

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOP-
LE, *et al.*,

Plaintiffs,

v.

BUREAU OF THE CENSUS, *et al.*,

Defendants.

No. 8:18-cv-00891-PWG

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' PRELIMINARY-IN-
JUNCTION MOTION AND IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

This complaint marks Plaintiffs' third attempt (in this court alone) to challenge the operations of the 2020 Census before a single person was counted. Plaintiffs' claims have evolved—from claiming the Census lacked confirmed leadership and adequate funding in their first complaint to now claiming that it has too much unspent money and should be ordered to hire more temporary field staff in this most recent effort. These changes underscore the deficiencies in Plaintiffs' suit, which, if successful, would harm the efforts of the Census Bureau to obtain an accurate 2020 count. The Court should deny Plaintiffs' motion for emergency relief, dismiss the Complaint, and enter judgment for Defendants.

Fundamentally, Plaintiffs get the 2020 Census design backwards. The 2020 Census has been designed precisely to *focus agency resources on harder to count areas and populations* by reducing unnecessary expenditures on counting those who will be easily counted. The 2020 Census design achieves this balance, while reserving a significant amount of funding in order to successfully count the population in the event of any unforeseen problem—be it natural disaster, terrorist attack, or even the census design not working as planned.

In their preliminary-injunction motion, Plaintiffs ask the Court to substitute its judgment for those of the career professionals who have been planning the census for a decade and order the Census Bureau to waste nearly \$800 million of taxpayer dollars on non-solutions for problems (i) that are moot, (ii) that may never materialize and (iii) that the Census Bureau has the resources, expertise, and contingency planning to actually solve if they do. Plaintiffs do so based on the unfounded assumption that current expenditures should track those of the 2010 Census, even though that census was designed in materially different ways.

Such blunt force logic is inapplicable to this year's census; as established by declarations from long-term Census Bureau employees, the 2020 Census reflects substantial and noteworthy departures from prior censuses. Indeed, precisely because the Census Bureau is continually refining its work and Plaintiffs' proposed solution—to spend money on broad programs—are so far removed from the (unfounded) concerns they raise, two of the three items of relief they request are essentially moot. Their proposed relief would undermine

the decade-long efforts of thousands to ensure the best possible count of this country's people and this continued litigation distracts the professionals in charge of seeing that work successfully completed.

Plaintiffs' claims are as insubstantial legally as they are unfounded factually. Their sole claim is that the 2020 Census operational plan creates the risk of undercounting the population in violation of the Constitution's Enumeration Clause. But the Constitution does not require a perfect count, let alone any particular number of enumerators or physical offices. If there is any standard to apply in this area, it requires, at most, that the Census Bureau conduct an enumeration that bears a "reasonable relationship" to counting the population. The Bureau's diligent efforts far exceed that threshold. And the Court has no jurisdiction to entertain these meritless claims in any event. The Court should deny Plaintiffs' motion for preliminary injunction, grant Defendants' motion to dismiss (and/or summary judgment), put an end to this litigation once and for all, and allow the Census Bureau to do its job unimpeded.

BACKGROUND

I. Procedural History

This represents Plaintiffs' third substantive challenge to the 2020 Census in this action.¹ Plaintiffs' initial complaint alleged that the 2020 Census was underfunded, ECF No. 38 ¶¶ 32–54, the Census Bureau was understaffed as a result of a federal hiring freeze in effect for only four months in early 2017, *id.* ¶¶ 55–59, the Census Bureau lacked a permanent director, *id.* ¶¶ 60–66, and the 2020 Census contained putative "design flaws" including use of online forms and inadequate protection from "cyber threats," *id.* ¶¶ 67–94. This Court dismissed all except the underfunding claim, reasoning that the government shutdown in effect in early 2019 created an extraordinary circumstance in which a narrow declaration from the Court directed at Congress would redress a proven shortfall in funding. *See* ECF No. 64 at 51.

¹ Plaintiffs' counsel also filed a complaint in the Southern District of New York on November 26, 2019, making substantively identical allegations to the present complaint under both the Enumeration Clause and the Administrative Procedure Act. *See Center for Popular Democracy Action, et al. v. Bureau of the Census, et al.*, No. 19 Civ. 10917 (S.D.N.Y.).

Plaintiffs proceeded to discovery on their underfunding claim, *id.*, while amending their Complaint to add APA claims challenging a *different* set of aspects of the census design, abandoning their claims regarding “cyber threats,” use of online census forms, and the lack of a Census Bureau Director. *Compare* ECF No. 91 ¶ 67 *with* ECF No. 38 ¶ 68. This Court dismissed the remainder of Plaintiffs’ claims, and Plaintiffs appealed. *See* ECF Nos. 154–55. In the meantime, discovery in this matter had revealed that the 2020 Census was not underfunded. Plaintiffs thus abandoned their underfunding claim on appeal. The Fourth Circuit affirmed this Court’s dismissal of Plaintiffs’ APA claim and reversed its dismissal of Plaintiffs’ constitutional claim.

On remand, Plaintiffs’ Third Amended Complaint (TAC) recasts their lone constitutional claim to contend that the Census Bureau has *too much* money that it has not spent and a further challenge a slightly different set of aspects of the census design. TAC at p.3 & ¶¶ 37, 153, 185, ECF No. 168. Specifically, Plaintiffs contend the Census Bureau has planned to (1) “significantly reduce the Bureau’s communications and partnership program”; (2) hire a “small number of enumerators”; (3) “drastically reduce the number of Bureau field offices”; (4) “replace most In-Field Address Canvassing with In-Office Address Canvassing”; and (5) “make only limited efforts to count inhabitants of units that appear vacant or nonexistent” in the Non-Response Follow Up Operation (NRFU). *Id.* ¶ 37. In their preliminary-injunction motion, Plaintiffs ask this Court to order the immediate expenditure of nearly \$800 million to address the first three of these perceived deficiencies in Plaintiffs’ preferred manner.

II. Census Operations

The goal of the decennial census is to count each resident of the United States once, only once, and in the right place. Stempowski Decl. Ex. A at 201. It is a huge and difficult undertaking—approximately 330 million people living over 3.8 million square miles will be counted in just a few months—that takes a decade of planning. Stempowski Decl. ¶ 10, 68. The entire census operation is designed with the objective of achieving that goal and counting everyone, and this effort includes the specific aspects of the census design challenged in Plaintiffs’ TAC. Stempowski Decl. ¶¶ 4, 6. Accordingly, great efforts and the most resources are expended on those populations are most difficult to count. Stempowski Decl. ¶ 9; Taylor Decl. ¶¶ 18–19; *see*

Cantwell Decl. ¶¶ 9, 32. In the 2020 Census, these efforts will be facilitated by incorporating a wealth of newly available technology that will make counting easier and more efficient, enabling additional resources to be focused on the hardest to count populations. Stempowski Decl. ¶¶ 9, 33, 46-49 51; Taylor Decl. ¶¶ 18-19.

Address Canvassing: Census operations began last year with the address canvassing operation, completed in October 2019. Stempowski Decl. ¶ 11. The address canvassing operation was an immense effort involving repeated checks among numerous sources of data that were continually updated. Every address in the nation was reviewed by comparing imagery from both government and commercially available satellite imagery to confirm addresses were still current. Bishop Decl. ¶ 34. And the Census Bureau then confirmed through an in-person visit 35% of the addresses in the nation, which included all of the 12% of blocks in which there was any question that the address data had changed since the prior census. *Id.* ¶¶ 36-37. These efforts were validated by tribal, state, and local governments, including Prince George's County, that collectively validated nearly 107 million addresses and are continuing to provide information about any new construction that could result in updates right up to Census Day, April 1, 2020. *Id.* ¶ 27-30. This process has resulted in the most complete and accurate address list in the history of the Census Bureau. *Id.* ¶ 42.

Mailings and In-Field Follow-Up: Beginning next month, this address list will be used to mail residents instructions to answer the 2020 Census through the internet, by mail, or over the phone. Stempowski Decl. ¶¶ 14-17. In areas with unreliable internet access, residents will receive a full paper questionnaire on the first mailing. *Id.* ¶¶ 14-15. Regardless, every household will receive a full paper questionnaire on the fourth mailing if it has not otherwise responded to the census. *Id.* ¶ 15.

If a household does not respond after six mailings to that address, the Bureau will analyze post office undeliverable information to determine whether that address is likely to be vacant or nonexistent. But the Bureau will not rely on those records alone to conclude that an address is vacant. *Id.* ¶ 26. Instead, it will send an enumerator—a Census Bureau employee—to confirm in-person that the address is in fact vacant or nonexistent. *Id.* ¶¶ 26-28. Even if both the postal records and the in-person inspection both confirm the address is unoccupied, the Census Bureau will still send an additional mailing encouraging self-response. *Id.* ¶ 29. If

they determine that the address is occupied, but no one is present after an in-person visit, the Census Bureau will review and cross-reference federal records, including tax and Medicare enrollment information, to determine whether the data are reliable enough to enumerate all residents of that location. *Id.* ¶¶ 28, 33, 65.

If federal records are inadequate to verify residents at the address, the Census Bureau will send an enumerator to the housing unit again up to six times to conduct an in-person enumeration. *Id.* ¶¶ 18, 32, 65. If necessary, the hardest-to-count residences may receive more than six visits. *Id.* ¶ 18. If in-person enumerators cannot reach members of the household directly, they may also gather information about the household—most crucially, the number of residents—from a “proxy,” such as a neighbor or landlord. *Id.* ¶ 32.

Enumerators: Because enumerators in the 2010 Census relied heavily on the use of paper—questionnaires, maps, address listing pages, training materials, field manuals, time reports, and expense reports—large and numerous regional offices were needed to support the paper-based 2010 Census. *Id.* ¶ 46. Enumerators met with their supervisors on a daily basis to exchange completed time and expense forms, receive new assignments and materials, and to submit completed assignments which were then taken to the Local Census Office for check-in and processing. *Id.* In contrast, enumerators in the 2020 Census will use mobile devices to collect census responses, to receive their assignments, to submit time and expense information, and to plan their route between each location they have been assigned to visit. *Id.* ¶ 47. This includes an advanced Field Operational Control System, which uses an optimizer to determine the most efficient set of cases to assign the enumerators and determines the most efficient routing of their field work. *Id.*

The Census Bureau currently plans to hire and deploy somewhere between 320,000 and 500,000 enumerators for the 2020 Census. Stempowski Decl. ¶ 50; *see* Taylor Decl. ¶¶ 32–34. This range of enumerators is purposeful: the Census Bureau can and will adjust its deployment of enumerators as necessary after Census Day. Stempowski Decl. ¶¶ 52–53. Any number of unforeseen disruptions are possible—from natural disasters, terrorist attacks, or an epidemic, to an unexpectedly large number of people failing to self-respond. Stempowski Decl. ¶ 58; Taylor Decl. ¶ 14. The Bureau has already prepared for some contingencies, both expected and

unexpected—and through this planning the Census Bureau retains the ability to be flexible and devote resources where needed, rather than being hamstrung by deploying its resources up front without any indication of self-response rates. Stempowski Decl. ¶¶ 57–59; Taylor Decl. ¶¶ 20, 34.

Imputation: Finally, even if the Census Bureau has not obtained the count of an occupied address through six mailings, multiple in-person visits, and proxy interviews, the housing unit will still not receive a count of zero. Instead, a number of residents will be imputed to that housing unit based on number of residents in a nearby housing unit with similar characteristics. Cantwell Decl. ¶¶ 12–15; Stempowski Decl. ¶¶ 19, 44.

Publicity and Partnerships: Throughout this robust enumeration process, the Census Bureau will conduct an unprecedented Integrated Partnership and Communications campaign to communicate the importance of participating in the Census and encourage self-response from all people living in the United States, with a particular focus on increasing the participation of hard-to-count communities that have been historically undercounted. Among other innovations for the 2020 Census, the Integrated Partnership and Communications program will include micro-targeted advertising and the ability to shift focus in real time to any areas or populations that appear to be responding at a lower rate. Reist Decl. ¶ 10. In 2020 dollars, the Census Bureau plans to spend about \$128 million more on the Integrated Partnership and Communications program for the 2020 Census than it did for the 2010 Census. Reist Decl. ¶ 27.

A perfect census count has never been achieved. The endeavor is too challenging and complex. But the Census Bureau tries every ten years to do the best possible count, incorporating lessons from its previous efforts. *See, e.g.*, Cantwell Decl. ¶ 32 (“Over the decades, many researchers at the Census Bureau, include[ing] me, have devoted their life’s work trying to achieve a complete and accurate enumeration, and to reduce the differential undercount.”). The 2020 Census has been carefully designed to do the best possible job—and the best job yet.

LEGAL STANDARDS

“A preliminary injunction is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief. A party seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Roe v. Dep’t of Def.*, --- F.3d ---, 2020 WL 110826, at *7 (4th Cir. Jan. 10, 2020) (citations and internal quotation marks omitted). The Fourth Circuit has long recognized that “[m]andatory preliminary injunctive relief in any circumstance is disfavored, and warranted only in the most extraordinary circumstances.” *Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir. 1994).

“Summary judgment is proper when the moving party demonstrates, through ‘particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials,’ that ‘there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Ferebee v. Lexy Corp.*, 2014 WL 1682015, at *2 (D. Md. Apr. 28, 2014) (Grimm, J.) (quoting Fed. R. Civ. P. 56(a), (c)(1)(A)). “If the party seeking summary judgment demonstrates that there is no evidence to support the nonmoving party’s case, the burden shifts to the nonmoving party to identify evidence that shows that a genuine dispute exists as to material facts.” *Id.*

For the relevant legal standards governing motions to dismiss, Defendants respectfully refer the Court to their motion to dismiss Plaintiffs’ First Amended Complaint. ECF No. 43-1 at 5–6.

ARGUMENT

I. PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION SHOULD BE DENIED

A. Plaintiffs Are Unlikely to Succeed on the Merits

To obtain a preliminary injunction, Plaintiffs bear the burden of establishing that they are likely to succeed on the merits. Plaintiffs argue that the relevant standard here is that set forth in *Wisconsin v. City of New York*, 517 U.S. 1 (1996), namely that the Secretary of Commerce’s conduct of the census “need bear only

a reasonable relationship to the accomplishment of an actual enumeration of the population.”² *Id.* at 20. This extraordinarily deferential standard derives from the fact that “the Constitution vests Congress with virtually unlimited discretion” in conducting the census (which Congress has in turn vested in the Secretary of Commerce) and from the practical recognition that no matter what effort is made, a perfect enumeration is virtually impossible, if not wholly impossible. *Id.* at 19; *see id.* at 6 (“Although each [census in United States history] was designed with the goal of accomplishing an ‘actual Enumeration’ . . . no census is recognized as having been wholly successful . . .”).³ In other words, the Constitution does not require a specific number of dollars spent on any operation, a specific number of employees, or a specific manner of conducting the census. At most, all that is required under the Constitution is that the Census Bureau (a) attempt to count the population, rather than estimate it statistically and (b) do so reasonably.

Plaintiffs come nowhere close to making their required showing with respect to *any* of the challenged aspects of the 2020 Census plan. Even if Plaintiffs’ criticisms of the 2020 Census design were reasonable, their mere disagreement with the manner that the Census Bureau has carefully planned, with numerous tests, revisions, and improvements over the course of a decade, would not be adequate to meet their constitutional burden. But Plaintiffs’ criticisms are not reasonable. At base, Plaintiffs’ case is grounded in contradiction: they claim that, even though past censuses resulted in a differential undercount, the Census Bureau should not be permitted to innovate and should operate in exactly the same way as the censuses that produced prior undercounts. To advance this inherently faulty premise, Plaintiffs manufacture criticisms of the 2020 Census design based on unfounded speculation that more spending, staffing, and offices are necessarily better, regardless of what the money is spent on and what functions the staff and offices actually fulfill. They also ignore key aspects of the 2020 Census design and presume that expenditures incurred in the 2010 Census dictate the

² Defendants contend that the *Wisconsin* standard is no standard at all, and this case is therefore non-justiciable, *see infra* Argument Section II.A. But for purposes of this preliminary-injunction motion, Defendants assume that the *Wisconsin* standard applies.

³ Plaintiffs’ reliance on *Carey v. Klutznick*, 637 F.2d 834 (2d Cir. 1980), a split decision from the Second Circuit, is inapposite, as it predates *Wisconsin* and fails to apply the deferential *Wisconsin* standard.

required amount of expenditures to effectively implement the entirely different design of the 2020 Census. The approximate cost of the 2020 Census overall will be slightly higher than the 2010 Census. But because of the design changes, the allocation of certain costs will have changed. Plaintiffs appear to believe that spending more money on human brute force is preferable to spending on technological innovation. That difference of opinion does not entitle them to succeed on the merits, or in any way make the 2020 Census design not “reasonably related” to conducting an actual enumeration.

1. The Census Bureau Has Expanded the Partnership Program, Nearly Doubling the Number of High-Value Professional Staff from the 2010 Census

Plaintiffs begin by attacking the Census Bureau’s partnership program. As an initial matter, their requested relief for nearly \$128 million “to increase outreach and communications to no less than 2010 Census levels” is now largely moot. Mot. at 2-3. Plaintiffs’ calculations are based on the understanding that the Bureau’s advertising spending in 2010 “amounts to \$447.8 million adjusted for inflation” and that the current planned advertising spend was \$480 million. Doms Decl. ¶ 14. In fact, the Census Bureau is planning to spend at least \$583 million on advertising, over \$100 million more than Plaintiffs contend and more than \$135 million more than Plaintiffs claim was spent for the 2010 Census. Reist Decl. ¶¶ 27, 37; Taylor Decl. ¶ 36. More money may be spent if necessary. *See* Stempowski Decl. ¶ 57.

Their criticisms are also unfounded. Plaintiffs’ lead argument in support of their preliminary-injunction motion that the Bureau “cut . . . almost in half” the number of “partnership staff” since the 2010 Census. Mot. at 5. This argument disregards both the different positions encompassed by the term “partnership staff” and the different needs for the 2020 Census. In the 2010 Census, the Bureau hired approximately 2,000 administrative staff members called “partnership assistants” from a last-minute grant of stimulus funding. Reist Decl. ¶ 23. This role—which was new to the 2010 Census—did not add significant value to the goal of community outreach, and largely aided the effort by simply managing the large volume of paper that was a feature of the 2010 Census’ design. Reist Decl. ¶¶ 23-24.

But all jobs are not created equal. As a result of both the Census Bureau's experience with the limited value of partnership assistants and the 2020 Census's updated design to rely more on digital technology and reduce the need for managing large volumes of paper, the decision was made to eliminate the partnership assistant role. Reist Decl. ¶ 24. That decision enabled the Census Bureau to nearly *double* the number of partnership *specialists*—the skilled professionals that do the substantive work central to the partnership program by actually forming and maintaining relationships with trusted partners. Reist Decl. ¶ 20, 25; Taylor Decl. ¶ 25. In other words, by eliminating an obsolete clerical job, the Census Bureau has been able to vastly expand the *substance* of the partnership program to an unprecedented degree. In short, Plaintiffs' argument is like suggesting a neurosurgery practice has decreased its commitment to medicine by getting rid of its pool of typists—employees whose skills are both collateral to the core mission and have been overtaken by technology.

The faulty premises undergirding Plaintiffs' lead argument also eviscerate the analyses of their putative experts. Dr. Hillygus explicitly relies on the incorrect assumptions that “each partnership staff person contributed equally to the partnership contract rate,” and its corollary, that each dollar spent has an equivalent effect on participation. Hillygus Decl. ¶ 22. This reliance invalidates Professor Hillygus's claim that the changes from the 2010 program will have any negative effect on African Americans' self-response rate to the census. *See id.* Dr. Doms advances the argument that the elimination of partnership assistants “raises the risk that partnership staff will be . . . less effective” because they are at “just 55% of the staffing level of 2010.” Doms Decl. ¶ 10. But he is surely aware of the distinction between partnership specialists and partnership assistants, as he had “direct, extensive experience . . . in the planning for the 2020 Census” while Under Secretary for Economic Affairs during the very years in which the Census Bureau made many of the decisions he now criticizes. Doms Decl. ¶ 6; *see* Bishop Decl. ¶¶ 44-49 (explaining Doms' support for the design decisions of the 2020 Census he now criticizes); Reist Decl. ¶¶ 39-40 (same); Taylor Decl. ¶ 21 (same). Either way, his conclusions about the effectiveness of 2020 Census partnership staff cannot be credited.

