewed for Symposium on Subnational Policymaking. (with Devin Caughey)
2. "Spatial variation in messaging effects." 2018. *Nature Climate Change*. News & Views. April, 2018.
1. "Business as Usual? Analyzing the Doctrinal Development of Environmental Standing Doctrine since 1976." 2011. *Harvard Law and Policy Review*. Volume 5.2. (with Gregory Wannier).

Book Chapters

5. "Elections and Parties in Environmental Politics." 2020. *Handbook on U.S. Environmental Policy*. David Konisky, ed. (with Parrish Bergquist)
4. "Latent Constructs in Public Opinion." 2018. *Oxford Handbook on Polling and Polling Methods*. R. Michael Alvarez and Lonna Atkeson, ed. Oxford: Oxford University Press.
3. "The Application of Big Data in Surveys to the Study of Elections, Public Opinion, and Representation." 2016. *Data Analytics in Social Science, Government, and Industry*. R. Michael Alvarez, ed. Cambridge: Cambridge University Press.
2. "The Political Economy of Expropriation and Privatization in the Oil Sector." 2012. *Oil and Governance: State-Owned Enterprises and the World Energy Supply*. David G. Victor, David Hults, and Mark Thurber, eds. Cambridge: Cambridge University Press.
1. "Democratization and Countermajoritarian Institutions: The Role of Power and Constitutional Design In Self-Enforcing Democracy." 2012. *Comparative Constitutional Design*. Cambridge: Cambridge University Press. (with Susan Alberts and Barry R. Weingast).

Policy Reports

1. Reforming Baltimore's Mayoral Elections. 2020. Abell Foundation Report.
<https://www.abell.org/publications/reforming-baltimores-mayoral-elections>

Unpublished Work

Book Project

"Dynamic Democracy: Citizens, Politicians, and Policymaking in the American States." 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

"How Local Covid Deaths Are Affecting Vote Choice." *New York Times*. July 28, 2020. (with Lynn Vavreck)

"A coronavirus recession would hurt all kinds of Republican candidates – not just Trump." *Washington Post*, Monkey Cage. March 18, 2020. (with Justin de Benedictis-Kessner).

"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

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

dgo: Dynamic Estimation of Group-Level Opinion. 2017. R package. <https://CRAN.R-project.org/package=dgo>. (with James Dunham and Devin Caughey)

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

Christopher S. Warshaw

6

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, Urban Affairs Review, Journal of Health Politics, Policy and Law, Perspectives on Politics, Cambridge 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

Organizing Committee, Conference on Ideal Point Models at MIT, <http://idealpoint.tahk.us>, 2015

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

Expert, *League of Women Voters of Pennsylvania v. the Commonwealth of Pennsylvania*, Partisan Gerrymandering Case (2017-18)

Expert, *League of Women Voters of Michigan v. Johnson*, Partisan Gerrymandering Case (2018-2019)

Christopher S. Warshaw

8

Expert, *New York Immigration Coalition v. US Dept of Commerce & State of NY v. US Dept of Commerce, Effects of Undercount on Census due to Citizenship Question* (2018)

Expert, *APRI et al. v. v. Smith et al.*, Partisan Gerrymandering Case (2018-2019)

Community Service

Sierra Club: National Board of Directors (2009-2015)

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

2. Millions of undocumented immigrants live in the United States and many have lived in the United States for many years. *See* Office of Immigration Statistics, U.S. Dep't of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 2 (Dec. 2018), https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf.

3. California and Texas are consistently the two states with the largest populations of undocumented residents. *Id.* at 4-5.

4. According to the Department of Homeland Security, California had 2.9 million undocumented residents and Texas had 1.9 million undocumented residents in 2015. *Id.* at 2.

5. As of the most recent Congressional reapportionment following the 2010 Decennial Census, the average population of each U.S. House district is 710,767 people. *See* Kristin D. Burnett, *Congressional Apportionment*, U.S. Census Bureau (Nov. 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-08.pdf> (last visited July 30, 2020).

6. According to the United States Census Bureau, as of July 1, 2019, the population of the United States was estimated to be 328,239,523. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited July 30, 2020).

¹ Citations to “Ex. ___” are to the exhibits to the accompanying Declaration of Matthew Colangelo dated August 7, 2020.

7. If the July 1, 2019 Census Bureau estimate of the total United States population is divided by the total number of seats in Congress (435), the quotient is 754,574. *See id.*

8. The Memorandum states that “[i]ncreasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law.” *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679, 44,680 (July 23, 2020) (the “Memorandum”) (ECF No. 1-1).

9. The Memorandum states: “Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State’s entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.” *Id.*

10. A state in which 2.2 million people represent 6 percent of the population would have a total population of more than 36 million residents.

11. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of California was 37,253,956. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited July 30, 2020).