Such criticisms of the partnership program are further undermined by Plaintiffs’ attempt to remove it from its context. In fact, the partnership program is only part of the Integrated Partnership and Communications program, which is the part of the census operations designed to increase participation of hard-to-count communities. In making the unreasonable claim that the elimination of an obsolete and unnecessary clerical position imperils the 2020 Census’s outreach, Plaintiffs wholly ignore the other half of the Integrated Partnership and Communications program, the Integrated Communications Contract. This is a \$583 million program, and it is expected to reach 99.9% the population, with advertising specifically directed at each individual hard-to-count community, impressing on them the importance of participation in the census. Reist Decl. ¶¶ 9, 12, 28. As Plaintiffs concede, this program has expanded since the 2010 Census.⁴ *See* Doms Decl. ¶ 14.

Nor has the Census Bureau declined to spend a particular amount on the partnership program despite being “directed by Congress” to do so. *See, e.g.*, ECF 169-1 at 7, 9; *see also* ECF 168 at 3. Congress appropriated a lump sum to the Bureau; it *explicitly declined* to direct any amount for advertising and outreach. Both the 2019 and 2020 appropriations acts state that “from amounts provided herein, funds *may* be used for promotion, outreach, and marketing activities,” without mandating *any* amount be so spent. Wishnie Decl. Exs. 2 & 31 (emphasis added). This is in marked contrast to the way funds are allocated in the same provision in each law to the Department Office of Inspector General, which directs a specific amount of funds be allocated to that office for the specific purpose of investigating and auditing the Census Bureau. *See id.*

Even the statement cited by Plaintiffs in support of their claim does not back it up. In the explanatory statement cited by Plaintiffs—a single statement by a committee chairperson and not a duly enacted statute—does not in fact represent an “express Congressional instruction” to spend a certain amount on outreach, as Plaintiffs suggest. ECF No. 169 at 5 (citing Wishnie Decl. Ex. 6); *cf.* Wishnie Decl. Ex. 6; *NLRB v. SW Gen.*,

⁴ While Professor Hillygus claims that “all evidence points to [the census’s advertising and communications campaign] failing to close the expected gap in differential undercount,” she cites none of this purported “evidence” and provides no analysis to support her claim. Hillygus Decl. ¶ 23. Her conclusions should be disregarded as speculation. *See, e.g., Oglesby v. Gen. Motors Corp.*, 190 F.3d 244, 249–50 (4th Cir. 1999).

Inc., 137 S. Ct. 929, 942, (2017) (“The [statutory] text is clear, so we need not consider . . . extra-textual evidence [such as legislative history]”). The statement merely notes that the total budgetary amount “*supports* no less than the *level of effort* for outreach and communications” in the 2010 Census should the Bureau choose to allocate the appropriation in that manner, and suggesting no specific amount of funds for that purpose. Wishnie Decl. Ex. 6 at 10962 (emphasis added). The Bureau’s plans heed that suggestion and reflect a level of effort on outreach and communications that is significantly greater in the 2020 Census than the 2010 Census.⁵ See Reist Decl. ¶ 34, 36, 38; see *id.* at ¶¶ 10, 19-22, 27-33.

Indeed, the Integrated Partnership and Communications program is both expanded in scale and superior in quality to the 2010 Census. See Reist Decl. ¶¶ 10, 19-22, 28, 34, 26, 38. Plaintiffs do not attack the 2010 Census’s equivalent program as unconstitutional, and appear to request that it be replicated, so their claim should fail for that reason alone. Either way, however, Defendants’ expenditure of over three quarters of a billion dollars on the Integrated Partnership and Communications program to create over 1,000 different advertisements in 13 languages, expected to reach 99.9% of the country, and to hire 1,500 employees creating 300,000 partnerships, all in order to encourage self-response to the census can hardly be seen as not bearing a “reasonable relationship” to an actual enumeration.⁶ *Wisconsin*, 517 U.S. at 20; Reist Decl. ¶¶ 12, 17, 20, 28; see Doms Decl. ¶¶ 13-14.

2. Plaintiffs Misunderstand the Planned Use and Number of Enumerators

The Census Bureau plans to spend whatever funds are necessary on as many enumerators are needed to complete NRFU, and it has the resources to do so. Stempowski Decl. ¶¶ 50-53; Taylor Decl. ¶¶ 19, 31-32, 34. Plaintiffs’ request—that this Court order the immediate spending of \$600 million to deploy a specific

⁵ Contrary to Plaintiffs’ arguments, the Chairwoman’s explanatory statement actually supports denying Plaintiffs’ requested injunction, as it proposes specifically allocating nearly \$1 billion of the 2020 appropriation to for contingency—as the Census Bureau is doing. Taylor Decl. ¶ 13; see *infra* Argument Section I.A.6.

⁶ Given that the Integrated Partnership and Communications program is collateral to the person-by-person count of the population, there can be no constitutional requirement to have such a program at all, let alone to have it employ a certain number of individuals or cost a certain amount. *Cf. Wisconsin*, 517 U.S. at 20.

number of enumerators—is wasteful, and their arguments reflect fundamental misapprehensions of the Census Bureau’s plans and the cost of deploying enumerators.

To begin, the Census Bureau does not “plan to employ only 260,829” enumerators. Mot. at 6. The Census Bureau plans to deploy the number of enumerators needed to complete the NRFU workload, which it currently anticipates being between 320,000 and 500,000, consistent with the approximately 400,000 enumerators estimated in the 2019 Life Cycle Cost Estimate. Stempowski Decl. ¶¶ 50–53; Taylor Decl. ¶ 34; *cf.* Mot. at 6.

But the actual number of enumerators that will be deployed, and critically, *where* they will be deployed, is as yet unknown. Stempowski Decl. ¶¶ 51–53. The primary factor driving the need for enumerators (and the resultant cost) is the NRFU workload. *Id.* ¶ 51. This will govern both the amount of work overall, and the geographic areas where that work is needed. Neither will be known until the self-response operation is well underway, because the enumerators’ job is to follow up by visiting and counting the residents at those addresses where residents did *not* self-respond. Stempowski Decl. ¶¶ 51–53.

Plaintiffs apparently base their misunderstanding of the Census’s Bureau’s plans on certain materials related to the 2019 Life Cycle Cost Estimate that refer to the Bureau anticipating a need for approximately 256,000 “core enumerators.” TAC ¶ 111. This term refers to the number of enumerators that Defendants actually predict—based on the projected workload, productivity, and schedule—will be required to complete the NRFU workload *if its median assumptions hold*. Taylor Decl. ¶ 34. In other words, this number is not the number that the Census Bureau intends to hire or deploy; it is just an output—the number the Census Bureau expects use in completing its work when all is said and done, assuming the middle of its range of assumptions is realized. *See* Wishnie Decl. Ex. 12 at 117.

But this number exists only for planning purposes, and it is based solely on informed projection. Using this number to mandate hiring ignores the Census Bureau’s contingency planning, which is based on a range of potential outcomes in order to hire and deploy whatever number of enumerators the workload ultimately calls for. Stempowski Decl. ¶¶ 51–53; Taylor Decl. ¶ 19. There can be no question that this plan—reserving

funds for and planning to hire whatever number of enumerators the job calls for—has a reasonable relationship to actual enumeration. *Wisconsin*, 517 U.S. at 20. Plaintiffs’ plan to order a specific expenditure and mandate a specific number of enumerators now, regardless of the scope and location of the workload, would be a waste of resources at best. Taylor Decl. ¶ 34.

3. The Number and Location of Field Offices Has No Relationship to Achieving an Accurate Enumeration

Plaintiffs next complain that the redesign of the 2020 Census resulted in the elimination of local offices relative to the 2010 Census. Plaintiffs wrongly imply that Area Census Offices (ACOs) are a form of “physical outreach” to the community, Mot at 18, but this is not true. Importantly, the number of ACOs will not affect whether or not any individual is counted in any way. Stempowski Decl. ¶ 44. Enumerators will travel to the people that must be counted, regardless of where any office is; no individual is more or less likely to be counted because their home is near or far from an ACO.⁷ *Id.* ¶ 44–45.

Plaintiffs’ attempt to draw an unfavorable comparison between the number of local offices established in the 2010 Census and the 2020 Census also fails because any such comparison implies that the function of these offices is the same in both censuses. It isn’t. *Id.* ¶¶ 46–47. The 2010 Census relied primarily on paper forms, and enumerators traveling door-to-door needed offices nearby to retrieve blank forms and deposit completed forms every day. *Id.* ¶ 46. This paper-based operation required a large amount of localized office space. *Id.*

But the 2020 Census operations will no longer be conducted exclusively on paper. Enumerators will perform their work using iPhones, and households will be encouraged to respond online. So local offices no longer serve the same function, and the need for many hyperlocal spaces for the pickup, return, and storage of paper no longer exists. *Id.* ¶ 47–49. Whether there are 500,000 local offices (with each enumerator’s house

⁷ Given the lack of relationship between the proximity of a census office and whether an individual is counted, Plaintiffs’ gripe that there is not an ACO in Prince George’s County is irrelevant. To the extent Plaintiffs impliedly suggest that the Census Bureau has an inadequate physical presence in Prince George’s county because it lacks temporary office space, that contention is risible; Prince George’s County is the site of the Census Bureau’s *headquarters*.

being an “office”) or zero local offices, the effect would be the same, and would be equally constitutional. The number of census “offices” has no bearing on the count itself, and as such no particular number of census “offices” are either required by the constitution or even especially significant.

Two mistakes—Plaintiffs’ mistaken view that the number of ACOs has any bearing on “physical outreach” and their expert Dr. Doms’ mistaken assumption that the census has not allocated any funding for purposes of localized questionnaire assistance—apparently lead Plaintiffs to request \$46 million for some form of local presence in hard to count communities. Mot. at 18; Doms ¶ 15. But the Census Bureau has already allocated between \$110 million and \$120 million for mobile questionnaire assistance centers.⁸ Stempowski Decl. ¶ 41; Taylor Decl. ¶ 33. This decision to provide more than double the resources for mobile assistance centers than Plaintiffs request fully moots this aspect of their request.

4. The 2020 Address Canvassing Effort Has Produced the Best Address List in the History of the Census

Plaintiffs next criticize the decision to reduce the percent of addresses verified in-field as opposed to using computer technology. At this point, the in-field address canvassing operations are complete and cannot be changed for the 2020 Census, Bishop Decl. ¶ 41; to the extent plaintiffs seek to change the method of address canvassing for the 2020 Census, their claim is now moot. *See, e.g., Catawba Riverkeeper Found. v. N. Carolina Dep’t of Transportation*, 843 F.3d 583, 588 (4th Cir. 2016) (“A case becomes moot, and thus deprives federal courts of subject matter jurisdiction, . . . when our resolution of an issue could not possibly have any practical effect on the outcome of the matter.”) (citations and internal quotations omitted).

But Plaintiffs’ concerns about the address canvassing effort are unsupported. The effort of developing the address list used in the 2020 Census is based on a consistent evolution from the approach used in previous

⁸ Plaintiffs also criticize Defendants’ decision to eliminate brick-and-mortar questionnaire assistance centers, which themselves were a legacy of a census based on paper forms and which on average resulted in just 20 additional people counted. Stempowski Decl. ¶¶ 35-37. But Plaintiffs provide no reason to believe that perpetuating this inefficient use of resources would be superior to the new mobile assistance centers.

censuses that harnesses exponential improvements in geospatial technology⁹ over the past decade, carefully vetted and tested methodologies, and continuous updating and cross-referencing of information to ensure accuracy. *See* Bishop Decl. ¶¶ 5–36. With the improvement of this technology and the active participation of local governments to improve the address list over the decade, many addresses no longer required fieldwork to validate, in contrast to earlier censuses when purchased address files and the absence of reliable geospatial technology required complete in-field verification. Bishop Decl. ¶ 32; *see id.* ¶¶ 24–36. All addresses for the 2020 Census were checked by comparing the imaging from the time of the 2010 Census to more recent data, to determine on a block-by-block level whether any address had changed. Bishop Decl. ¶¶ 32–36. Wherever there was any question about either the data quality or any change to the block, the Census Bureau required in-field verification. Bishop Decl. ¶ 35. This enabled the Census Bureau to limit in-field verification to the subset of addresses in which there was any question about the completeness, currency, or reliability of the data, and rely on the imagery as cross-referenced with data provided by local governments and others to confirm addresses where there were no discrepancies or questions.

This detailed, careful plan, in which different data sources are cross-checked and continuously updated is without question “reasonably related to the actual enumeration of the population.” *Wisconsin*, 517 U.S. 20. Plaintiffs small number of minor criticisms—themselves unsupported—do not suggest otherwise. Plaintiffs first rely on an Office of Inspector General (OIG) report noting some discrepancies between the results of in-field and in-office canvassing, but those statistics are misleading for several reasons. First, the figures include addresses that were classified by the in-office canvassing as needing to be verified in-field, so the statistics do not speak to the effectiveness of using only in-office canvassing. Bishop Decl. ¶ 41. Second, many of the purported errors do not reflect any issue with the address file that would prevent the households at issue from being contacted by the Census Bureau or enumerated. *Id.*

⁹ This technology is the kind of digital mapping information used in Google Maps, for example. The Census Bureau’s geospatial database is among the most sophisticated on earth. *See generally* Bishop Decl. ¶¶ 5–17 (describing Census Bureau’s Geographic Support program).

Plaintiffs further rely on Dr. Hillygus to suggest that minority households tend to be in areas requiring more in-field verification. Mot. at 18-19 (citing Hillygus Decl. ¶¶ 39, 40-41). But Dr. Hillygus’s arguments and the underlying data on which she relies in fact support the Census Bureau’s approach, which is to focus the in-field resources on areas that are difficult to canvass and conserve those resources by relying otherwise on in-office work. *See* Bishop Decl. ¶ 32 (“[T]he Census Bureau determined that a 100 percent in-field validation was redundant, wasteful, and would not improve quality.”); *id.* ¶¶ 33–39. In particular, the minority neighborhoods that are the subject of the study on which she bases her conclusion are those in which an overwhelmingly high percentage were canvassed in-field for precisely the reason that they are the types of areas in which conclusive in-office canvassing is not possible. Bishop Decl. ¶¶ 52–54.¹⁰

5. Every Address that Appears to Be Vacant Will Have a Census Employee Conduct an in-Person Visit to Confirm It Is Unoccupied

Finally, Plaintiffs’ contention that “unreliable” administrative records have been “excessively” relied on to determine whether a housing unit is in fact unoccupied is wrong on its face. Mot. at 9, 19. Administrative records will *never* be used on their own to classify a unit as vacant or unoccupied. Stempowski Decl. ¶¶ 25–32. Instead, an enumerator will visit each address that does not respond to the census after six mailings or submit a response via the mobile assistance center. *Id.* ¶ 22. If that visit does not result in a successful, in-person enumeration of the people in that location, the enumerator will make a determination about whether the unit is vacant or unoccupied. *Id.* ¶ 25. Although in many cases it will be obvious that a unit is either uninhabited (e.g., a vacant lot) or occupied, the Census Bureau will not simply take the enumerator’s word. *Id.* ¶¶ 25–26. Instead, they will cross-check the enumerator’s determination against postal service undeliverable lists and

¹⁰ Notwithstanding Plaintiffs’ contention that Defendants have not conducted enough in-field address canvassing or spent enough money on doing so, in support of their motion, Dr. Hillygus notes that “the Census Bureau has reduced the estimated percent of households to be correctly canvassed in office, significantly increasing anticipated costs.” Hillygus Decl. ¶ 40. In other words, Dr. Hillygus acknowledges that the Census Bureau has decided to spend more and canvas more in-field when it perceives that doing so would increase quality. Dr. Hillygus’s statement also implicitly approves the use of in-office canvassing to “correctly canvas” certain households without fieldwork.

other administrative records. *Id.* ¶ 27. Only if both the undeliverable list, the enumerator, and other administrative records concur will an address be treated as vacant or unoccupied. *Id.*

This is an axiomatically reasonable means to ensure that resources are deployed to count people at occupied locations while making certain that no one is mistakenly removed, without wasting resources on vacant properties. *Id.* And even those addresses deemed to be vacant will receive a final mailing as an additional check.¹¹ *Id.* ¶ 29. Plaintiffs may prefer to have Census Bureau employees returning time after time to vacant lots after an employee has verified that no residence exists, but the Constitution—which requires at most a “reasonable relationship” to enumeration—cannot possibly require this. *Wisconsin*, 517 U.S. at 20.

Nor do Plaintiffs offer any admissible evidence that this will either interfere with the quality of the count in general or result in a differential undercount in particular. Plaintiffs offer speculation—and nothing more—that use of administrative records “may” increase a differential undercount. *See* Hillygus Decl. ¶¶ 45–46 (quoting other authors’ hypotheses that this design change “could increase some . . . undercount differentials” and “may . . . systematically underrepresent[]” some subpopulations and that it “is not clear yet that [use of administrative records] will not compromise quality,” and hypothesizing without citation to any evidence or studies “two ways” the use of administrative records “can worsen the differential undercount”) (emphasis added). This is plainly inadequate to support their claim. *See Cooper v. Smith & Nephew, Inc.*, 259 F.3d 194, 200 (4th Cir. 2001) (“A reliable expert opinion must be based on scientific, technical, or other specialized knowledge and not on belief or speculation, and inferences must be derived using scientific or other valid methods.”) (quoting *Oglesby v. General Motors Corp.*, 190 F.3d 244, 250 (4th Cir.1999)); *cf.* FRE 702.

¹¹ Plaintiffs do not even argue that the use of administrative records outside the context of vacant housing could diminish the data quality or increase a differential undercount, with good reason. Plaintiffs’ suggestion that minority households would be less likely to have reliable administrative records, if accepted, implies that they would be more likely to receive additional visits by enumerators and be counted in person—a method Plaintiffs appear to view as superior. Stempowski Decl. ¶ 65.

6. Plaintiffs Cannot Demonstrate that the Bureau Has “Refused” to Spend Any Funds, Nor Is Plaintiffs’ Requested Relief Appropriate

In addition to Plaintiffs’ wholly unsubstantiated claims regarding the specifics of census operations, they make the equally empty contention that the Census Bureau has “refused” to spend appropriated funds. The Bureau has done no such thing.

The census is a vast undertaking that has undisputedly significant consequences for the nation. It is thus essential that the Census Bureau take care of its resources in order to ensure that the census is successfully completed, on the timeline mandated by federal law. *See* 13 U.S.C. § 141(b). In order to ensure that the 2020 Census is successfully and timely completed, the Census Bureau must retain a reserve of contingency funding in order to cope with any issues that may arise.

Despite the hard work of thousands of Census Bureau employees over the last decade in designing, testing, and improving the plan for 2020 Census operations, it is always possible that the real life outcomes could turn out to be unanticipated. This could be due to a large scale disaster, like a terrorist attack, environmental catastrophe or epidemic, or could be the result of small deviations in human behavior that are impossible to perfectly predict. Either way, the Census Bureau has allocated a substantial sum that it intends to spend on addressing whatever unexpected problems arise in the future. Taylor Decl. ¶¶ 17-20.

Plaintiffs’ motion—indeed, their entire case—comes down to their claims that (a) they know better than the thousands of Census Bureau employees who have spent an entire decade planning the largest census in American history, and (b) that money must be spent immediately on problems that Plaintiffs’ experts have hypothesized—problems that may never materialize and that will be observed and corrected if they ever do—instead of reserved to address whatever actual problems arise during the course of conducting the census. Neither premise is valid. Congress expressly cited concerns about contingencies and risks when it allocated additional funds to the 2020 census. *See* Wishnie Decl. Ex. 6 at H10962 (explanatory statement notes that nearly \$1 billion of that appropriation was expected to fund “contingency needs that may arise during the Census operation such as major disasters or other unforeseen risks realized” and “additional sensitivity risks”

like “any reduction in self-response rates beyond the current projections of the Census Bureau”). The census is thus proceeding in an appropriate and reasonable manner, which is also consistent with the intent of Congress. *See* Taylor Decl. ¶ 13.

Nor is there any support in law for what Plaintiffs request—an order that the Census Bureau must spend a lump sum appropriation in a specific manner; indeed, the Supreme Court has found to the contrary. *See Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S. Ct. 361, 370 (2018) (explaining that “allocation of funds from a lump sum appropriation” is the type of “agency decision[] that courts have traditionally regarded as unreviewable”); *see* Wishnie Decl. Exs. 2 & 31 (demonstrating that 2019 and 2020 census appropriations were lump sum appropriations without any specific Congressional directive as to how the funds are to be used).

Plaintiffs’ cited cases support this proposition; they make clear that “the Supreme Court has determined that courts have ‘no leave to intrude’ on the agency’s chosen method of achieving the congressionally determined object of the appropriation,” and that “asking whether the agency chose the best method to advance that object is unreviewable.” *Healthy Teen Network v. Azar*, 322 F. Supp. 3d 647, 657 (D. Md. 2018). Even the manner in which Plaintiffs describe these cases in their brief—cases in which “an executive agency has refused to expend funds based on factors prescribed by Congress,” Mot. at 20—demonstrates how the current situation differs. Here, there is (1) a lump sum appropriation with *no* factors prescribed by Congress as to how the Census Bureau will go about conducting the Census, *see* Wishnie Decl. Exs. 2 & 31, and (2) Defendants have *not* refused to spend appropriated funds. *Cf. Healthy Teen Network*, 322 F. Supp. 3d at 658, 659-60 (listing factors set forth in appropriations act for which funds must be used and finding that the agency “has not shown that it considered any of these congressionally prescribed factors when making its decision”); *In re Aiken Cty.*, 725 F.3d 255, 257, 260 (D.C. Cir. 2013) (refusing to uphold agency refusal “to perform a statutorily mandated activity” “where previously appropriated money is available” but stating no limitation on executive agencies’ implementation of policies “within statutory boundaries”); *City & County of San Francisco v. Trump*, 897 F.3d 1225, 1233 (9th Cir. 2018) (addressing executive order that “directs . . . agencies . . . to withhold

funds appropriated by Congress in order to further the Administration’s [unrelated] policy objective of punishing cities and counties that adopt so-called ‘sanctuary’ policies); *Guadamuz v. Ash*, 368 F. Supp. 1233, (D.D.C. 1973) (prohibiting termination of specific grant programs where “the announced reason . . . was totally unrelated to the purposes of the program” because “the Executive may not withhold funds from projects which the Congress has *specifically directed* because of such extraneous considerations”) (emphasis added).¹²

**B. An Injunction Would Be Against the Public Interest and the Balance of Equities
Tips in Defendants’ Favor**

Here, both parties claim the goal of ensuring the most accurate count possible in the 2020 Census. But only Defendants have an actual plan for completing an accurate count in the deadline that has been imposed by law. Interfering with the Census’s design at this late date and forcing the Census Bureau to spend nearly \$800 million would significantly harm the public interest and the likelihood that the census will succeed.

First, derailing the plans for the 2020 Census on the eve of enumeration and forcing new and immediate changes to the design would disrupt the work of counting the population and consume the Census Bureau’s time, preventing it from devoting itself to ensure an accurate count at this critical stage. Stempowski Decl. ¶¶ 58–59. The result of Plaintiffs’ requested injunction, in short, would be an increased risk of an inaccurate count—the very evil Plaintiffs claim they wish to avoid.

Second, mandating a change to the Census’s plans would expend a significant portion of the funding that has been reserved to resolve unforeseen crises when they arrive, depriving the Bureau of almost \$800 million to deal with future unforeseen events. If the Court enters Plaintiffs’ requested injunction, these funds will be squandered on pure speculation rather than reserved for specific, observed concerns to be addressed in a tailored manner when those concerns arise. *See* Taylor Decl. ¶ 17–20; 33–36.

¹² Nor do Plaintiffs’ cited cases support the proposition that an agency is required to spend appropriated funds if it ultimately turns out that doing so would be unnecessary to achieve Congress’ aims. *See Guadamuz*, 368 F. Supp. at 1243 (noting “[t]his case does not present a situation where congressionally mandated objectives can be achieved with unforeseen efficiency or economies”).

Third, directing the expenditure of these funds would be against the public interest because it would require an immense waste of taxpayer dollars. While the Census Bureau is committed to spending any amount necessary to ensure an accurate count of the population, it remains a public agency entrusted to prudently spend taxpayer dollars. *See* Stempowski Decl. ¶ 49; Taylor Decl. ¶ 19. If its job can be properly done without expending the public’s money, its duty is to do the job in that manner. In contrast, Plaintiffs would have the Bureau spend taxpayer money for the sake of spending it, without any detailed plan for its use or any basis to indicate it would resolve any problem at all.

Finally, Plaintiffs’ entire case tacitly presumes that the census can never innovate or take advantage of new technologies that will both improve the accuracy of the count *and* save money. Plaintiffs note that previous censuses—including the 2010 Census that they use as an appropriate spending benchmark—have resulted in a differential undercount. Davis Decl. ¶ 18 (“In 2010, the County suffered the largest net census undercount of any large county in Maryland and one of the largest undercounts in the entire United States for any county of 100,000 or more residents.”). But Plaintiffs would still have the Bureau rely on outdated technologies and expend resources required by those technologies—or at least to expend the funds that were required to house and transport millions of pages of paper to now conduct a primarily digital census. *See* Taylor Decl. ¶¶ 32–36. The 2020 Census is designed to harness advances in technology to perform the best count in census history. Entering Plaintiff’s proposed injunction would chill future efforts to innovate, as it would justify the fear that any change in census design, however carefully planned over the course of a decade and well-founded in research, could be upended at the last minute and jeopardize the count as a whole.

C. Plaintiffs Will Not Experience Irreparable Harm

In contrast to the 2020 Census, *see* Taylor Decl. ¶¶ 17–20, 33–36, Plaintiffs will suffer no harm in the absence of that injunction. The Census Bureau will continually monitor self-response rates, enumerator productivity, and the remainder of the results to determine whether any additional resources are needed, either in any particular location or nationwide. Stempowski Decl. ¶ 57–59. If any initial assumption is found to be incorrect, or any amount of resources are shown to be underestimated, the Census Bureau will make efforts

to address that problem if and when it arises—that is the very purpose of its extensive planning and reserve for contingency funding. *Id.* ¶¶ 57–59; Taylor Decl. ¶¶ 17–19.

The Bureau’s constant willingness to improve its plans and correct problems is demonstrated by its history to date, in which it has updated its plans repeatedly in response to its testing, research, and other public discussion. For two examples, the Court need look no further than two of the areas Plaintiffs have raised in this motion. First, since its final operational plan was published, the Bureau has developed a plan to spend around \$110 million on mobile questionnaire assistance—more than *double* the amount Plaintiffs’ request in this motion, mooted a portion of their requested relief entirely. Stempowski Decl. ¶ 41; ECF 169-1 at 6-7 (“request[ing] a preliminary injunction directing Defendants . . . “(3) to increase the number of . . . mobile assistance units . . . at levels commensurate to 2010 (\$45.6 million)”). Second, the Bureau recently allocated additional spending to the communications campaign, bringing its total planned spending on “outreach and communications,” Mot. at 2-3, to \$103 million more than Plaintiffs’ calculated in bringing their motion—the vast majority of the \$128 million Plaintiffs ask for. Taylor Decl. ¶ 36. The Census Bureau is not averse to spending money when warranted, and will do so as events develop. *See* Stempowski Decl. ¶¶ 57–59; Taylor Decl. ¶ 19.

Moreover, Plaintiffs’ proposed injunction does not make sense on its face and will not remedy any undercount, so denying the motion will not put the Plaintiffs in any better position than granting it. Setting aside the now fully moot issue of mobile assistance centers, Plaintiffs seek \$597 million to deploy in the field enumerators that have already been hired and \$128 million to be spent on “outreach and communications.” But Plaintiffs fundamentally misunderstand the cost—and effect—of deploying the additional enumerators. Deploying additional enumerators that have already been hired and trained *does not* increase cost or require additional expenditure, assuming a fixed amount of work. Because enumerators are paid by the hour, a workload that takes 10 person-hours at a rate of \$10/hour will always cost \$100, whether two people do it or 10 people do it. The only difference is how long it will take and how much that cost is allocated to each individual (in the example above, five hours and \$50 each in the first case and one hour and \$10 each in the second).

The only reason to deploy more enumerators would be either (a) the enumerators end up behind schedule or (b) the workload is larger than anticipated. The Census Bureau will be monitoring the results in real time to determine whether these conditions do or do not occur. In either case, the Census Bureau is ready to resolve any issue that arises. Stempowski Decl. ¶ 57–59.

Plaintiffs’ proposed injunction regarding outreach and communications fares no better. Plaintiffs’ only substantive complaint regarding the design of the Communications and Partnership Program appears to be that they would prefer more staff be hired. *See* ECF No. 168 ¶¶ 39-53; ECF No. 169-1 at 5. Their putative concern rests on the false premise that all staff are fungible, and that a greater number of staff is necessarily better, regardless of the role that staff plays or whether there is any need for that role under the present census design. *See* Reist Decl. ¶¶ 23–26. But hiring unnecessary bodies would be poor stewardship of taxpayer dollars with no benefit to creating an accurate Census. Although the 2020 Census design does indeed require fewer “partnership staff” than the 2010 Census, that is because both experience and new technology made clear that the unskilled administrative role of “partnership assistant” used in the 2010 Census would not be useful in light of the 2020 Census’s greater reliance on computing technology instead of paper. *See supra* Argument Section I.A. While that obsolete position has been eliminated, the size of the substantive professional staff doing the core substantive work of the program—“partnership specialists”—have nearly doubled, as Plaintiffs concede. Plaintiffs essentially ask this Court to order an extra \$130 million expenditure on staff to sharpen pencils for people who now work on computers, even though there are now twice as many professionals using the computers for this program as there were professionals using pencils in 2010.

II. THIS CASE SHOULD BE DISMISSED, OR IN THE ALTERNATIVE, SUMMARY JUDGMENT SHOULD BE GRANTED FOR DEFENDANTS

A. This Case Presents a Nonjusticiable Political Question

“The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch.” *Japan Whaling Ass’n v. Am. Cetacean Soc.*, 478 U.S. 221,

230 (1986). The Enumeration Clause requires that an “actual Enumeration” of the population be conducted every 10 years and it vests Congress with authority to conduct that enumeration “in such Manner as they shall by Law direct.” U.S. Const. art. I, § 2, cl. 3. As this Court previously recognized, “the Founders clearly intended Congress to have paramount authority in both the design and execution of the census, as well as its funding.” *NAACP v. Bureau of the Census*, 399 F. Supp. 3d 406, 418 (D. Md.), *aff’d in part, rev’d on other grounds*, 945 F.3d 183 (4th Cir. 2019). So Plaintiffs’ census-design challenge is “constitutionally committed to a coordinate political department.” *Id.* (alterations omitted) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)).

There is also “a lack of judicially discoverable and manageable standards” in this area. *Id.* (quoting *Baker*, 369 U.S. at 217). It is clear that the *Wisconsin* reasonable-relationship standard applies where the decision at issue concerns “the population count itself—such as a postcensus decision not to use a particular method to adjust an undercount, and a decision to allocate overseas military personnel to their home States.” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2566 (2019) (citing *Wisconsin*, 517 U.S. at 4 and *Franklin v. Massachusetts*, 505 U.S. 788, 790–791 (1992)); *Utah v. Evans*, 536 U.S. 452, 464 (2002) (explaining that such determinations “rest[] upon the words ‘actual Enumeration’ as those words appear in the Constitution’s Census Clause”). It is now also clear that ancillary decisions unrelated to the headcount—like the collection of demographic information through the census—should be judged by “Congress’s broad authority over the census, as informed by long and consistent historical practice.” *Dep’t of Commerce*, 139 S. Ct. at 2566–67.

But there is no standard governing minute details of *future* census operations that are at the very core of the Congress’s power (largely delegated to the Secretary) to “direct” the “Manner” by which the census is taken. U.S. Const. art. I, § 2, cl. 3. Where, as here, Plaintiffs challenge operations of a yet-to-be-conducted census, “[n]o districts have been drawn, no benefits cut, no actual harm yet suffered by the plaintiffs.” *Tucker v. U.S. Dep’t of Commerce*, 135 F.R.D. 175, 180 (N.D. Ill. 1991). So “[t]he question is which of the coordinate branches of government is best equipped to deal with plaintiffs’ concern.” *Id.* And the answer is Congress, as the Court would be venturing into the realm of cost/benefit analyses and policy judgments concerning every logistical decision in the 10-year lead up to the census, including whether the Census Bureau properly balanced

the cost, testing, training, effectiveness, timing, need, and accuracy of each operation with every other operation and the monies appropriated by Congress. *See* Defs.’ First MTD at 22–25; Defs.’ First MTD Reply at 9–14; Defs.’ First MTD Suppl. Br. at 5–6.

Those are determinations constitutionally entrusted to representatives of the people and executive officials confirmed by the same. They are up to the task: since the Bureau published its final operational plan, Congress appropriated (and the Bureau developed a plan to spend) around \$110 million on mobile questionnaire assistance—more than *double* the amount Plaintiffs request in this motion. Stempowski Decl. ¶ 41. So court intervention is both unwise and unnecessary. Indeed, “you might as well turn [this case] over to a panel of statisticians and political scientists and let them make the decision, for all that a court could do to add to its rationality or fairness.” *Tucker v. U.S. Dep’t of Commerce*, 958 F.2d 1411, 1417–18 (7th Cir. 1992). In this Court’s own words, “the Court cannot undertake independent resolution” of Plaintiffs’ case “without expressing lack of the respect due coordinate branches of government.” *NAACP*, 399 F. Supp. 3d at 418 (alterations omitted) (quoting *Baker*, 369 U.S. at 217). This case is not justiciable and should be dismissed.

B. Plaintiffs Do Not Have Standing to Bring this Case

Standing “requires an injury in fact that is caused by the challenged conduct and is likely to be redressed by a favorable decision.” *6th Cong. Dist. Republican Comm. v. Alcorn*, 913 F.3d 393, 405 (4th Cir. 2019). As the parties invoking this Court’s jurisdiction, Plaintiffs bear the burden of establishing these elements. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). They cannot.

1. Plaintiffs’ speculative injuries are far from certainly impending.

“To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Id.* at 1548. The purpose of the imminence requirement “is to ensure that the alleged injury is not too speculative for Article III purposes.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013). So the “threatened injury must be *certainly impending* to constitute injury in fact, and allegations of *possible* future injury are not sufficient.” *Wikimedia Found. v. Nat’l Sec. Agency*, 857 F.3d 193, 207–08 (4th Cir. 2017) (alterations omitted)

(quoting *Clapper*, 568 U.S. at 409). A “highly attenuated chain of possibilities[] does not satisfy the requirement that threatened injury must be certainly impending.” *Clapper*, 568 U.S. at 410.

Plaintiffs rely on just such a “highly attenuated chain of possibilities” to connect purportedly deficient census operations with their theoretical representational and funding injuries. *See* TAC ¶¶ 167–69. In order for Prince George’s County to experience an undercount, (1) its residents must not respond to any of six mailings by internet, mail, or phone, (2) they must not be counted by high-quality administrative records from other federal agencies, (3) they must not respond to six or more in-person visits by enumerators, (4) they must not be counted when enumerators gather information from proxies (like neighbors or landlords), and (5) they must not be counted by imputation, which is specifically designed as a final backstop to assure that all occupied housing units are counted. *Supra* Background Section II. And after all that, Prince George’s County will not experience a *differential* undercount unless it is undercounted by *more* than other parts of Maryland (for Plaintiffs’ intrastate redistricting “injury”) or other parts of the country (for Plaintiffs’ apportionment and federal funding “injuries”). In other words, undercounts elsewhere may render an undercount in Prince George’s County (if any) immaterial. So Plaintiffs pile speculation on top of speculation six times over. *See, e.g., Sharrow v. Brown*, 447 F.2d 94, 97 (2d Cir. 1971) (no standing because, even absent challenged census practice, “it might well be that . . . New York’s representation would not be increased as [plaintiff] claims”); *Fed’n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 570 (D.D.C. 1980) (denying standing because the plaintiffs “can do no more than speculate as to which states might gain and which might lose representation”).

That is why, as this Court recognized, the idea of challenging census procedures *before* the census “flies in the face of decades of litigation that legions of plaintiffs have brought . . . *after* . . . the census had been conducted.” *NAACP*, 382 F. Supp. 3d at 369 (D. Md. 2019) (collecting cases), *aff’d in part, rev’d in part* 945 F.3d 183 (4th Cir. 2019). Plaintiffs themselves recognize this uncertainty. *See, e.g., Hillygus Decl.* ¶ 11 (hypothesizing that “*if* a differential undercount occurs in the 2020 Census and *if* current allocation formulas and funding levels remain similar over time, [] a differential undercount would cause” certain states to lose money (emphasis added)); *id.* ¶ 36 (noting that “reduced local presence creates a major risk for the 2020 count *if* self-

response rates decline below assumed and modeled levels . . .” (emphasis added)); *id.* ¶ 50 (explaining that “[t]he effects of these [operational] decisions are cumulative and often difficult to quantify precisely given available data”); Doms Decl. ¶ 24 (noting that “it is not possible to conclude” whether or not certain operational changes will improve efficiencies in Nonresponse Followup); *id.* ¶ 36 (conceding that “technology and outside databases could, in theory, produce a MAF more accurate than in-field operations”).

Plaintiffs’ cursory allegations about their purported representational and funding injuries further demonstrate their inadequacy. For example, Plaintiffs note that “Defendants’ failure to conduct a constitutionally sufficient census . . . increases the risk of Maryland losing seats in Congress,” without any further elucidation concerning how Maryland’s census count will compare to the counts of the other 50 states needed to calculate Maryland’s number of representatives. TAC ¶ 169; *see Dep’t of Commerce v. Montana*, 503 U.S. 442, 455 (1992) (describing the method of equal proportions used for congressional apportionment). Plaintiffs also rest on conclusory allegations that “Defendants’ current failings threaten to result in a significantly higher undercount for Prince George’s County, leading to an even greater loss of funding” than prior censuses. TAC ¶ 167. But Plaintiffs make no mention of any specific federal funding programs, the funding formulas for those federal programs, how they incorporate census data, or how the count of Prince George’s County will compare to the counts of other states and localities relevant to any specific funding formulas. *See generally* TAC ¶ 14, 156–82; *see Nat’l Law Ctr. on Homelessness & Poverty v. Kantor*, 91 F.3d 178, 185 (D.C. Cir. 1996) (no standing because court could not determine “what effect any methodology for counting the homeless would have on the federal funding of any particular appellant,” since “if a more accurate count would have enlarged some communities’ shares, it likely would have reduced the shares of other communities”).¹³ And even if they

¹³ Individual Plaintiffs and Organizational Plaintiffs’ members have also not alleged sufficient facts indicating that they—as opposed to Prince George’s County—will suffer any concrete injury from a loss of funding or tied any hypothetical funding decreases to material changes in the particular public services they use. For example, Plaintiffs have alleged no facts indicating that their state and local governments will reduce spending on the particular roads and other programs that Plaintiffs themselves use, rather than replacing any lost federal funding with other sources, or reducing spending roads and programs not used by Plaintiffs. *See Defs. of Wildlife*, 504 U.S. at 571 (“[A]gencies generally supply only a fraction of the funding for a foreign project. . . . Respondents have produced nothing to indicate that the projects they have named will either be

had, Congress could change funding formulas at any time, making Plaintiffs’ “injury” even more speculative. Plaintiffs’ “legal conclusions couched as factual allegations” are plainly insufficient for standing. *Roberson v. Ginnie Mae*, 973 F. Supp. 2d 585, 589 (D. Md. 2013) (Grimm, J.) (citations omitted).

2. Plaintiffs’ speculative injuries are not traceable to Defendants.

Plaintiffs also lack standing because they do not allege that their theoretical injuries will result directly from the Census Bureau’s supposedly deficient census operations, but from a multi-step causal chain (as explained above), including the “the independent action of some third part[ies] not before the court.” *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976).

First, any speculative injury is traceable to Prince George’s County residents who decide not to answer the census. Not only does the law require people to answer the census, 13 U.S.C. § 221(a), but, as explained above, the census operations at issue have been specifically designed to elicit census responses from every occupied household. That makes this case a far cry from the citizenship-question cases. “[I]n th[o]se circumstances,” the Supreme Court found traceability because “third parties w[ould] likely react in predictable ways to [a] citizenship question [on the 2020 Census]” based on the “Census Bureau’s theory” indicating “noncitizens’ reluctance to answer a citizenship question.” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2566 (2019). But here, there are no allegations—let alone a Census Bureau theory—that Prince George’s County residents will be “reluctan[t]” to answer the census due to any of the census operations at issue. *Id.* To the contrary, the challenged census operations will be used *to enumerate* individuals, not to gather ancillary citizenship data. So if Prince George’s County residents choose to not answer the census despite six mailings and multiple in-person visits, any (speculative) harm is traceable to their decision.