12. According to the Census Bureau, as of July 1, 2019, the total population of the State of California was 39,512,223. *Id.*

13. The second most populous state in the United States is Texas. *Id.*

14. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of Texas was 25,145,561. *Id.*

15. According to the United States Census Bureau, as of July 1, 2019, the total population of the State of Texas was 28,995,881. *Id.*

16. After California and Texas, the next most populous state is Florida, which, according to the Census Bureau, had a total population of 18,801,310 as of April 1, 2010, and an estimated total population of 21,477,737 as of July 1, 2019. *Id.*

17. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute approximately 7.6 percent of the estimated total population of Texas as of July 1, 2019. *See id.*

18. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute over 10 percent of the estimated total population of Florida as of 2019. *See id.*

19. The Memorandum anticipates that excluding undocumented immigrants from the apportionment base would deprive California of at least one seat in the House of Representatives. *See* 85 Fed. Reg. at 44,680.

20. Dr. Christopher Warshaw modeled the effects of excluding undocumented immigrants from the population count used to calculate Congressional reapportionment after the 2020 Census. *See* Warshaw Decl. at ¶ 11 (Ex. 58).

21. According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that Texas will lose a seat in the House of Representatives is 98.3%. *Id.* § 5.2, Tbl. 7.

22. According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that California will lose a seat in the House of Representatives is 72.1%. *Id.*

**THE POLITICAL INFLUENCE OF PLAINTIFFS CONSTITUENTS WILL BE
DIMINISHED BY THE MEMORANDUM'S EXCLUSION OF UNDOCUMENTED
IMMIGRANTS FROM THE APPORTIONMENT BASE**

23. Plaintiff the City and County of San Francisco, represented by and through its City Attorney, is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county. Gov't Pls.' Am. Compl. ¶ 42 (ECF No. 34).

24. Residents of the City and County of San Francisco will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

25. Plaintiff Monterey County, California is a political subdivision of the State of California. *See* Gov't Pls.' Am. Compl. ¶ 48 (ECF No. 34).

26. Residents of the Monterey County will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

27. Plaintiff Cameron County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 44 (ECF No. 34).

28. Residents of Cameron County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

29. Plaintiff El Paso County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 45 (ECF No. 34).

30. Residents of El Paso County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

31. Plaintiff Hidalgo County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 46 (ECF No. 34).

32. Residents of Hidalgo County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

33. Plaintiff American-Arab Anti-Discrimination Committee ("ADC") is a membership-based not-for-profit organization. Khalaf Decl. ¶ 4 (Ex. 26).

34. ADC has several thousand dues-paying members nationwide, with members in all 50 states including California and Texas. *See New York*, 351 F. Supp. 3d at 608; Khalaf Decl. ¶ 5 (Ex. 26).

35. Dr. Souhail Toubia is a member of ADC and a resident of Orange County, California. Khalaf Decl. ¶ 17 (Ex. 26).

36. George Majeed Khoury is a member of ADC and a resident of San Diego, California. *Id.*

37. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

38. George Majeed Khoury is a member of ADC and a resident of San Diego, California. Khalaf Decl. ¶ 17 (Ex. 26).

39. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

40. Plaintiff FIEL Houston Inc. ("FIEL") is a membership-based not-for-profit organization based in Houston, Texas. Espinosa Decl. ¶ 2 (Ex. 18).

41. Today, FIEL has approximately 11,000 members in the greater Houston area. *Id.* ¶ 3.

42. Deyanira Palacios is a member of FIEL and a resident of Montgomery County, Texas. *Id.* ¶ 19.

43. Because Ms. Palacios resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

44. Karen Ramos is a member of FIEL and a resident of Harris County, Texas. Espinosa Decl. ¶ 20 (Ex. 18).

45. Because Ms. Ramos resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

46. Plaintiff Ahri for Justice ("Ahri") is a membership-based not-for-profit organization based in Los Angeles, California. Seon Decl. ¶ 2 (Ex. 43).

47. Ahri has roughly 220 individual members, with most residing in Southern California, and particularly in Orange and Los Angeles Counties. Some but not all of these members are U.S. citizens. *Id.* ¶ 4.

48. Julie Kim is a member of Ahri and a resident of Orange County, California. *Id.* ¶ 20.

49. Because Ms. Kim resides in California, she will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *Id.*

50. Simon Lee is a member of Ahri and a resident of Los Angeles County, California. *Id.* ¶ 21.

51. Because Mr. Lee resides in California, he will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58); Seon Decl. ¶ 21 (Ex. 43).