Second, even assuming a differential undercount for Prince George’s County, any intrastate vote dilution would be fairly traceable to Maryland’s independent decision to use Census Bureau decennial census

suspended, or do less harm to listed species, if that fraction is eliminated. . . . [I]t is entirely conjectural whether the nonagency activity that affects respondents will be altered or affected by the agency activity they seek to achieve.”).

data—as opposed to an alternative source of population data—in post-2020 intrastate redistricting. No stricture of the *federal government* requires states to use Census Bureau data in intrastate redistricting. *See Burns v. Richardson*, 384 U.S. 73, 91 (1966) (“[T]he Equal Protection Clause does not require the States to use total population figures derived from the federal census as the standard by which this substantial population equivalency is to be measured.”); *City of Detroit v. Franklin*, 4 F.3d 1367, 1374 (6th Cir. 1993) (“Nothing in the constitution . . . compels the states . . . to use only the unadjusted census figures.”). Indeed, Maryland has chosen not to do so in some instances. *See Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 n.3 (2016); Md. Code Ann., State Gov’t § 2-2A-01; Md. Code Ann., Local Gov’t § 1-1307. If Maryland chooses to draw its post-2020 legislative districts using some other source of population data—like their own population data, population data from a private entity, or even Census Bureau population data other than from the decennial census—Plaintiffs’ intrastate voting power would be unaffected by any theoretical differential undercount.

Any intrastate vote dilution would also be fairly traceable to Maryland’s independent decision to redraw the post-2020 state legislative districts in which Plaintiffs reside as a result of any differential undercount. States may constitutionally deviate from equal populations across state legislative districts by up to 10% to accommodate districting decisions reflecting the states’ history and legitimate political values. *See Brown v. Thompson*, 462 U.S. 835, 838–40, 842–44 (1983); *Connor v. Finch*, 431 U.S. 407, 418 (1977); *White v. Regester*, 412 U.S. 755, 761 (1973); *Abate v. Mundt*, 403 U.S. 182, 185 (1971). So even assuming a differential undercount in Prince George’s County, if Maryland does not change how state legislative districts are drawn after 2020, or redraws districts to account for any differential undercount, Plaintiffs’ intrastate voting power would be unaffected by any differential undercount.

Third, again assuming a differential undercount for Prince George’s County, Plaintiffs have not come close to adequately alleging any loss of funds traceable to the Census Bureau. *See* TAC ¶ 167. As noted above, Plaintiffs do not allege the loss of monies from any specific federal funding programs, the funding formulas for those federal programs, or how they incorporate census data. That is important for traceability purposes

because many federal funding regimes provide full or partial discretion to states and localities in disbursing federal funds, making any purported funding injury traceable to other actors.

Plaintiffs have not adequately alleged that any abstract census-related injury is traceable to the challenged census operations rather than Prince George’s County residents that do not answer the census or Maryland’s redistricting and funding choices. It may be true that “the causation element of standing is satisfied where the plaintiff suffers an injury that is produced by the determinative or coercive effect of the defendants’ conduct upon the action of someone else.” *Am. Acad. of Pediatrics v. FDA*, 379 F. Supp. 3d 461, 479 (D. Md. 2019) (Grimm, J.) (alterations and citations omitted). But the Census Bureau has done everything in its power to “coerce” census responses from every occupied housing unit and make an accurate count the “determinative” outcome.

3. Plaintiffs’ speculative injuries are not redressable by the Court.

This Court previously rejected Plaintiffs’ request for “the Court to tell the Bureau when and how to spend [] funds and, in effect, take supervisory control over the execution of the 2020 Census.” *NAACP*, 399 F. Supp. 3d at 416. As the Court explained, “[t]hat is not a remedy that a court has the authority, expertise, or time to provide.” *Id.*; see *NAACP v. Bureau of the Census*, 945 F.3d 183, 191 (4th Cir. 2019) (recognizing that “the various ‘design choices’ being challenged expressly are tied to one another,” so “[s]etting aside’ one or more of these ‘choices’ necessarily would impact the efficacy of the others, and inevitably would lead to court involvement in ‘hands-on’ management of the Census Bureau’s operations”). The Court was correct in its holding and should apply the same reasoning to dismiss Plaintiffs’ TAC (or grant summary judgement for Defendants). See *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 891 (1990) (“[R]espondent cannot seek wholesale improvement of this program by court decree, rather than in the offices of the Department or the halls of Congress, where programmatic improvements are normally made.”).

4. NAACP and its branch office cannot sue on behalf of unidentified members.

An organization does not have Article III standing to sue on behalf of its members unless the organization identifies a particular affected member, not merely a “statistical probability that some of [its] members

are threatened with concrete injury.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009). A general reference to unidentified members is insufficient for organizational standing. *Id.* (“[T]he Court has required plaintiffs claiming an organizational standing to identify members who have suffered the requisite harm.”); *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 487 n.23 (1982); *S. Walk at Broadlands Homeowner’s Ass’n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 184 (4th Cir. 2013) (upholding dismissal for lack of standing at the pleading stage because the plaintiff “failed to identify a single *specific member* injured by the [conduct at issue]”); *Casa De Maryland, Inc. v. Trump*, 2019 WL 5190689, at *5 (D. Md. Oct. 14, 2019) (Grimm, J.). Because NAACP and its branch office name only Robert Ross and Elizabeth Johnson as members, they cannot support standing by relying on their allegations that some member, somewhere in the United States, will be hypothetically injured after the census. *See, e.g.*, TAC ¶ 173; *id.* ¶ 175.

5. NAACP and its branch office cannot sue on their own behalves.

Organizational standing is conferred where the defendants’ misconduct causes injury to the organization by frustrating the organizational mission, thus requiring the organization to divert resources in response. *PETA v. Tri-State Zoological Park of W. Maryland, Inc.*, 2019 WL 7185560, at *17 (D. Md. Dec. 26, 2019); *Lane v. Holder*, 703 F.3d 668, 674 (4th Cir. 2012) (“An organization may suffer an injury in fact when a defendant’s actions impede its efforts to carry out its mission.”). Prince George’s County Maryland Branch NAACP does not allege any diversion of resources whatsoever, and therefore fails this inquiry at the outset. *See generally* TAC ¶¶ 156–82. NAACP, on the other hand, alleges that it “has devoted additional staff time to its efforts to encourage participation in the 2020 Census, has begun providing Census-related trainings to its membership units across the country, and has established new Census-related partnerships with outside organizations.” TAC ¶ 176. But NAACP nowhere alleges how these activities have “impede[d] its efforts to carry out its mission.” *Lane*, 703 F.3d at 674. That is probably because census-related activities are at the core of NAACP’s

mission to, in its own words, “ensure the political, educational, social, and economic equality of all citizens.”¹⁴ In fact, “NAACP has been a trusted partner in the last three censuses.” Reist Decl. ¶ 18 n.2. NAACP therefore lacks standing because any diversion of resources is not the result of “any actions taken by [Defendants], but rather from the organization’s own budgetary choices.” *Lane*, 703 F.3d at 675 (citations omitted).

Even if NAACP’s census-related activities somehow impeded its mission, it would still lack standing because any purported harm from the census is entirely speculative. *See* Section II.B.1, *supra*. So NAACP “cannot manufacture standing merely by inflicting harm on [itself] based on [its] fears of hypothetical future harm that is not certainly impending.” *Clapper*, 568 U.S. at 416; *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 285 (3d Cir. 2014) (explaining that an organization cannot “simply choos[e] to spend money fixing a problem that otherwise would not affect the organization at all”). “If the law were otherwise, an enterprising plaintiff would be able to secure a lower standard for Article III standing simply by making an expenditure based on a nonparanoid fear.” *Maryland v. United States*, 360 F. Supp. 3d 288, 308 (D. Md. 2019) (citation omitted).

C. Plaintiffs Do Not Plausibly Allege, or Create Any Material Factual Dispute Concerning, an Enumeration Clause Violation

For the reasons set forth in Argument Section I.A., Plaintiffs fail to plausibly allege, or create a genuine issue of material fact in support of, their claims. As Defendants’ declarations make clear, each of the challenged 2020 Census operations have been designed with great effort and far exceed the minimal requirement (if any) that they “bear only a reasonable relationship to the accomplishment of an actual enumeration of the population.” *Wisconsin*, 517 U.S. at 20. The undisputed facts show that the 2020 Census is materially different in design from the 2010 census such that comparable levels of funding and staffing are not required. In particular, the undisputed facts show that: (1) the 2020 census is not reliant on paper for tracking information, which reduces the need for physical office space and clerical support (Stempowski Decl. ¶¶ 46–49; Reist Decl. ¶¶ 23–25); (2) superior in-office data have produced the most accurate dataset ever of U.S. addresses (Bishop Decl.

¹⁴ NAACP, *What is the Mission of the NAACP?*, <https://www.naacp.org/about-us/>. Indeed, NAACP’s own website touts its efforts to “promote and ensure the full participation of the Black community in the 2020 Census.” *See* NAACP, *2020 Census*, <https://www.naacp.org/campaigns/2020-census/>.

¶¶ 24–42); (3) the Bureau will deploy 2020 enumerators in a strategic and targeted way, to maximize the chances of an accurate count for hard-to-count populations (Stempowski Decl. ¶¶ 18, 21–33; Taylor Decl. ¶¶ 18–19); (4) the 2020 Census involves expanded outreach, including to hard-to-count communities, as compared to any previous census (Reist Decl. ¶¶ 7–12, 20–22, 27–28, 32–34); (5) plans for the 2020 Census were supported by extensive research and testing (Stempowski Decl. ¶¶ 54–56; Reist Decl. ¶¶ 29–30; Cantwell Decl. ¶ 24); and (6) Defendants’ reservation of funding to address risks and contingencies is consistent with congressional intent and appropriately avoids unnecessary spending (Stempowski Decl. ¶¶ 57–59; Taylor Decl. ¶ 13). All Plaintiffs offer in opposition is the repeated invocation of the 2010 census design and expenditures, which cannot constitute genuine disputes of material fact in light of the changes for the 2020 census. *See Mathews v. Johns Hopkins Health System, Corp.*, 2019 WL 3804129, at *6 (D. Md. 2019) (defendants entitled to summary judgment on plaintiff’s discrimination claim where plaintiff “attempts to compare apples to oranges, [so] this argument too must fail.”); *Zimmerman v. Vectronix*, 2017 WL 6459680, at *3 (E.D. Va. 2017) (“where such a comparison cannot be made because of apples-to-oranges sales figures, this is an irreconcilable debate and ultimately immaterial to the question at the summary judgment stage—has the plaintiff carried his burden of production with respect to establishing the prima facie case? Mr. Zimmerman has not.”).

And even if Plaintiffs attempt to find some area of factual dispute, any such dispute is not material given the extraordinarily deferential standard of review under the Enumeration Clause (assuming the *Wisconsin* standard even applies). Plaintiffs’ experts offer only unsupported speculation about the effect of census operations based on unreasonable assumptions, critical omissions, and mischaracterization of details necessary to properly understand the plans at issue. “[A] party cannot create a genuine dispute of material fact through mere speculation or compilation of inferences.” *See Bennett v. Charles Cty. Pub. Sch.*, 2006 WL 4738662, at *2 (D. Md. May 23, 2006) (citing *Deans v. CSX Transp., Inc.*, 152 F.3d 326, 330–31 (4th Cir. 1998), *aff’d*, 223 F. App’x 203 (4th Cir. 2007); *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985). And such speculation is forcefully rebutted by the declarations of the long-term Census employees cited herein. Reist Decl. ¶¶ 35–38; Stempowski Decl. ¶¶ 60–65; Bishop Decl. ¶¶ 50–54; Taylor Decl. ¶¶ 21–32; Cantwell Decl. ¶¶ 9–32.

The Court should enter summary judgment for Defendants. “When specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts even if, as an original matter, a court might find contrary views more persuasive.” *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 378 (1989). This applies doubly where, as here, “an agency is called upon to make complex predictions within its area of special expertise.” *Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 F.3d 177, 205 (4th Cir. 2009). In such circumstances, “a reviewing court must be at its most deferential” and “the novelty of a [] measure alone cannot be the basis of our decision to discredit it.” *Id.* There is no genuine issue of material fact here.

CONCLUSION

This case is a study in misguided litigation. Plaintiffs purported to want more funding for the 2020 Census, so they sued instead of lobbying Congress. Then Plaintiffs purported to want design changes, so they sued instead of expressing concerns to the Census Bureau. Now, despite professed concerns about the census, they wish to commandeer nearly \$800 million of Census Bureau’s budget to transform the way the 2020 Census will be conducted just weeks before census invitations are mailed to nearly 150 million residences.

The Census Bureau has spent over 10 years researching, testing, evaluating, refining, and planning in an effort to count everyone once, only once, and in the right place. Operations are already underway. For the reasons set forth above, the Court should reject Plaintiffs’ eleventh-hour attempt to upend the Census Bureau’s most critical undertaking. Plaintiffs’ preliminary-injunction motion should be denied, and Defendants’ motion to dismiss or in the alternative motion for summary judgment should be granted, permitting the Census Bureau to go about its critical work once and for all.

DATED: February 11, 2020

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED
PEOPLE, *et al.*,

Plaintiffs,

v.

BUREAU OF THE CENSUS, *et al.*,

Defendants.

No. 8:18-cv-00891-PWG

DECLARATION OF BENJAMIN K. TAYLOR

I, Benjamin K. Taylor, make the following Declaration pursuant to 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I am the Chief of the Decennial Budget Office of the Census Bureau. I have served in this capacity since November 2017. Prior to assuming those duties, I was the special assistant to the Associate Director for Decennial Census Programs at the Census Bureau from 2016, in which I served in a lead advisory role on all matters of budget, strategy, and policy. I also work in a close informal advisory role with the Census Bureau's Budget Director and Chief Financial Officer.

2. From 2008 to 2016, I was employed by the Office of Management and Budget (OMB) in multiple senior analyst/examiner roles. At OMB from 2013 to 2016, I served as the senior program examiner assigned to all oversight, advisory, and strategic responsibilities for the U.S. Census Bureau, Bureau of Economic Analysis, and Small Business Administration loan programs on behalf of the Administration. The particular focuses were on the President's budget requests, cost estimates and modeling of key programs, and the appropriations process. The first five years of my OMB tenure were

spent as a fiscal economist in the Budget Analysis Branch, including as the lead economist the final three years. In this capacity, I was responsible for modeling the Federal budget, Administration's economic forecast, and demographic baseline over a 75 year time horizon as well as the near term and long term interactions between the economy and the budget. I earned a Bachelor of Arts in economics from the University of Michigan in 2006 and a Master of Public Policy from the University of Michigan in 2008.

3. In connection with my job responsibilities I am thoroughly familiar with this litigation brought by Plaintiffs, as well as the government's efforts to defend Census Bureau and the U.S. Department of Commerce. The following statements are based upon my personal knowledge or on information supplied to me in the course of my official responsibilities.

I. Executive Summary

4. In this declaration:

a. I explain the process by which the official cost estimate of the 2020 Census was constructed, consistent with, and more conservative than, the GAO guidelines for cost estimation, based on an initial estimate of the expected cost to carry out each program in 50% of simulated scenarios, and then adjusted upward to account for the risk that conditions would make it cost more. This method is far more sophisticated and accurate than just adjusting upward based on inflation or other factors from the costs of the prior census, because it accounts for the actual (different) plans that will be used in this census. The overall cost estimate for the entire lifecycle of the 2020 Census is \$15.6 billion, which represents enough funding to successfully complete the 2020 Census in virtually all possible risk simulations.

b. I explain that Congress has appropriated funding in-line with the current cost estimate and indicated its expectation that the Census Bureau reserve approximately \$2 billion of its presently available appropriations as “contingency funds,” i.e. reserves to spend in case events do not operate as expected. It did not allocate these funds to any specific programs, which is appropriate because the exact needs of the programs over the next few months are not yet known and will not be known until operations are further underway. Congress also indicated its intent that a portion of the funds it appropriated in excess of the President’s budget request for FY 2020 be spent on mobile questionnaire assistance efforts. The Census Bureau’s current plans honor both these preferences of Congress.

c. I explain how Dr. Doms’ declaration oversimplifies and leaves out some key aspects in the analysis of the 2020 Census and 2010 Census in such a manner as to render its conclusions unreliable. In particular, Dr. Doms (a) inappropriately disregards design differences between the 2010 Census and the 2020 Census, making his assumption that the amount of funding from the 2010 Census should be a baseline for funding the 2020 Census unreasonable; (b) inappropriately disregards the difference in value of the contributions of Partnership Specialists, professional staff who perform the significant work of the Partnership Program, and Partnership Assistants, who were clerical staff; and (c) fails to account for the productivity gains that were a driving purpose in the new design of the 2020 Census.

d. I explain that Plaintiffs requested relief is inappropriate because the Census Bureau already intends to spend as much as, or more than, the totals Plaintiffs request to be spend on advertising and mobile assistance centers. making their requests

unnecessary. Their request that nearly \$600 million be spent on enumerators is inappropriate because at the moment the need for enumerator-hours is not yet known because it will depend on the volume and distribution of those people who do not self-respond to the 2020 Census in the coming months and the Census Bureau will maintain enough enumerators to do whatever amount of work that is necessary when that volume and distribution of work are known. Directing a certain amount of spending before the exact workload is known would simply be wasteful and could make actual mitigation more difficult later.

II. Census Cost Estimations

5. As Chief of the Decennial Budget Office, I am responsible for the official cost estimate for the 2020 Census. The office finalized the most recent official cost estimate for the 2020 Census, known as the 2020 Census Life Cycle Cost Estimate (LCCE) Version 2.0, on June 10, 2019, and an executive summary of that estimate is publicly available at https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/life-cycle-cost-estimate_v2.pdf. The Government Accountability Office (GAO) reviewed the updated estimate and determined as of January 2020 that it substantially or fully met GAO's standards and best practices for a reliable cost estimate in terms of credibility, accuracy, completeness, and documentation quality. It is rare for civilian agencies to be so designated, and we are proud that the Census Bureau has achieved this status.

6. The 2020 Census LCCE takes the form of a layered, bottoms-up estimate. This means that each element of programmatic scope required for the 2020 Census is estimated based on the most updated and sophisticated information and then aggregated, rather than taking buckets of cost elements from the previous decennial census and applying a simple inflation or other growth factor to past data. In other words, the 2020 LCCE was based on the anticipated costs of each operation in the 2020 Census

as actually planned; it was not based on applying inflation or another growth factor to the actual costs from the 2010 Census, which was conducted based on a different plan. This is a more sophisticated and accurate methodology, and allows for a refined estimation of individual cost elements that may not have a straightforward relationship to the past cost of a similar element.

7. The layering refers to how the cost estimation is aggregated and how risk is introduced. The first and smallest component of the cost estimate is the point estimate. The point estimate represents the amount of money that would be necessary to conduct the 2020 Census if the set of expected (or mid-point assumptions) were realized. This is estimated at a 50% confidence level, meaning that in half of simulations that randomly vary the set of assumptions in a given range of uncertainty, the point estimate was enough funding to conduct the 2020 Census. The 2020 Census point estimate in the 2019 version of the LCCE was \$12.7 billion. The cost-driving assumptions include the following major variables: nationwide self-response rate at the start of nonresponse followup (NRFU); average number of cases completed per hour by field staff; and pay rates necessary to recruit and hire the necessary field staff in each locality in the country.

8. GAO advises in its best practices that the point estimate be conducted at the 50% confidence level and then risk-adjusted at the 80% confidence level. This latter is the funding level at which 80% of simulations that randomly vary the set of assumptions in a given range of uncertainty still yield sufficient funding to complete the 2020 Census. The 2019 version of the LCCE added just over \$300 million in contingency funds to accommodate this risk adjustment to the 80% confidence level. However, the Census Bureau chose to take risk adjustment a step further beyond varying cost driving parameters, since many risks being tracked and managed by the 2020 Census program would not, if realized, manifest cost solely through field parameters such as the response rate. For example, a significant IT security incident could impact the self-response rate, but the full impact could also include

significant IT, outreach, and other mitigation costs. To this end, all known lifecycle risks to the 2020 Census have been maintained and managed in the portfolio Risk Register, which includes thorough probability analysis and cost impact if realized. The 2019 LCCE reflects an additional \$1.1 billion in contingency to allow mitigation of realized risks captured in the 2020 Census Risk Register. Collectively, the risk-adjusted point estimate for the LCCE is \$14.1 billion, which represents well beyond the 80% confidence level.

9. The Census Bureau then further added \$300 million to the risk-adjusted point estimate to account for deviation in certain cost assumptions—pay rates for enumerators and the self-response rate—outside the ranges of variation estimated in the risk adjustment. Finally, \$1.2 billion was added to account for the costs associated with unknown and unforeseeable risks or an unforeseeable realization of known risks and/or deviations in cost assumptions. Collectively, the overall 2020 Census LCCE is \$15.6 billion and this figure represents enough funding to successfully complete the 2020 Census in virtually all possible risk simulations.

10. The purpose of a cost estimate is to lay out a range of possible costs for the 2020 Census. The actual cost will be determined by the exact risks realized and the actually realized cost assumptions. The actual amounts requested and appropriated for the 2020 Census were decisions made by differing entities (such as the Administration; and/or Congress) based on the cost ranges presented within the 2020 Census LCCE, and they are indicative of the level of risk protection desired by these different entities for the 2020 Census.

III. Current Appropriations for the 2020 Census

11. As of this writing, the Census Bureau has been appropriated in aggregate just under \$14.0 billion to use for both the 2020 Census operations and contingency for fiscal years 2012 through 2020. This is \$1.3 billion more than the \$12.7 billion risk-adjusted point estimate through FY 2020 in the 2019

version of the 2020 Census Lifecycle Cost Estimate. Further, this is \$4.4 billion greater in appropriated dollars than the \$9.6 billion actually expended from fiscal years 2002 to 2010 for the 2010 Census.

12. The \$14 billion total appropriated by Congress to date also represents 99.4% of the total Lifecycle Cost Estimate through FY 2020, which as I mentioned above includes a level of contingency funds sufficient to cover the full range of expected operational outcomes with near certainty.

13. Congress has indicated that at least two thirds of the \$1.3 billion of funding above the budget request should be utilized as contingency funding to address any significant risks realized in the conduct of the 2020 Census that exhausts the nearly \$1.1 billion in unused contingency funds already included in the \$12.7 billion risk-adjusted point estimate through FY 2020. In other words, while the contingency funds that covered the 80 percent confidence level as well as covering the 2020 Census Risk Register were already included in the budgeted amounts for FY 2020, Congress also appropriated a level consistent with a point in the LCCE range that exercised even more caution by providing more than \$900 million in additional contingency for unknown risks and significant deviations in cost assumptions.

14. Combined, there remains approximately \$2 billion in contingency funds that have been appropriated, but which we have not yet needed to use. The 2020 Census maintains a rigorous program Risk Register and individual project risk registers, covering a wide range of risks to 2020 Census operations occurring on schedule, at the highest degree of quality, the most significant of which with detailed mitigation and contingency plans. As stated above, contingency funding covering the expected mitigation of these risks is included in the risk-adjusted point estimate. This contingency funding included in the \$12.7 billion estimate also includes natural deviations in cost-driving assumptions, such as the self-response rate and the productivity rate. The additional contingency funding of at least \$900 million appropriated beyond the risk-adjusted point estimate is designated to go above and beyond this

standard to cover unforeseen risks being realized (for example, a natural disaster or terrorist attack) and more extreme deviations in cost-driving assumptions, for example, a decrease of more than 5% in the self-response rate.

15. Congress has indicated that part of the remaining approximately 33 percent of funds appropriated beyond the risk-adjusted point estimate through FY 2020 in the 2019 Lifecycle Cost should be allocated to fund the Mobile Questionnaire Assistance operation beginning in March of 2020. The Census Bureau expects that this operation will cost between \$100 million and \$120 million during FY 2020 to bolster self-response in hard-to-count communities.

16. The remainder of these funds—approximately \$350 million—will be deployed as needed and as determined by 2020 Census program management to optimize 2020 Census operations. Approximately \$70 million of that total was recently allocated to the Integrated Communications Contract (including advertising and partnerships), to further ensure an optimized media campaign for each targeted demographic area with a focus on reaching the hard-to-count. The total of over \$580 million for the Integrated Communications Contract will further exceed the inflation-adjusted totals from the 2010 Census (now at least \$135 million higher), and I understand this spending level will achieve a level of saturation and penetration even further beyond that of the 2010 Census campaign than was previously expected.

17. While operations for the 2020 Census are on time, within budget, and in some cases underway or completed, a significant portion of the risks facing the program will occur in a short time period during self-response and NRFU from March through July 2020. While the 2020 Census program management maintains a high degree of confidence that \$2 billion or more in contingency will not be required to complete a high quality 2020 Census on schedule, scenarios involving multiple significant risks being realized could theoretically require most or all of this funding in order to ensure the complete

2020 Census count is delivered within the statutory deadline later in the year. As noted above, Congress has appropriated well more than the risk-adjusted point estimate of \$14.1 billion. But this still slightly less than the full \$15.6 billion figure representing enough funding to complete the 2020 Census in virtually *all* possible risk simulations. So the Census Bureau is in no position to squander contingency funds before understanding the NRFU workload.

18. Having this reserve appropriated and readily available to mitigate actual risks realized during the 2020 Census peak operations is one of the most important guarantors of a complete, accurate, on-time 2020 Census. Operationally speaking, this could mean maintaining a higher number of enumerators than expected or retaining some enumerators for longer durations, and is why we over-recruit and over-train relative to the point estimate assumptions in the LCCE. This could also include responding to an area impacted by a major natural disaster with alternate, more costly field procedures, or an integrated response to a significant data breach at the Census Bureau or another high profile institution. In an extreme scenario, it could mean a combination of these or other mitigations. Regardless, having this funding mechanism paired with operational flexibility will provide the Census Bureau with the optimum ability to complete a high quality 2020 Census regardless of which, if any, operational risks are realized.

19. Finally, it should be underscored that none of the above risks being realized change the mission of the 2020 Census: to count everyone living in the United States once, only once, and in the right place. We plan to exhaust resources under any combination of outcomes necessary to fulfill that mission. In all scenarios, the focus of our resources will include the hard-to-count. Our plan is based on attempting to enumerate the most willing and able to respond in our most efficient and cost effective manner, thereby freeing the majority of our resources for usage toward a bevy of in-person techniques specifically tailored to reach hard-to-count communities.

20. It is my opinion that at this point in time relative to 2020 Census peak operations, any diversion of these contingency funds to preemptively and speculatively address specific unrealized operational risks would be short-sighted, and hinder the flexible and nimble risk mitigation that must be allowed to occur to keep the 2020 Census on track.

IV. Funding for Selected Operations in the 2020 Census as Compared to the 2010 Census

21. In the course of preparing this declaration, I have reviewed the Declaration of Dr. Mark Doms submitted in connection with Plaintiffs' Motion for Preliminary Injunction. I interacted with Dr. Doms in his role overseeing the Census Bureau as Under Secretary over two years while I was managing the Census Bureau portfolio at OMB. I am personally familiar with the role Dr. Doms played in the redesigned operations for the 2020 Census as they were presented in the 2015 Operational Plan, which is very similar to the design that prevails today, and the associated cost estimate for that design which was over \$3 billion less than the 2020 Census cost estimate today. Dr. Doms' declaration does not address his position in crafting this redesign of the program at a significantly lower cost estimate than today's cost estimate, making his declaration misleading.

22. In addition, Dr. Doms' declaration oversimplifies and leaves out some key aspects in the analysis of the 2020 Census and 2010 Census that render its conclusions erroneous.

23. As an initial matter, the 2020 Census and the 2010 Census had significant differences in the way they were designed, both in the areas discussed by Dr. Doms and elsewhere. As a result of these design differences, the amount of funding required for each particular operation in the 2010 Census provides an overly simplistic baseline for the funding of the parallel operation in the 2020 Census. In overseeing the cost estimate for the 2020 Census, the Decennial Budget Office based the estimate on what the expected costs would be of the design being used for the 2020 Census itself, not on the actual costs of the 2010 census. To have done so would have been inconsistent with accepted cost-

estimation practices because it would have been over-simplistic and ignore updated operational requirements, procedures, and expectations. I understand from cost estimation experts on my team, at DOC, and at GAO that a decennial census is both highly unique, complex, and rare, making direct comparisons across decades without accounting for the multitudinous ways in which the technological and social environment around a census have changed a poor approach for a cost estimate of the highest degree of reliability.

24. In Dr. Doms' statement, he refers to several costs from the 2010 Census that have been inflated with the GDP deflator and population growth over ten years, in order to compare them with the proposed levels for the 2020 Census. But in several areas of communications and outreach, there are missing elements that put forward an incomplete record. In the discussion of community partnerships, for example, Dr. Doms refers to 2,000 partnership assistants. The vast majority of these positions were funded very late in the 2010 Census as a part of the American Recovery and Reinvestment Act of 2009, which was primarily a jobs stimulus. In fact, this represented around \$109 million of the \$283 million spent on community partnerships for the 2010 Census; this is about \$140 million of the \$343 million adjusted for inflation and population growth. The program as planned for the 2010 Census up until that point is far lower than the 2020 Census even adjusted for those growth rates.

25. This late infusion of funds went to partnership assistants, which were clerk-like positions mostly dealing with the realities of a paper-based Census. As opposed to partnership specialists—who create a multiplicative impact on the number of census partners—partnership assistants were an overhead cost. In the 2020 Census decade, we have doubled the number of professional partnership specialist positions that can be expected to have a multiplicative impact on the number of partners, while also relying on this decade's automation and new office structure to render much of the partnership assistants' duties obsolete. From a cost and programmatic standpoint, we have taken some of the funds

that were invested in partnership assistants and reinvested them earlier in the process into partnership specialists.

26. Further, Dr. Doms' declaration notes that the 2019 LCCE did not include funding for the Questionnaire Assistance Centers (or equivalent), while noting that the 2010 Census spent \$35.6 million on similar activities. This ignores the Census Bureau's 2019 reporting and proposal to Congress for the Mobile Questionnaire Assistance operation that would best support the 2020 Census efforts to enumerate the hard-to-count, and the Congressional approval and appropriation of this initiative within the FY 2020 Continuing Resolution and final appropriation bill. These provisions called for expenditures of not less than \$90 million on these efforts, and the Census Bureau's plans are over \$100 million and could exceed \$120 million under certain circumstances. These totals are triple what was spent in the 2010 Census on an operation that was less well-tailored to encourage self-response in hard-to-count communities.

27. Dr. Doms' declaration also notes that point estimates for the cost of NRFU and In-Field Address Canvassing in the 2020 Census are lower than the 2010 Census actual costs despite a greater projected caseload for each operation than the previous decade. This results from significantly improved field efficiency demonstrated throughout the decade in field test after field test, capped by the experiences in the 2018 End-to-End Census Test, which tested the systems and other automated procedures undergirding the redesigned field operations in the 2020 Census. It is not reasonable to directly compare these redesigned and fully automated field operations to the prior decade where everything was manual, paper-based, and decentralized.

28. So much of the time and cost in the field from the 2010 Census and for many decades prior was dedicated to laborious administrative activities related to the daily creation and distribution of paper case lists, paper maps, paper timesheets, and paper response forms between field supervisors and

their teams of listers or enumerators. Duplicative enumeration was common, as there was no way to automatically remove cases from the door-to-door caseload where a mail response had been received. There was no live case optimization for best time of day to visit a household. There was no route optimization. Additionally, these tremendous amounts of paper needed to be transported many and sometimes hundreds of miles to the Local Census Offices for manually processing, coding, and sometimes repacking and shipping to additional central processing destinations.

29. Much of Dr. Doms' critique of opening fewer offices this decade ignores that offices can be smaller and more spread out because they have shifted from operating largely as daily, administrative paper processing facilities to functioning as high-tech operational hubs. Dr. Doms' declaration simply ignores this refinement in the flow and efficiency of the fabric of census-taking as well as the underlying test data showing that every field hour worked on the 2020 Census is far more productive than a field hour worked in the 2010 Census. Dr. Doms' declaration therefore displays a fundamental misunderstanding not only of the designs of the 2020 Census and 2010 Census but of census-taking in general.

30. In addition to leaving out the massive gains in productivity (an important goal of modernizing the 2020 Census), Dr. Doms' declaration also leaves out how the Census Bureau has remained openly cautious in its planning for the 2020 Census operational costs. One of the primary differences between the cost estimates for this design (endorsed by Dr. Doms earlier in the decade) and the significantly higher cost estimates for this design laid out in 2017 and 2019 is the introduction of a significant and unprecedented level of contingency funding for the 2020 Census.

31. With actually appropriations designated for contingency of just over \$2 billion (nearly 15 percent of the total appropriations) to date, the Census Bureau is poised to respond to nearly any possible risk that we face. Should canvassing productivity have fallen below the tested levels,

the Census Bureau had tens of millions in contingency at the ready to extend tours of duty or even the entire operation. Nationwide productivity was ultimately even higher than the tested levels, despite a focus on the very hardest and most complex blocks to canvass this decade, so this funding was not needed for deployment. Likewise, should something natural or unnatural cause a higher NRFU caseload than we have estimated in the point estimate of the cost of NRFU, or cause less productive enumerators than we have tested, we have hundreds of millions if not billions of dollars at the ready to extend tours of duty, increase pay rates, increase hours worked per week, and/or increase the number of weeks of the operation's duration.

32. For example, even if the self-response rate for the 2020 Census fell to 50 percent (10.5 percentage points, or nearly 15 million housing units, lower than expected and 13.5 percentage points lower than the 2010 Census) and the enumerator productivity fell to 2010 levels consistent with paper-based procedures, the cost of completing NRFU would rise by approximately \$625 million or just one third of the available contingency, and the operation could still be completed in 10 weeks with 500,000 enumerators. The Census Bureau is on track to recruit enough applicants to field up to 500,000 enumerators, and has three times as much funding as the additional amount that would be necessary to field this many enumerators for all of NRFU. There is no doubt in my mind that the Census Bureau is prepared for all reasonable eventualities during 2020 Census peak operations.

V. Costs Related to Plaintiffs' Requested Relief

33. It is my understanding that in their motion for a preliminary injunction, Plaintiffs have asked the court to require the Census Bureau to immediately expend an additional \$770 million that has been reserved for contingency funding on several specific operations. As explained above, I believe that would be a mistake. But there are additional reasons why Plaintiffs' specific requests would be inappropriate. First, as noted above, the Census Bureau has currently allocated up to \$120 million to

fund mobile questionnaire assistance centers, which is more than twice the amount Plaintiffs have requested for this purpose. Therefore, there is no need to require defendants to expend any additional funds on this operation.


34. More significantly, Plaintiffs' request that almost \$600 million be spent to deploy enumerators that the Census Bureau already plans to hire and train reflects a fundamental misunderstanding of the cost and effect of deploying those additional enumerators. Plaintiffs' reference to approximately 250,000 "core enumerators" represents the number of enumerators that the Census Bureau predicts—based on the projected workload, productivity, and schedule—will be required to complete the NRFU workload if its median assumptions hold. But, as explained, the Census Bureau is recruiting, hiring, and training up to 500,000 enumerators to be maintained in the field if and for as long as needed. There is no reason to exhaust these resources up front when their necessity could prove fully moot depending on the final self-response rate and field productivity rates. If these enumerators are not needed to work, expending these contingency funds will not be required.

35. Finally, Plaintiffs request for \$128 million "to increase outreach and communications." *see* Plaintiffs' Motion for Preliminary Injunction at 2–3, is unclear to me. If Plaintiffs request the money to be spent on field partnerships, the request is impractical this close to Census Day, and unnecessary. As stated above, the community partnership program is stronger now as it is more efficient and its resources focused on multiplicative impactors rather than administrative overhead, as it did last decade. We have double these high value resources and will have significantly more partners than in the 2010 Census. These facts are undeniable.

36. To the extent Plaintiffs simply request an additional \$128 million to be spent on some form of outreach, including advertising, the Census Bureau has already increased its planned expenditures on the Integrated Partnership and Communications Program by almost the full amount

Plaintiffs request. Dr. Doms writes that the Census Bureau plans to spend \$480 million on advertising, when the current plan is to spend \$583 million on advertising, \$103 million more than Dr. Doms' declaration claims. This \$583 million is also approximately \$135 million more than the \$448 million Dr. Doms' declaration calculates as the inflation-adjusted advertising expenditure for 2010—more than the \$128 million increase Plaintiffs request. Either way, there is no need to require the Census Bureau to expend any additional funds on this operation.

Executed on this 11th day of February, 2020.

A handwritten signature in black ink, appearing to read 'Benjamin K. Taylor', written over a horizontal line.

Benjamin K. Taylor
Chief, Decennial Budget Office
Bureau of the Census

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED
PEOPLE, *et al.*,

Plaintiffs,

v.

BUREAU OF THE CENSUS, *et al.*,

Defendants.

No. 8:18-cv-00891-PWG

DECLARATION OF DEBORAH STEMPOWSKI

I, Deborah Stempowski, make the following Declaration pursuant to 28 U.S.C. § 1746, and state under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I currently serve as the Assistant Director for Decennial Census Programs, Operations and Schedule Management. I have served in that capacity since September 2019. Previously, I served as the Chief of the Decennial Census Management Division; I served in that capacity from May 2016 to September 2019. I have an undergraduate degree in Economics from Penn State University and a Masters in Financial Management from the University of Maryland, University College. I have been employed by the U.S. Census Bureau since 1991, starting as a GS-7 Survey Statistician and serving in positions of increasing responsibility over the past 28 years. I have been a member of the Senior Executive Service since 2012.

2. As the Assistant Director for Decennial Census Programs, Operations and Schedule Management, I am responsible for the successful execution of the decennial census and

the American Community Survey. Success relies on effective executive management of the operational design, implementation, and execution of the decennial census that meets the objectives of conducting a census of population and housing and disseminating the results to the President, the States, and the American people. This includes overall responsibility for the budget, schedule, and scope at both the portfolio and project levels, and monitoring the readiness and implementation of the 35 operations that make up the decennial census. I am knowledgeable and well informed about 2020 Census operations, and I make this declaration based upon my personal knowledge and/or upon information supplied to me in the course of my official duties.

I. Executive Summary

3. In this declaration, I address the following subjects and draw the following conclusions:

- a. I explain that the overarching goal and purpose of the 2020 Census design, the end toward which I and my colleagues at the Census Bureau have worked over the past decade, is to count *everyone* in the country once, only once, and in the right place, *including those in hard to count populations*. Substantial Census Bureau effort and resources are directed to counting the hardest to count populations, and numerous plans and programs have been instituted for this specific purpose.
- b. I outline the overall process by which the 2020 Census is being conducted and the numerous steps taken to ensure as accurate an enumeration as possible, and explain that operations are currently underway and cannot be changed to a significant degree without putting the success of the 2020 Census at risk.

- c. I explain the limited use that will be made of administrative records as part of the Nonresponse Followup Operation (NRFU), during which every household in the United States that does not self-respond will be visited in-person at least once.
- d. I explain the planned use of Mobile Questionnaire Assistance, which involves more than twice the level of funding that I understand Plaintiffs have requested for questionnaire assistance, and I explain that the number of Area Census Offices is a function of planned workloads and is not determinative of whether any individual is or is not counted.
- e. I explain the Census Bureau's planned level of enumerator hiring, which is on track and will be at a level sufficient to complete all reasonably anticipated NRFU workloads.
- f. I explain the extensive testing in which the Census Bureau engaged in designing the 2020 Census, including the operations I understand Plaintiffs to be challenging.
- g. I explain the extensive risk planning undertaken by the Census Bureau and the manner in which the Census Bureau's leadership is constantly monitoring and tweaking the details of operations in real time to make the enumeration successful.
- h. I respond to the declarations of Dr. Doms and Hillygus submitted by Plaintiffs, in particular the speculative and unsupported nature of their criticisms of the planned use of administrative records, hiring levels, and field infrastructure.

- i. I explain the immense burden that defending this litigation places on Census Bureau personnel at the busiest at this most important time in the decade for the Census Bureau, and how this burden puts the success of the 2020 Census at risk.

II. Overarching Goals of the Census and the Design of the 2020 Census

4. The Census Bureau goes to extraordinary lengths to count everyone living in the country once, only once, and in the right place, including those in hard to count populations. This is the core mandate of the Census Bureau, and is the most significant factor informing every decision made in designing, planning, testing, and executing the decennial Census.

5. An accurate count of the population is influenced by societal, demographic, and technological trends. The Census Bureau's mandate is to count everyone living in the United States. This includes the 50 states, the District of Columbia, and the territories of Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and U.S. Virgin Islands. To that end, significant funds, efforts, and resources are expended in capturing an accurate enumeration of the population including those who are hard to count. In particular, the 2020 Census operational design considers population groups that have historically been hard to count, as well as population groups that may emerge as hard to count – providing an opportunity for all to be enumerated.