DATED: August 7, 2020

Respectfully submitted,

/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
acepedaderieux@aclu.org
jtopaz@aclu.org
slakin@aclu.org

/s/ John A. Freedman

John A. Freedman
R. Stanton Jones**
Daniel F. Jacobson**
Chase Raines**
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 942-5000
John.Freedman@arnoldporter.com
Stanton.Jones@arnoldporter.com
Daniel.Jacobson@arnoldporter.com
Chase.Raines@arnoldporter.com

/s/ Perry Grossman

/s/ Sarah Brannon* ***

Ceridwen Cherry*
American Civil Liberties Union
Foundation
915 15th Street, NW

Washington, DC 20005-2313
(202) 675-2337
sbrannon@aclu.org
ccherry@aclu.org

Julia A. Gomez
Peter Eliasberg*
ACLU Foundation of Southern California
1313 West 8th Street
Los Angeles, CA 90017
(213) 977-9500
jgomez@aclusocal.org
peliasberg@aclusocal.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

Perry Grossman
pgrossman@nyclu.org
New York Civil Liberties Union
Foundation
125 Broad Street
New York, NY 10004
Phone: (212) 607-3329

Andre Segura**
Edgar Saldivar**
Thomas Buser-Clancy**
ACLU Foundation of Texas, Inc.
P.O. Box 8306
Houston, TX 77288
Telephone: (713) 942-9146
Fax: (713) 942-8966
asegura@aclutx.org
esaldivar@aclutx.org
tbuser-clancy@aclutx.org

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
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6057

Steven C. Wu
Deputy Solicitor General
Judith N. Vale
Senior Assistant Solicitor General
Eric R. Haren, *Special Counsel*

Of Counsel

elena.goldstein@ag.ny.gov

Attorneys for the Plaintiffs in 20-CV-5770

To: Brebbia, Sean (Federal)[SBrebbia@doc.gov]; Olson, Stephanie (Federal)[SOlson@doc.gov]
Cc: Foti, Anthony (Federal)[AFoti@doc.gov]
From: Kumar, Harry (Federal) b(6)

b(6)

Sent: Tue 8/4/2020 12:06:07 PM (UTC-04:00)
Subject: Fwd: Senator Shaheen Letter to Director Dillingham
08-04-20 Census Director Dillingham Statutory Delay Letter.pdf
[ATT00001.htm](#)

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

RICHARD C. SHELBY, ALABAMA, CHAIRMAN

MITCH MCCONNELL, KENTUCKY
LAMAR ALEXANDER, TENNESSEE
SUSAN M. COLLINS, MAINE
LISA MURKOWSKI, ALASKA
LINDSEY GRAHAM, SOUTH CAROLINA
ROY BLUNT, MISSOURI
JERRY MORAN, KANSAS
JOHN HOEVEN, NORTH DAKOTA
JOHN BOOZMAN, ARKANSAS
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN KENNEDY, LOUISIANA
CINDY HYDE-SMITH, MISSISSIPPI
STEVE DAINES, MONTANA
MARCO RUBIO, FLORIDA
JAMES LANKFORD, OKLAHOMA

PATRICK J. LEAHY, VERMONT
PATTY MURRAY, WASHINGTON
DIANNE FEINSTEIN, CALIFORNIA
RICHARD J. DURBIN, ILLINOIS
JACK REED, RHODE ISLAND
JON TESTER, MONTANA
TOM UDALL, NEW MEXICO
JEANNE SHAHEEN, NEW HAMPSHIRE
JEFF MERKLEY, OREGON
CHRISTOPHER A. COONS, DELAWARE
BRIAN SCHATZ, HAWAII
TAMMY BALDWIN, WISCONSIN
CHRISTOPHER S. MURPHY, CONNECTICUT
JOE MANCHIN, III, WEST VIRGINIA
CHRIS VAN HOLLEN, MARYLAND

SHANNON HUTCHERSON HINNES, STAFF DIRECTOR
CHARLES E. KIEFFER, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025
<http://appropriations.senate.gov>

August 4, 2020

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

¹ “Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count,” U.S. Census Bureau, 3 August 2020, <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>.

² Wines, M. (2020, July 28). New Census Worry: A Rushed Count Could Mean a Botched One. *New York Times*, <https://www.nytimes.com/2020/07/28/us/trumpcensus.html>

³ “U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Steven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19,” U.S. Census Bureau, 13 April 2020, <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020>.

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.”⁴

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.”⁵ 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?

⁴ Hansi, L.W. (2020, July 30). Census Door Knocking Cut A Month Short Amid Pressure To Finish Count. *National Public Radio*, <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals>

⁵ Hansi, L.W. (2020, May 27). 'We're Running Out Of Time': Census Turns To Congress To Push Deadlines. *National Public Radio*, <https://www.npr.org/sections/coronaviruslive-updates/2020/05/27/863290458/we-re-running-out-of-time-census-turns-to-congress-to-push-deadlines>

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,

A handwritten signature in cursive script that reads "Jeanne Shaheen". The signature is fluid and elegant, with a long horizontal flourish at the end.

Jeanne Shaheen
Vice Chair
Subcommittee on Commerce,
Justice, Science and Related Agencies