6. The 2020 Census operational design is based on efficient, effective, and proven techniques. In formulating this design, the Census Bureau has tailored specific operations to reach and enumerate all persons, allocating the resources needed to enumerate hard-to-count populations. Almost every major 2020 operation contains components designed to reach hard to count populations—from stakeholder engagement, to content and forms design, to address frame completion activities, to field infrastructure, to offering multiple modes for self-response, to

operations designed specifically for the enumeration of population groups that have been historically hard to count, to the NRFU operation that enumerates households that did not self-respond to the census. The best explanation of the many integrated operations designed to reach these populations is set forth in Appendix B to Version 4.0 of the 2020 Census Operation Plan, a true and correct copy of which is attached as Exhibit A hereto. Examples include:

- Verifying address lists using partner-provided address data, satellite technology and address listers checking addresses in communities nationwide;
- In-person enumeration using paper questionnaires in areas such as Remote Alaska;
- Hand-delivering 2020 Census materials to areas impacted by natural disasters, such as those impacted by Hurricane Michael in Florida;
- Conducting a special operation to count persons in “Group Quarters.” Group Quarters include places such as college or university student housing, nursing homes, and corrections facilities;
- Working with local partners to identify locations, like shelters and soup kitchens, to best count people experiencing homelessness; and,
- Creating culturally relevant advertisements targeting the hard to count.

7. Resources are allocated to ensure as complete and accurate a count as possible.

Research and testing, in addition to the Census Bureau’s collective knowledge and experiences, has resulted in an effective approach to reach all population groups. There is no one-size-fits-all method to enumerate the population—especially population groups that are harder to count.

8. Significant changes from the 2010 Census design to the 2020 Census design make comparison of costs and workloads difficult. For example, a significant effort and expense in the 2020 Census went into developing the IT-related systems and infrastructure support for the 2020

Census, including the use of Enterprise systems and applications (meaning systems or applications used by the entire Census Bureau such as the Census Human Resources Information System), Decennial-specific systems, applications and interfaces (such as the Decennial Response Processing System which is a system unique to the 2020 Census for processing decennial census responses), Field IT systems and interfaces (such as the Field Operational Control System used to control, monitor, and track the field work for each decennial census field data collection operation), mobile computing, and cloud computing. The 2020 Census IT solutions, systems, and interfaces were designed to improve upon approaches used in the 2010 Census, and to move away from a reliance on the use of paper. With the decreased reliance on paper, the physical footprint required for staff, supplies, equipment, etc., is significantly less when compared to that of the 2010 Census.

9. The innovations driving the operational design of the 2020 Census centered around efforts to avoid cost increases that are unnecessary to maintain data quality. The general goal of the design was to conduct the 2020 Census at an overall cost per housing unit that does not exceed the constant dollar cost per housing unit of the 2010 Census so long as any changes did not reduce the quality of the count. With increased operational efficiencies, resources are focused on a complete and accurate count of the population, including individuals who are harder to count.

III. Current Status and Schedule of 2020 Census Operations

10. The purpose of the 2020 Census is to conduct a census of population and housing by counting individuals living in the 50 states, the District of Columbia, and the territories of Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and U.S. Virgin Islands, and recording their place of residence as of April 1, 2020, which is referred to as Census Day. Planning for the 2020 decennial census began a decade ago. The planning, research, design, development, and execution of a decennial census is a massive undertaking. The 2020 decennial census consists of 35 operations utilizing 52 separate systems. Monitoring the status and progress of the 2020 Census—the operations and systems—is managed in large part via an Integrated Master Activity Schedule, which consists of over 27,000 separate lines. Thousands of staff at Census headquarters and across the country support the development and execution of the 2020 census operational design, systems, and procedures. In addition, the conduct of the 2020 Census requires the hiring and management of hundreds of thousands of field staff across the country to manage operations and perform the fundamental tasks of collecting data in support of the decennial census.

11. The 2020 Census is well under way. We successfully completed our first major field data collection operation, In-Field Address Canvassing, on schedule in October 2019. The Address Canvassing operation (composed of both an in-office and an in-field component) ensured that the Census Bureau's address list and maps are as exact as possible, which is vital to the underlying structure to be used for an accurate enumeration of the population. The In-Field Address Canvassing operation was managed out of 39 Area Census Offices (ACOs) across the nation. The Census Bureau hired over 3,600 census field supervisors and over 32,000 listers to update and quality-check over 50 million addresses in over 1.1 million geographic areas.

Address Canvassing is one of the early operations in a set of highly integrated operations and activities that result in the production and delivery of apportionment counts and redistricting data. If the Census Bureau was required to redo Address Canvassing, it would cause a delay to the remainder of work to be done. This delay would jeopardize the statutorily mandated December 2020 delivery of the apportionment counts to the President. *See* 13 U.S.C. § 141(b). As of the signing of this declaration we are roughly a month from the start of general data collection operations.

12. The first enumeration of the 2020 Census occurred on January 21, 2020 in Toksook Bay, Alaska. Field staff are now conducting the in-person enumeration of the residents in approximately 221 remote Alaska villages prior to the thaw, when residents disperse to hunt, fish, and pursue warm-weather employment.

13. In an effort to ensure the most efficient process to enumerate households, every block in the United States is assigned to one specific type of enumeration area (TEA). The TEA reflects the methodology used to enumerate the households within the block. There are two TEAs where self-response is the primary enumeration methodology: TEA 1 (Self-Response) and TEA 6 (Update Leave).

14. TEA 1 uses a stratified self-response contact strategy to inform and invite the public to respond to the census, and to remind nonresponding housing units to respond. Invitations, reminders, and questionnaires will be mailed over the course of approximately six weeks. These mailings are divided into two panels, Internet First and Internet Choice. Internet First emphasizes online response as the primary self-response option. Mailings to the Internet First panel begin with an invitation letter that alerts the housing unit to the beginning of the 2020

Census and provides the Census ID¹, URL for the online questionnaire, and information for responding by phone.

15. Internet Choice is targeted to areas of the nation that are least likely to respond online. Historical response rates from other Census Bureau surveys, internet access and penetration, and demographics are used to determine those areas least likely to respond online. Mailings to the Internet Choice panel begin with an invitation letter that alerts the housing unit to the beginning of the 2020 Census and provides the Census ID and URL for the online questionnaire, information for responding by phone, and also a paper questionnaire. Housing units in Internet Choice areas have the *choice* to respond on paper beginning with the initial contact. All nonresponding housing units, regardless of panel, receive a paper questionnaire after the initial mailing and two separate reminder mailings.

16. Update Leave (TEA 6) is conducted in areas where the majority of the housing units do not have mail delivery to the physical location of the housing unit or the mail delivery information for the housing unit cannot be verified. The purpose of Update Leave is to update the address list and feature data and to leave a 2020 Census Internet Choice package at every housing unit. The major difference from TEA 1 is that a Census Bureau employee rather than a postal carrier delivers the 2020 Census invitation to respond, along with a paper questionnaire. Housing units also have the option to respond online or by phone.

17. The self-response period begins in mid-March. During the self-response period, the Census Bureau will deploy staff across the country to assist people in completing their

¹ A Census ID is a unique identifier assigned to each address in a decennial census; the Census ID is used to track whether an address has self-responded or to track the address through nonresponse data collection and, ultimately through response processing and data tabulation.

decennial census response. The staff are part of a mobile questionnaire assistance response effort deployed to areas that have a low self-response rate.

18. Approximately six weeks after Census Day, the Census Bureau will begin its NRFU operation. From approximately mid-May through late July, 2020, the Census Bureau will deploy hundreds of thousands of enumerators across the nation to visit addresses for which a self-response has not been received. Each case in the NRFU workload is subject to a set number of in-person attempt days (multiple attempts during the same day are considered a single attempt day). The default number of attempts for NRFU cases is six. Select cases may be subject to additional contact attempts near the end of NRFU. Additional details on NRFU are provided below and can be found [here](#).

19. From August 1 through November 30, 2020, we will process the responses that we collected, resulting in the production of the Census Unedited File. Producing the Census Unedited File involves coding write-in responses, updating the address and geospatial databases, determining housing unit status (occupied, vacant, or non-existent), establishing a single enumeration record for an address when multiple returns are received, applying count imputation, and determining the final housing unit population count. The Census Unedited File is used to produce the apportionment counts, which must be created, reviewed, cleared and delivered to the President by December 31, 2020.

20. While we produce the apportionment counts, we also begin further processing of the Census Unedited File to produce characteristic information about the households we counted, including implementing statistical procedures to account for missing or inconsistent information. The result of this processing is Census Edited File. When the Census Edited File is complete, we implement differential privacy protections to ensure that the release of tabulated statistics does

not reveal information on individual respondents. The release of these data for redistricting begins in mid-February, 2021 and runs through March 31, 2021, as required by law.

IV. Use of Administrative Records in the Nonresponse Followup (NRFU) Operation

21. NRFU is the field data collection operation designed to ensure a complete enumeration of nonresponding housing unit addresses. The primary purpose of NRFU is to conduct in-person contact attempts at each and every housing unit address that did not self-respond to the decennial census questionnaire.

22. After giving the population an opportunity to self-respond to the census, census field staff, known as enumerators, will attempt to contact nonresponding addresses to determine whether each address is vacant, occupied, or does not exist, and when occupied, to collect census response data. Multiple contact attempts to nonresponding addresses may be needed to determine the housing unit status and to collect decennial census response data.

23. The 2020 Census NRFU operation is similar to the 2010 Census NRFU operation, but improved. In both the 2010 Census and the 2020 Census, cases in the NRFU workload are subject to six contact attempts. In both the 2010 and 2020 NRFU, the first contact attempt is an in-person attempt. In the 2010 Census, these six contact attempts could be conducted as three in-person attempts and three attempts by telephone. By comparison, each contact attempt in the 2020 Census NRFU will be an in-person contact attempt.

24. In both the 2010 Census and 2020 Census NRFU, if upon the first contact attempt an enumerator determines an address is occupied and is able to obtain the decennial census response data for the housing unit, then the housing unit has been counted, and no follow-up is needed.

25. If upon the first contact attempt, the enumerator is not able to obtain a response, the enumerator is trained to assess whether the location is vacant or unoccupied. Enumerators will use clues such as empty buildings with no visible furnishings, or vacant lots, to identify an address as vacant or non-existent.

26. In both the 2010 and 2020 Census, a single determination of a vacant or non-existent status was not sufficient to remove that address from the NRFU workload; a second confirmation is needed. If a knowledgeable person can confirm the enumerator's assessment, the address will be considered vacant or non-existent and no additional contact attempts are needed. A knowledgeable person is someone who knows about the address as it existed on census day or about the persons living at an address on census day. A knowledgeable person could be someone such as a neighbor, a realtor, a rental agent, or a building manager. This knowledgeable person is known as a proxy respondent.

27. If a knowledgeable person cannot be found to confirm the status of vacant or non-existent, use of administrative records may provide the confirmation of the enumerator's assessment. The Census Bureau does not rely on a single administrative records source to determine an address is vacant or non-existent. Rather, multiple sources are necessary to provide the confidence and corroboration before administrative records are considered for use. For example, the Census Bureau is confident that an address is vacant or non-existent when the U.S. Postal Service indicates that Census Bureau attempts to deliver 2020 Census mailings were undeliverable, and there are other sources (*i.e.*, other administrative records) indicating the absence of people at an address. When used in combination with an enumerator's assessment of vacant or non-existent, corroborated administrative records provide the second confirmation that a nonresponding address is vacant or non-existent. In these instances, the status of the

nonresponding address is indicated as vacant or non-existent and no additional in-person contact attempts will be made. Nor should there be: having confirmed through administrative records and an in-person visit that no person resides at a given address, it would be wasteful to follow up with further in-person visits to count its residents, because it is evident there are none.

28. If, upon the first in-person contact attempt, the enumerator believes the address is occupied, but no knowledgeable person is available to complete the enumeration, if the Census Bureau has consistent and high-quality administrative records from trusted sources, we will use the administrative records as response data for the household and no further contact will be attempted. We consider administrative records to be of high quality if they are corroborated with multiple sources. Examples of high quality administrative records that we plan to use to enumerate occupied housing units include Internal Revenue Service Individual Tax Returns, Internal Revenue Service Information Returns, Center for Medicare and Medicaid Statistics Enrollment Database, Social Security Number Identification File, and 2010 Census data.

29. Regardless of whether administrative records are used as a confirmation of vacancy or non-existent status or for the purposes of enumerating an occupied housing unit, the Census Bureau will, as a final backstop, send a final mailing encouraging occupants, should there be any, to self-respond to the 2020 Census.

30. For all addresses, if the enumerator is unable to make contact with someone, s/he will leave a Notice of Visit at the address. A Notice of Visit provides information for the residents on how to self-respond to the decennial census. If a self-response is received, the address is considered enumerated and no further in-person contact attempts by a census enumerator will be made.

31. Administrative records usage for corroboration of vacancy and non-existent status and for the purposes of enumeration is limited to those nonresponding addresses where the Census Bureau has confidence in the use of administrative records. In such cases, multiple sources of information (including the assessment of an individual who has made an in-person contact attempt in the field) will be used to determine the approach to and enumeration of the housing unit.

32. The vast majority of nonresponding addresses in the NRFU workload will require the full battery of in-person contact attempts to determine the status of the nonresponding address (vacant, occupied, does not exist) and to collect 2020 Census response data. The full battery of in-person contact attempts also includes the ability to collect information about persons living in a nonresponding housing unit from a proxy respondent. Nonresponding units become eligible for a proxy response after a pre-determined number of unsuccessful attempts to find residents of a nonresponding address.

33. Contrary to Plaintiffs' assertions, the Census Bureau has no reason to believe that its plans to use administrative records during NRFU will increase a differential undercount. The NRFU contact strategy was informed by and evolved as a result of each intercensal field test (i.e., the extensive testing conducted after the 2010 Census in preparation for the 2020 Census). Final adjustments to the contact strategy were made following the 2018 End to End Census Test. We tested this change rigorously and it is a careful and targeted change; our testing indicates no reason to believe this change will harm data quality or increase any differential undercount. Use of administrative records, when and where feasible, allows the Census Bureau to resolve cases in an efficient and effective manner. In fact, with this approach, in-person contact attempts can be

focused on those households that are not represented well by administrative records – in general, the harder to count of the nonresponding households.

34. The operational design for NRFU evolved over the course of the decade. Use of administrative records, field management structures, systems, procedures, data collection tools and techniques were proven in tests occurring in 2013, 2014, 2015, 2016, and 2018.

V. Mobile Questionnaire Assistance Centers

35. In the 2010 Census, Questionnaire Assistance Centers (“QACs”) functioned as distribution sites for “Be Counted” forms, which were Census questionnaires that could be submitted without a Census ID. The QAC staff were not authorized to accept completed forms, rather they could only hand out the form, provide assistance if needed, and direct the respondent to a mail box. The Census Bureau did not plan to repeat the QAC operation in the 2020 Census because the operation didn’t make sense in light of the new design.

36. Specifically, for the 2020 Census, from the very earliest planning, we assumed reliance on response through the internet, rather than on paper Be Counted forms, and that internet responses would allow responses without a Census ID, which we call Non-ID responses. Non-ID response makes it easy for people to respond anytime, anywhere, without the need for their unique Census ID. Non-ID response allows a respondent to provide their decennial census response data via the internet or by phone. By collecting a respondent’s address as part of the decennial response data and then matching that address to the Census Bureau’s address inventory, the Census Bureau will associate the response to the appropriate Census ID. With no paper Be Counted forms, there was simply no need for QACs as implemented in the 2010 Census.

37. It is also important to note that the QACs in the 2010 Census were not a cost-effective method to achieve non-ID self-responses. In the 2010 Census, about 760,000 persons were added to the final population counts from Be Counted forms nationwide – an average of only about 20 persons from each of the approximately 39,000 locations (30,000 QACs and 9,000 Be Counted).

38. Congress requested that the Census Bureau explore alternatives to revive QACs. The Census Bureau responded in April 2019 with a proposal to create a new Mobile Response Initiative. We received favorable feedback on the Mobile Response Initiative proposal, and Congress has since allocated additional funding for it. We call this new operation MQA, or Mobile Questionnaire Assistance. The proposal takes advantage of the new ability to take self-responses over the internet and in multiple languages. Over 4,000 staff hired across the country as Recruiting Assistants, rather than being let go in March 2020, will be converted to working as MQA staff. They will take their tablets to places where respondents in hard-to-count or low response areas may congregate, such as markets, festivals, events, church services and the like. Rather than waiting for respondents to visit a QAC, this staff will be highly mobile with the ability to visit multiple areas in a single day. The strategy moves from motivating a response to actually obtaining a secure, on-the-spot response. The MQA operation is simply a better solution than the old QAC model from the 2010 Census.

39. As I explained above, taking a decennial census is a massive endeavor. The 2020 Census has over 27,000 separate lines in the Integrated Master Activity Schedule and 52 separate systems. The 52 systems make up the IT infrastructure required to support the execution of the 2020 Census. Encompassed within these systems are capabilities including, but not limited to: an online job application for field staff, the Internet Response application, control systems used

to manage the 2020 Census through creation of the mail workload, tracking of responses, identification of nonresponding housing units, application of administrative records, and processing and tabulation of response data. We are now engaged in data collection operations and it is far too late to change the census operational design. Late changes—even actions that may seem minor or straightforward to an observer lacking an operational understanding of conducting the United States decennial census—will imperil the success of the 2020 Census. In particular, it is many years too late to make substantive changes such as opening physical Questionnaire Assistance Centers—or to change the strategy for using administrative records in NRFU, discussed above.

40. Additionally, we are long past the time when the Census Bureau could open physical QACs, even if we believed this was a good idea, which we do not. Field enumeration has begun and self-response will begin in less than a month. There is not time to identify and lease locations, a process that requires years rather than months or weeks.

41. We plan to expend from \$110 to \$120 million on the Mobile Response Initiative. It is my understanding that Plaintiffs believed that our plans did not include funding for any such initiative. And it is also my understanding that our anticipated expenditure on this initiative is more than double the amount Plaintiffs have requested be spent on increased ground operations. Accordingly, I believe this request has been resolved by the Census Bureau's current plans.

VI. Area Census Offices

42. Similarly, we are far past the date we could open additional Area Census Offices (ACOs), even if we believed it was a good idea. This is a process, that takes years, not months, and being forced to open additional ACOs would certainly delay the census. The federal

contracting process for acquiring leased space is complex because it involves other agencies and significant time periods for necessary reviews.

43. We determined the needed number and location of ACOs through a data-driven process based on the estimated number of enumerators needed for the 2020 Census. The Census Bureau projected the workload and determined the number of enumerators needed to conduct the NRFU operation for the 2020 Census. We used several data sources to estimate the number of enumerators needed per area, such as response rate projections based on the 2010 Census, the estimated NRFU workload, and the locations of group quarters.²

44. ACOs, like the Local Census Offices used in the 2010 Census, are not open to the public—the public does not visit an ACO to be enumerated. As described above, regardless of the location of the nearest ACO, individuals will be counted either by self-responding (completing a form from any location of their choosing), through an in-person visit to their homes, in the rarest case where neither is possible, through administrative records, or when all else fails through count imputation.

45. ACOs house the managers, staff, materials, and equipment (laptops, smartphones, tablets, etc.) needed to support the hundreds of thousands of Census Bureau employees conducting local census operations, including NRFU, group quarters, and other enumeration operations. The fact that there are fewer ACOs planned for the 2020 Census than there were

² ACO locations were chosen based on the following broad criteria: (1) Each state must have at least one ACO; (2) Indian reservations and military bases (regardless of county, state, or regional boundaries) will be managed by only one ACO; (3) ACO areas of responsibility will not cross state or regional boundaries (with noted exceptions above); (4) ACO areas of responsibility will align with county boundaries (except for counties with multiple ACOs); (5) each ACO area of responsibility will contain at least one major city; and ACO areas of responsibility must consider the transportation network and impassable geographical features and water bodies.

Local Census Offices used in the 2010 Census thus has no real bearing on whether any person will or will not be counted.

46. It is also incorrect to treat 2020's ACOs as equivalent to 2010's Local Census Offices. The difference in number is directly tied to the difference in function based on the changed design of the 2020 Census. The 2010 Census relied heavily on the use of paper – paper in the form of questionnaires, maps, address listing pages, training materials, field manuals, time and expense reports, etc. Larger offices with more space were needed to support the paper-based 2010 Census. Enumerators met with their supervisors on a daily basis to exchange completed time and expense forms, receive new assignments and materials, and to submit completed assignments which were then taken to the Local Census Office for check-in and processing.

47. In contrast, enumerators in the 2020 Census will use mobile devices to collect census responses, to receive their assignments, to submit time and expense information, and to plan their route between each location they have been assigned to visit. This includes an advanced Field Operational Control System, which uses an optimizer to determine the most efficient set of cases to assign the enumerators and determines the most efficient routing of their field work. For example, the optimizer will assign cases to enumerators whose home addresses are closest to the addresses that require an in-person interview. The optimizer will also route enumerators to their assigned cases in an order that takes into consideration the best time to contact a particular household.

48. Each evening, enumerators will enter their work availability into the field data collection application to indicate the hours they are able to work for the following five days. The optimizer will, in overnight processing, analyze the enumerators' availability and the other critical information regarding the case, enumerators' home locations, their hours of availability,

and best times to contact the case. Based on the optimizer's analysis, the enumerators are assigned nonresponding cases to work. When enumerators log into their iPhones in the morning, their assignments will be loaded onto their devices to enable their work for the day. The cases will be sorted in the optimal order to ensure the enumerators travel to their cases and conduct interview attempts in the most efficient manner possible.

49. Our research and testing indicates that this improvement will make enumerators far more productive and efficient, which will likely require fewer enumerators than were required to complete the 2010 Census. But it also means that they do not need offices close enough to their residences to visit on a daily basis. Accordingly, having fewer field offices than 2010 will not negatively affect NRFU operations. The location of ACOs was driven by the criteria mentioned above. Our decisions were based on operational needs and effective and efficient use of taxpayer dollars.

VII. Enumerator Hiring

50. The Census Bureau expects to hire between 320,000 and 500,000 field staff to conduct field operations in 2020. The majority of these field staff will work in the NRFU operation and we are actively recruiting to achieve this goal.

51. Our hiring plans are a function of the anticipated self-response rate, expected enumerator productivity, the duration of the operations, and how many hours per week enumerators are willing and able to work. To complete the NRFU data collection between mid-May and the end of July, we estimate that we will need to hire 320,000 field staff based on a 60.5% self-response rate, productivity of 1.55 cases/hour, and work availability of 20.5 hours/week. Under the most extreme negative assumptions (e.g., pairing achieving only a 55% self-response rate with productivity of only 1.25 cases per hour), we could need almost 500,000

field staff. Although we will not know the exact magnitude or location of the NRFU workload until early May, based on current recruitment rates, we expect to be able to hire as enumerators as will be needed, perhaps as many as 500,000.

52. In the unlikely event we do not achieve even a 55% self-response rate, the Census Bureau has contingency strategies available. The Census Bureau's recruiting strategy is designed to provide an ample pool of resources from which it can pull, providing flexibility needed to expand beyond the estimated number of enumerators needed. In addition, while our standard procedure is to hire enumerators to work in the geographic areas where they live, should we experience a greater than anticipated workload in any specific area, we could move enumerators to work in areas of greater need. In the 2010 Census NRFU operation, 98% of the NRFU workload was completed within seven weeks, and as the work was completed, staff were released. In 2020, if we experience similar completion rates, staff could be retained and moved to work in areas of need. Additionally, we have the ability to authorize overtime for enumerators, or in drastic situations even a potential ability to extend the duration for completing NRFU. All enumerators that are hired and successfully meet the training requirements will be deployed to conduct 2020 Census field work.

53. In short, it is inappropriate for the Census Bureau to be ordered to hire a specific number of enumerators, particularly in advance of knowing what the required workload will actually be and where in the country that workload will be heaviest. We have a well thought out plan to conduct NRFU, based on a decade of preparation and testing, and we are confident in our ability to hire the needed workforce.

VIII. Research and Testing of the 2020 Census Design

54. As noted above, the 2020 Census is a highly complex operation with many interconnected components, many of which are designed specifically to enumerate hard-to-count populations. Given the immense effort required to conduct the census, the importance of the results, and the decade of work by thousands of people that goes into planning and conducting the decennial census, the Census Bureau expends a significant amount of effort to evaluate its planning and design to ensure that its operations will be effective in coming as close as possible to a complete count of everyone living in the United States.

55. The operational design of the 2020 Census has been subjected to repeated and rigorous testing. Testing and design of the 2020 Census was an iterative process. With the results of each set of tests, we revised our plans and assumptions as necessary.

56. I have listed below eight significant tests conducted prior to the 2020 Census. Seven of the tests listed below directly contributed to the support of the NRFU operational design or the infrastructure needed to support it. The eighth test pertained to In-Field Address Canvassing.

- a. **2013 Census Test.** The 2013 Census Test explored methods for using administrative records and third-party data to reduce the NRFU workload. Key objectives of the 2013 Census Test included:
 - i. Evaluate the use of administrative records and third-party data to identify vacant housing units and remove them from the NRFU workload;
 - ii. Evaluate the use of administrative records and third-party data to enumerate nonresponding occupied housing units to reduce the NRFU workload;

- iii. Test an adaptive design approach for cases not enumerated with administrative records and third-party data; and
 - iv. Test methods for reducing the number of enumeration contact attempts as compared with the 2010 Census.
- b. **2014 Census Test.** The 2014 Census Test built upon the results from the 2013 Census Test specific to administrative records and third-party data usage to reduce the NRFU workload. Key objectives of the 2014 Census Test included:
 - i. Testing various self-response modes, including the Internet, telephone, and paper, and response without a preassigned census identifier;
 - ii. Testing the use of mobile devices for NRFU enumeration in the field;
 - iii. Continuing to evaluate the use of administrative records and third-party data to remove cases (vacant and nonresponding occupied housing units) from the NRFU workload;
 - iv. Testing the effectiveness of applying adaptive design methodologies in managing the way field enumerators are assigned their work; and
 - v. Examining reactions to the alternate contacts, response options, administrative record use, and privacy or confidentiality concerns (including how the Census Bureau might address these concerns through micro- or macro-messaging) through focus groups.
- c. **2014 Human-in-the-Loop Simulation Experiment (SIMEX).** Key findings included:
 - i. Determination that the field management structure could be streamlined and the supervisor-to-enumerator ratios increased;

- ii. Messaging and alerts within the operational control system provided real-time and consistent communication; and
 - iii. Smartphones were usable by all people—even those with little technology experience were able to adjust and adapt.
 - d. **2015 Optimizing Self-Response Test.** The objectives of this test included:
 - i. Determining use of digital and target advertising, promotion, and outreach to engage and motivate respondents;
 - ii. Offering an opportunity to respond without a Census ID (Non-ID Processing) and determine operational feasibility and potential workloads around real-time Non-ID Processing; and
 - iii. Determining self-response and Internet response rates.
 - e. **2015 Census Test.** The 2015 Census Test explored reengineering of the roles, responsibilities, and infrastructure for conducting field data collection. IT also tested the feasibility of fully utilizing the advantages of planned automation and available real-time data to transform the efficiency and effectiveness of data collection operations. The test continued to explore the use of administrative records and third-party data to reduce the NRFU workload. Key objectives included:
 - i. Continue testing of fully utilized field operations management system that leverages planned automation and available real-time data, as well as data households have already provided to the government, to transform the efficiency and effectiveness of data collection operations;

- ii. Begin examining how regional offices can remotely manage local office operations in an automated environment, the extent to which enumerator and manager interactions can occur without daily face-to-face meetings, and revised field staffing ratios;
 - iii. Reduce NRFU workload and increase productivity with the use of administrative records and third-party data, field reengineering, and adaptive design; and
 - iv. Explore reactions to the NRFU contact methods, administrative records and third-party data use, and privacy or confidentiality concerns.
- f. **2016 Census Test.** The 2016 Census Test tested different supervisor-to-enumerator staffing ratios and incremental improvements and updates to the field data collection software that guided an enumerator through interviews. The 2016 Census Test also allowed the continued evaluation of the use of administrative records to reduce the NRFU workload. Key NRFU objectives included:
- i. Refining the reengineered field operations;
 - ii. Refining the field management staffing structure;
 - iii. Testing enhancements to the Operational Control System and field data collection application; and
 - iv. Testing scalability of Internet and Non-ID Processing during self-response using enterprise solutions.

Objectives related to self-response included:

- i. Testing provision of language support to Limited English Proficient populations through partnerships and bilingual questionnaires;

- ii. Testing the ability to reach demographically diverse populations;
 - iii. Testing deployment of non-English data collection instruments and contact strategies; and
 - iv. Refining Real-Time Non-ID processing methods, including respondent validation.
- g. **2018 End-to-End Census Test.** The 2018 End-to-End Census Test focused on the system and operational integration needed to support the NRFU operation. Nearly all 2020 system solutions supporting the NRFU operation were deployed. The test also allowed continued evaluation of the NRFU contact strategy. The objectives of this test included:
- i. Testing and validating 2020 Census operations, procedures, systems, and field infrastructure together to ensure proper integration and conformance with functional and nonfunctional requirements.
- h. **Address Canvassing Test (conducted in the fall of 2016).** The Address Canvassing Test examined the effectiveness of the In-Office Address Canvassing through the results of the In-Field Address Canvassing. The objectives of the test included:
- i. Implementing all In-Office Address Canvassing processes;
 - ii. Evaluating the effectiveness of online training for field staff;
 - iii. Measuring the effectiveness of In-Office Address Canvassing through In-Field Address Canvassing; and
 - iv. Integrating multiple information technology applications to create one seamless operational data collection, control, and management system.

IX. Risk Planning and Contingency Operations

57. Plaintiffs also appear to misunderstand the nature of the Census Bureau's planning documentation, appearing to suggest that the operational plans and budget estimates are fixed. This is not the case. The Census Operational Plan went through four public releases between October 2015 and December 2018, as testing was completed and plans were revised. Similarly, the Life Cycle Cost Estimate, which is the Census Bureau's official estimate of the cost of carrying out the operational plan, has gone through two versions between 2017 and 2019. But even after the publication of the "final" versions of these documents, leading into the implementation phase of the census, our plans and anticipated spending may change as events develop on the ground.

58. In particular, experience with conducting the census over many decades has demonstrated that an operation of this scale never goes exactly as planned. Assumptions that were supported by testing may not play out in the census environment, certain populations or areas may prove easier than anticipated to count while others may prove harder, some operations may end up requiring more effort than anticipated while others require less, and on occasion truly unpredictable risks like natural disasters can occur that totally transform how a count must be conducted in certain areas.

59. As a result of these risks, the Census Bureau does not commit all of its funding to specific operations in advance, nor do our initial expected plans—including the number of people expected to do any particular job—reflect our only or final planning efforts. For some potential circumstances, we have designed specific plans in advance for potential unexpected but conceivable outcomes. For others, we simply reserve funds without designing plans in advance, because we cannot foresee with sufficient certainty what they will be.

When census operations are underway, Census Bureau leadership is constantly monitoring the operations and results of the count in real time. If particular populations or areas appear to be responding less than others—or less than anticipated—we will increase our outreach, be it through advertising, partnership, mobile questionnaire assistance, or any combination of the three, depending on the need that materializes. Similarly, if the NRFU workload turns out to be larger than anticipated, we can at that point deploy more enumerators if it becomes necessary to do so. The same is true for any problem that arises—the Census Bureau is committed to conducting the best count possible, and will do whatever it can on a real-time basis to fulfill that goal.

X. Response to Drs. Doms & Hillygus

60. In the course of preparing this declaration, I have reviewed the portions of the Declarations of Drs. Mark Doms and D. Sunshine Hillygus submitted in connection with Plaintiffs Motion for Preliminary Injunction that pertain to the issues of NRFU operations and field operations.

61. For the reasons stated above, Dr. Doms' and Dr. Hillygus's concerns regarding the size of the enumerator workforce and number of field offices are unfounded. The Census Bureau is ready to hire the number of individuals needed for the potential range of reasonably likely workload volumes. Dr. Doms chose to focus only on self-response and failed to consider the expected productivity gains in relation to the 2010 Census in expressing his concern about the estimated number of enumerators that the Census Bureau will need. Even if the self-response rate is lower than expected, the Census Bureau is on track to hire as many enumerators as will be needed, having anticipated a full range of potential scenarios in planning. Dr. Doms mistakenly

treats estimates made for planning purposes as if they were a fixed goal, rather than a rough prediction within a range of anticipated uncertainty.

62. Dr. Hillygus, by contrast, speculates that productivity rates observed in the 2018 end-to-end test may not hold because of the demographics of Providence County, the county in which the end-to-end test was conducted, has “high rates of Internet access and historically high levels of Census cooperation,” and notes the county’s self-response rate. But productivity gains of the enumerators were driven by our new technology-assisted workflow. Self-response rates and demographics of respondents impact workload, not productivity, and Dr. Hillygus’s claim to the contrary is borne out of guesswork and misunderstanding.

63. Dr. Doms and Dr. Hillygus also mistakenly treat the number of field offices as meaningful for the success and quality of the enumeration, when in fact the number of needed ACOs is a simple function of anticipated workloads and productivity. The number of offices used for the 2010 Census is not determinative of the number needed for the 2020 Census, given the substantial number of design changes between the two censuses, including the move from a paper-based system to a primarily digital one. Dr. Hillygus’s suggestion that the demographics of the county in which an ACO is located determine the effectiveness of the count in that area is inaccurate for similar reasons. Enumerators will go to the addresses of all non-responding units; the location of the enumerators is relevant, the location of the offices is not.

64. Similarly, Dr. Hillygus’s conclusions about the 2010 Census Questionnaire Assistance Centers ignores the illogic of bringing back physical locations for the distribution of paper Be Counted forms, as there are no more paper Be Counted forms. Dr. Hillygus cites no support for her claim that the 2020 Census mobile questionnaire assistance centers are “unlikely

to be effective.” Congress has expressly indicated its desire that the Census Bureau conduct this operation and her statements about its effectiveness are simply speculation.

65. Finally, Dr. Hillygus’s statements about the use of administrative records potentially increasing a differential undercount are also conjecture. As noted above, multiple sources of information will be used to confirm any decision based on administrative records, and the Census Bureau will make at least one in-person visit to every address that does not self-respond. Further Dr. Hillygus’s concern that minority populations may be less well-represented in administrative records would still not mean that use of administrative records makes those populations more likely to be uncounated; it simply means that those populations are more likely to be enumerated through multiple in-persons visits than through the use of administrative records.

XI. This Litigation Burdens the Census Bureau and Puts the Census at Risk

66. As I have previously stated in a declaration dated December 18, 2019 in a challenge to 2020 Census operations in the Southern District of New York, *Center for Popular Democracy et al. v. Bureau of the Census et al.*, 19-cv-10917, it would be burdensome for the Census Bureau to have to engage in a substantive defense of this lawsuit. In that declaration, I stated that I typically worked over 50 hours per week on Monday – Friday, and often additional hours on the weekend. Those numbers have only increased, given that we have begun field data collection and are posed to begin self-response operations. I know from personal knowledge (phone calls, emails, etc.) that other members of the decennial leadership team are working similar hours. Daily production status meetings began in July 2019 and are held each weekday. Key operational staff review and discuss events, check system statuses, and review output. I chair a meeting with senior decennial leadership where we review key operational information

and address issues escalated to senior leadership. The remainder of the time is spent conducting smaller meetings to address future operations and their readiness for production, monitoring budget, as well as providing senior-level oversight for the 2020 Census. My day also includes significant time preparing updates for oversight from the Department of Commerce, GAO, OIG, the Census Bureau's advisory committees, and both Chambers of Congress.

67. We have identified individuals (including myself) who have been asked to perform work related to this lawsuit, and all are essential to maintaining operations during this time. To require Census staff members to shift their focus from Census work to assist in defense of this lawsuit on an ongoing basis could jeopardize the ability of the Census Bureau to carry out the 2020 Census in accordance with its statutorily mandated deadline of December 2020 and would impose an immense burden on the Census Bureau at the busiest and most important period of the decade for its work.

68. This burden creates a significant risk to accurate and timely completion of the census because, as noted above, census operations are continually monitored and updated to address unforeseen issues and allocate resources as necessary to solve problems on a daily basis. Each person hour expended by a senior official at the Census Bureau participating in the defense of this litigation is an hour that person is unavailable to work on the task of counting over 330 million people in 50 states, the District of Columbia and five territories. It is my professional, informed opinion that 2020 Census operations would be imperiled were key members of the Census Bureau leadership team to be forced to drop their operational responsibilities to provide litigation support in this lawsuit.

Executed on this 10th of February 2020.

A handwritten signature in black ink, reading "Deborah Stempowski". The signature is written in a cursive style with a horizontal line underneath it.

Deborah Stempowski
Assistant Director for Decennial Census Programs,
Operations and Schedule Management
Bureau of the Census

Exhibit A

Appendix B

2020 Census Operational Design: An Integrated Design for Hard-to-Count Populations

The goal of each decennial census is to count everyone once, only once, and in the right place. Accomplishing this is no small task; it is impacted by the ever-evolving environment in which we live, work, and will conduct the 2020 Census. Societal, demographic, and technological trends result in a population that is harder and more expensive to enumerate. As it becomes more challenging to locate individuals, connect with them, and solicit their participation through traditional methods, the U.S. Census Bureau must, decade after decade, devote additional thought and effort to understanding our environment and the potential impacts on counting the population, especially

populations that have historically been hard to count.

To establish a framework around which we will consider hard-to-count populations, we will leverage the work of Roger Tourangeau. Slight modifications to Tourangeau’s definitions of the segmentation of hard-to-count populations have been made to fit the 2020 Census environment. The 2020 Census operational design considers the hard-to-count population in relation to four segments: Hard-to-Locate, Hard-to-Contact, Hard-to-Persuade, and Hard-to-Interview, as depicted in the following image.

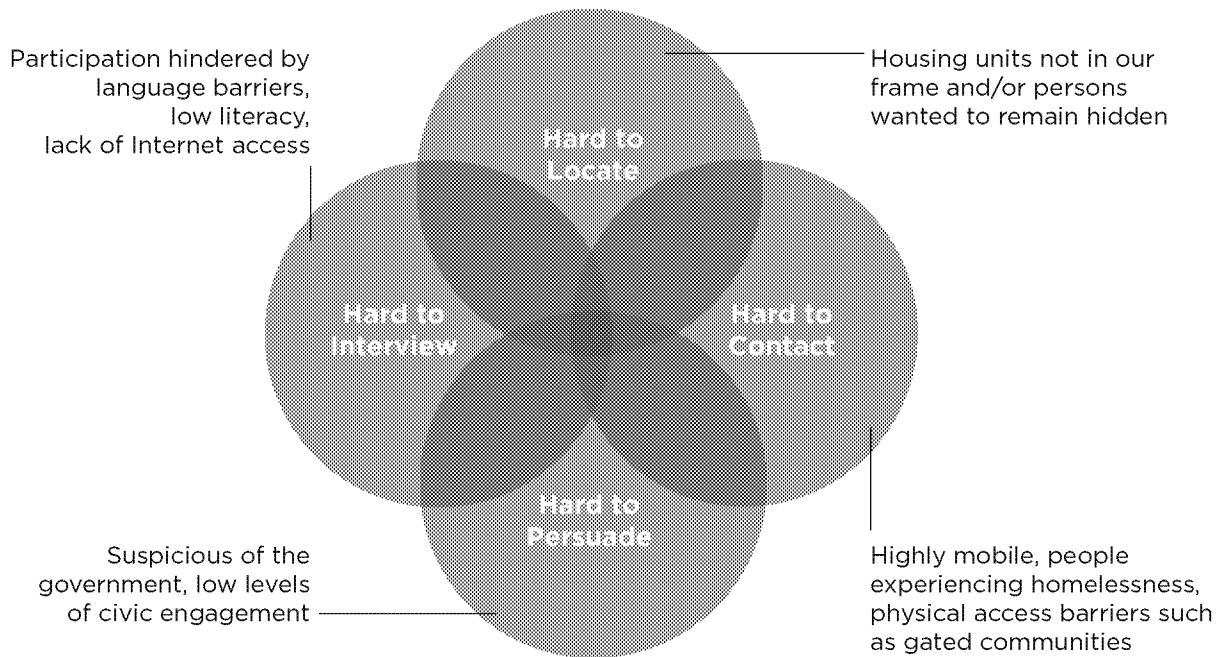


Figure 1: 2020 Census Hard-to-Count Framework

The Hard-to-Locate segment includes housing units that we do not have in our frame and includes persons wanting to remain hidden. Persons may want to remain hidden to keep themselves or certain characteristics about themselves quiet out of fear or other factors that create reluctance to respond. The Hard-to-Contact segment includes highly mobile populations, people experiencing homelessness, and populations with physical access barriers such as gated communities. The Hard-to-Persuade segment can include populations with low civic engagement and populations suspicious of the government. In addition, the Hard-to-Interview segment can include populations where participation may be hindered by language barriers, low literacy, or lack of Internet access. Some populations may fall in one, more than one, or all of these segments of the Hard-to-Count (HTC) Framework.

As our environment evolves and we lay the foundation for the 2020 Census operational design, we must ask ourselves if and how the design impacts, changes, or adds to the populations we historically think of as the hard-to-count. These populations include, but are not limited to:

- Young children.
- Highly mobile persons.
- Racial and ethnic minorities.
- Non-English speakers.
- Low-income persons.
- Persons experiencing homelessness.
- Undocumented immigrants.
- Persons who have distrust in the government.
- Lesbian, Gay, Bisexual, Transgender, and Questioning/Queer (LGBTQ) persons.
- Persons with mental and physical disabilities.
- Persons who do not live in traditional housing.

The ever-evolving societal changes and trends have influenced the 2020 Census operational design. Woven throughout the operational design are operations and activities undertaken for populations that have historically been hard to count, continue to be hard to count, or are emerging as hard to count. Shown in Figure 2 is the 2020 Census operational placemat. Shaded in darker blue are operations that make the most significant

contributions to an integrated design for hard-to-count populations. Through these operations the Census Bureau:

- Engages with stakeholders to understand the opportunities and challenges in enumerating hard-to-count populations.
- Determines what information to collect.
- Identifies the addresses where people live or could live.
- Determines how to connect with people.
- Motivates people to respond.
- Collects information from all households, including those residing in groups or unique living arrangements.

To a certain extent, any deviation taken from the traditional or “ideal” path to response can be seen as an effort to encourage response and participation from someone who might otherwise not respond to, and be counted as part of the 2020 Census. From an operational design perspective, the ideal path to a 2020 Census response involves the delivery of an initial invitation letter containing a unique census identifier, a respondent receiving the letter and sitting down at a computer or similar device and using their unique identification code, completing, and submitting their census response. However, our world is not ideal for everyone.

In the text that follows, we itemize activities and operations the Census Bureau will implement in support of hard-to-count populations.

SUPPORT OPERATIONS

We learn from every decennial census. The Census Bureau’s ability to connect with the population as a whole and to have the population connect with the data collected in a decennial census provides opportunities for hard-to-count populations to understand the importance of the census and to see themselves in the data that are collected. Understanding the challenges that face hard-to-count populations, providing materials in multiple languages for non-English proficient populations, and—as the diversity of the U.S. population has grown—evolving the decennial census content are ways in which the Census Bureau engages with and encourages participation in the 2020 Census.

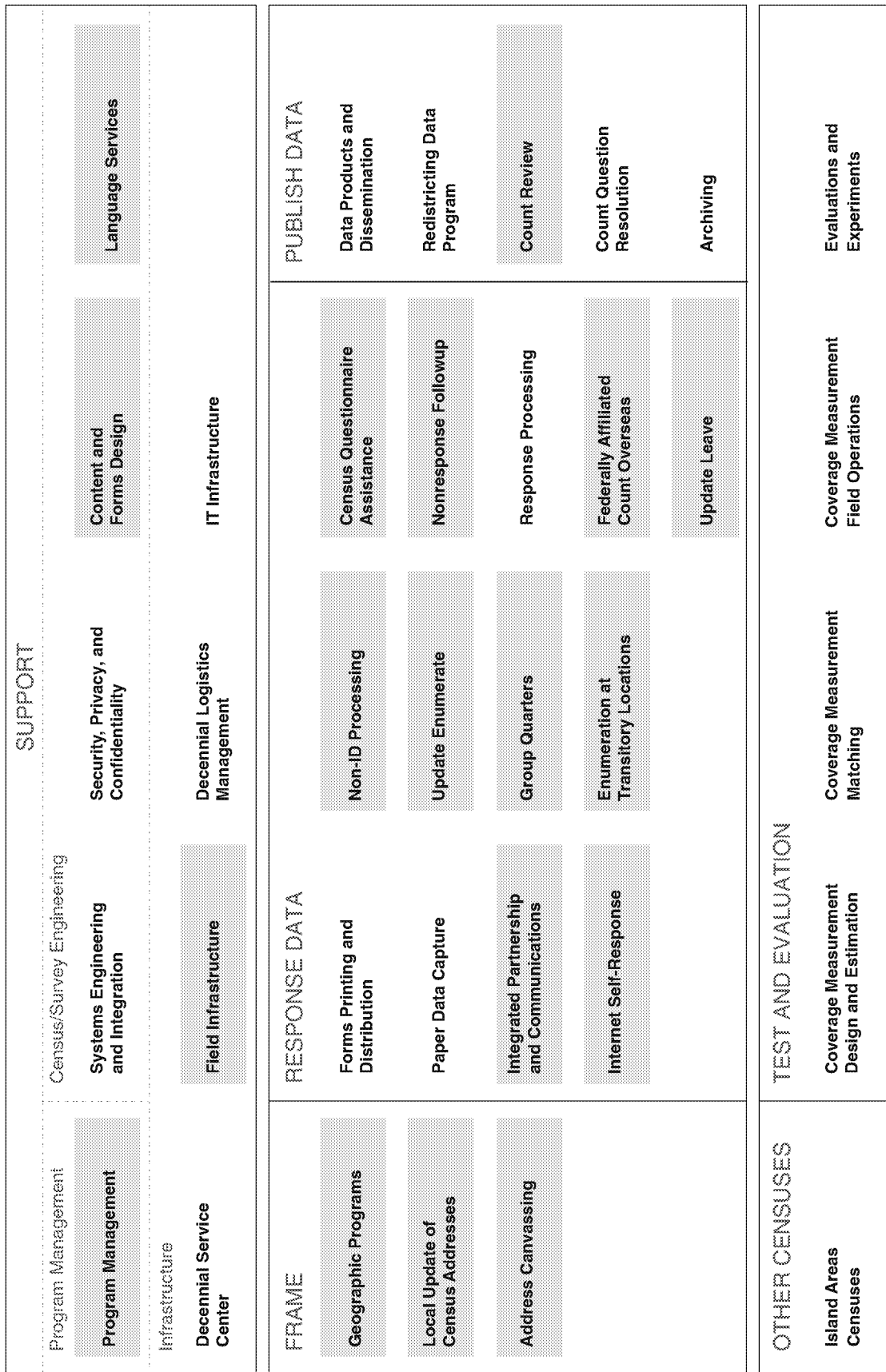


Figure 2: 2020 Census Operational Placemat

Stakeholder Communication and Engagement

Nested within the 2020 Census Program Management Operation is Stakeholder Communication and Engagement. The Census Bureau engages with various internal and external stakeholders pertaining to our planning, research, and operational design. The Census Bureau engages early and on a regular basis to share our plans, but more importantly to listen, to hear, to understand, and to collect information on the opportunities and challenges with groups that have historically been Hard-to-Count, as well as groups that are emerging as Hard-to-Count.

Stakeholder Communication and Engagement activities include:

- 2020 Census Program Management Reviews.
- National Advisory Committee Meetings and working groups that specifically look at hard-to-count populations and potential impacts that aspects of the 2020 Census operational design would have on hard-to-count populations.
- Census Scientific Advisory Committee meetings.
- Congressional briefings.

The Census Bureau also conducted a series of tribal consultations with federal- and state-recognized tribes. In these consultations, information about the 2020 Census Operational Design was shared and has led to input on the preference that each tribe has for enumeration (Self-Response, Update Leave, or Update Enumerate).

In addition, we regularly share information about the 2020 Census Operational Design via presentations in various forums, which often leads to feedback, concerns, and recommendations pertaining to hard-to-count populations.

From a HTC Framework perspective, Stakeholder Communications and Engagements is focused on all four segments: Hard-to-Locate, Hard-to-Contact, Hard-to-Persuade, and Hard-to-Interview.

Content and Forms Design

The 2020 Census will enable different race and ethnic groups to self-identify their race/ethnicity on their census questionnaires. Respondents will be able to select multiple check boxes for race and Hispanic origin. The race question includes 15 different checkboxes with the ability for respondents to select more than one checkbox; respondents can also select “Some other race” if they do not see themselves in the other 14 options. In addition, regardless of which checkboxes a respondent selects, detailed responses can be added in the write-in fields.

What is this person's race?
 Mark *X* one or more boxes **AND** print origins.

White – Print, for example, German, Irish, English, Italian, Lebanese, Egyptian, etc. *X*

Black or African Am. – Print, for example, African American, Jamaican, Haitian, Nigerian, Ethiopian, Somali, etc. *X*

American Indian or Alaska Native – Print name of enrolled or principal tribe(s), for example, Navajo Nation, Blackfeet Tribe, Mayan, Aztec, Native Village of Barrow Inupiat Traditional Government, Nome Eskimo Community, etc. *X*

Chinese Vietnamese Native Hawaiian

Filipino Korean Samoan

Asian Indian Japanese Chamorro

Other Asian – Print, for example, Pakistani, Cambodian, Hmong, etc. *X*

Other Pacific Islander – Print, for example, Tongan, Fijian, Marshallese, etc. *X*

Some other race – Print race or origin. *X*

Figure 3: 2020 Census Race Question

Respondents who self-identify with Hispanic, Latino, or Spanish origin will be able to further indicate if they are Mexican, Mexican-American, Chicano, Puerto Rican, Cuban, or another Hispanic, Latino, or Spanish origin. There will also be a dedicated write-in box to print origins of those identifying with "another Hispanic, Latino, or Spanish origin."

Is this person of Hispanic, Latino, or Spanish origin?

No, not of Hispanic, Latino, or Spanish origin

Yes, Mexican, Mexican Am., Chicano

Yes, Puerto Rican

Yes, Cuban

Yes, another Hispanic, Latino, or Spanish origin – Print, for example, Salvadoran, Dominican, Colombian, Guatemalan, Spaniard, Ecuadorian, etc.

Figure 4: 2020 Census Hispanic Origin Question

The 2020 Census also enables respondents to indicate their relationship with household members, through a variety of relationship categories. This includes the distinction between opposite-sex and same-sex husband/wife/spouse/unmarried partner categories. Relationship data are used in planning and funding government programs that provide funds or services for families, people living or raising children alone, grandparents living with grandchildren, or other households that qualify for additional assistance.

How is this person related to Person 1? Mark ONE box.

<input type="checkbox"/> Opposite-sex husband/wife/spouse	<input type="checkbox"/> Father or mother
<input type="checkbox"/> Opposite-sex unmarried partner	<input type="checkbox"/> Grandchild
<input type="checkbox"/> Same-sex husband/wife/spouse	<input type="checkbox"/> Parent-in-law
<input type="checkbox"/> Same-sex unmarried partner	<input type="checkbox"/> Son-in-law or daughter-in-law
<input type="checkbox"/> Biological son or daughter	<input type="checkbox"/> Other relative
<input type="checkbox"/> Adopted son or daughter	<input type="checkbox"/> Roommate or housemate
<input type="checkbox"/> Stepson or stepdaughter	<input type="checkbox"/> Foster child
<input type="checkbox"/> Brother or sister	<input type="checkbox"/> Other nonrelative

Figure 5: 2020 Census Relationship Question

From the very first census in 1790, Congress established the principle of counting people where they usually reside, which is defined as the place where a person lives or sleeps most of the time, in order to be fair and consistent. The 2020 Census residence criteria and residence situations determine who should be counted and where they should be counted. Every decade, the Census Bureau undertakes a review of the decennial residence criteria and residence situations to ensure the concept of "usual residence" is applied in a way that is consistent with the Census Bureau's commitment to count every person once, only once, and in the right place. With respect to the 2020 Census residence criteria, language on our questionnaires helps to count all people, including young children. A summary of the residence criteria is the first thing a respondent will read on the paper questionnaire, our Internet instrument provides a help text with a clear summary of response criteria, and during field operations, respondents are shown an informational sheet with instructions on who should be counted.

In addition, our undercount question gives the respondent an opportunity to ensure everyone has been included. With increasingly complex living arrangements, whom to include in the household population count can be a challenge. The 2020 Census will include revised wording related to young children, who have historically been undercounted.

Were there any additional people staying here on April 1, 2020 that you did not include in Question 1?

Mark all that apply.

Children, related or unrelated, such as newborn babies, grandchildren, or foster children

Relatives, such as adult children, cousins, or in-laws

Nonrelatives, such as roommates or live-in babysitters

People staying here temporarily

No additional people

Figure 6: 2020 Census Undercount Question

To address the undercount of young children, we include specific instructions in our mailing materials about including young children.

From a HTC Framework perspective, the Content and Forms Design Operation is focused on the Hard-to-Persuade and the Hard-to-Interview segments.

Language Services

The 2020 Census will enable Limited English-speaking individuals to respond to the census by providing language assistance and represents a significant expansion compared to the 2010 Census; the 2020 Census will be the most robust language program ever built.

According to the 2016 American Community Survey 5-year estimates, there are over 3 million households in the United States that are Spanish-speaking and are limited English-speaking. This accounts for over 60 percent of total limited English-speaking households. Accordingly, the 2020 Census will deliver bilingual English/Spanish mailing materials to addresses in Spanish tracts, as well as enable enumerators to toggle between English and Spanish in the enumeration instrument when enumerating Spanish-speaking households. In addition, the 2020 Census will provide the Internet Self-Response instrument and Census Questionnaire Assistance in Spanish and 11 additional non-English languages, covering over 85 percent of total limited English-speaking households. The languages, in descending order of need are Spanish, Chinese, Vietnamese, Korean, Russian, Arabic, Tagalog, Polish, French, Haitian Creole, Portuguese, and Japanese. For Census Questionnaire Assistance, there will be separate telephone numbers dedicated to each language with two different numbers for Chinese, one for Mandarin and one for Cantonese. There will also be a dedicated number for Telephone Display Device. The telephone numbers will be included in the 2020 Census mailing packages.

There will also be language guides in 59 non-English languages (including the aforementioned languages), where respondents will receive information via video and/or print guides on filling out their questionnaires. The language guides will include American Sign Language, braille, and large print. This will account for approximately 98 percent of total limited English-speaking households. For the remainder of the language guides, 2020 Census staff and partnership specialists will

work with the language communities to provide additional assistance in their languages.

From a HTC Framework perspective, the Language Services Operation is focused primarily on the Hard-to-Interview segment.

Field Infrastructure

Often the topic of hard-to-count efforts leads to questions about hiring and language skills. The objective of our Field Infrastructure Operation is to provide the human resources and personnel management support functions, including recruiting, hiring, and onboarding that reflect the diversity of the nation to support, facilitate, and encourage response.

A key point in our recruiting and hiring process is to make it local. The Census Bureau will hire enumerators who are comfortable and familiar with the neighborhoods where they work. Recruiting and hiring at low levels of geography is essential, as is the ability to speak the languages of the local community. The overarching strategy for hiring enumerators is to hire people who will work in the communities in which they live.

The 2020 Census Community Partnership and Engagement Program will focus the efforts of approximately 1,500 partnership specialists to increase self-response and participation in communities who are hesitant to respond or who will not respond. Partnership specialists will use existing networks, resources, and “trusted voices” to increase census participation in low response communities.

When considering the HTC Framework, the primary focus of the Field Infrastructure Operation is related to the Hard-to-Persuade and Hard-to-Interview segments.

FRAME

The Census Bureau never ceases its efforts to maintain the Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) System, which serve as the foundation on which we base the 2020 Census operational design. The objective of the operations associated with the frame is to develop a high-quality geospatial frame that serves as the

universe for enumeration activities representing all of the places where people live or could live. The Census Bureau regularly updates our address list—the MAF—with new information from the United States Postal Service, and data from tribal, state, and local governments and third-party data (commercial vendors). We are in a constant state of exploration to identify new sources of address and geospatial information that can corroborate data from other sources, fill in missing information, and add new addresses and spatial data to improve the overall coverage and quality of the MAF and TIGER data.

Area Census Office (ACO) Delineation

The Census Bureau is opening 248 ACOs to support the 2020 Census. The estimated Nonresponse Followup (NRFU) workload, which is comprised of hard-to-count addresses, was the primary driver in determining the location and span of control for each office. The initial number of ACOs was determined based on the number of enumerators needed for field operations. Several data sources were used to estimate the number of enumerators needed per area, such as response rate projections based on the 2010 Census, the estimated NRFU workload, and the locations of group quarters (university dormitories, nursing homes, prisons, military barracks, etc.).

Type of Enumeration Area (TEA)

The TEA represents the predominant enumeration method for conducting the 2020 Census in a given geographic area. The TEA assignment is based on area characteristics to maximize respondent participation. TEAs are attributes of a Basic Collection Unit (BCU); every BCU will have a TEA attribution. In a very general sense, all TEAs other than Self-Response are aimed at listing and enumerating housing units in areas that may require special procedures to ensure accurate counting, i.e., treating all areas in the same way will not work. We cannot use a mail contact strategy in areas where the majority of housing units do not have mail delivered to the physical location of the address. Many of these areas (such as Update Enumerate) contain hard-to-count populations. Please see the sections below pertaining to the individual operations.

Address Canvassing (ADC) Operation

ADC is part of a continual effort to identify all possible places where people live or could live. In our efforts to ensure we count everyone where they spend most of their time, we must identify all possible places where people could live. This includes hidden housing units. Occupants of hidden housing units are considered hard-to-count. If we are unable to discover hidden housing units, we are unable to count the occupants of those units. As part of the ADC training, the Census Bureau instructs listers to identify and inquire about hidden housing units.

Local Update of Census Addresses (LUCA) Operation

The LUCA Operation provides the opportunity for tribal, state, and local governments to review and comment on the Census Bureau's address list and maps to ensure an accurate and complete enumeration of their communities. The Census Address List Improvement Act of 1994 (P.L. 103-430) authorized the Census Bureau to provide individual addresses to designated local officials of tribal, state, and local governments who agreed to conditions of confidentiality in order to review and comment on the Census Bureau's address list and maps prior to the decennial census. The basic process for LUCA includes:

- Census Bureau provides address list and maps to the governmental entities.
- Governmental entities review and add, delete, or change address records or features.
- Census Bureau incorporates the updates to MAF/TIGER system.
- Census Bureau validates the updates through a clerical review, automated address matching, and ADC.
- Census Bureau provides feedback to the governmental entities.

The Census Bureau offers additional opportunities to review and provide input on the coverage, completeness, and accuracy of the address list through:

- The Geographic Support System program.
- The Count Review Operation.
- The New Construction program

From a HTC Framework perspective, operations associated with the frame are focused on the Hard-to-Locate segment.

RESPONSE DATA

Targeted advertising and tailored contact strategies to different demographic and geographic areas, and our partnership program outlined below, assist in connecting with hard-to-count populations. The 2020 Census operational design makes it easier for people to respond through multiple modes (Internet, paper, or telephone), by allowing respondents to submit a questionnaire without a unique Census identifier, and by providing online forms, paper forms, and flexible and adaptive telephone support in multiple languages. When and where field data collection efforts are implemented, the Census Bureau tailors the enumeration strategy to the demographic and geographic areas.

Integrated Partnership and Communications (IPC) Operation

The IPC Operation must reach every household in the nation, delivering the right messages to the right audiences at the right time. It must allocate messages and resources efficiently, ensuring consistent messaging, as well as look and feel, across all public-facing materials across communications efforts as well as operations. The program will offer the following components:

- Advertising, using print, radio, digital, television, and out-of-home.
- Earned media and public relations.
- Partnership, including both regional and national efforts.
- Social media, to include blogs and messages on platforms such as Facebook, Twitter, Instagram, Snapchat, etc.
- Statistics in Schools.
- Rapid response.
- Web site.

The IPC Operation will implement an integrated communications campaign, to increase awareness of the decennial census, promote self-response, reduce cost for NRFU operations, and improve response rates for our audiences. These audiences include hard-to-count populations.

Foundational research conducted as part of the IPC Operation to better identify and understand our audiences, particularly hard-to-count audiences, is known as the Census Barriers, Attitudes, and Motivators Study (CBAMS). As part of 2020 CBAMS, the Census Bureau conducted a survey called the 2020 Census Barriers, Attitudes, and Motivators Study Survey (2020 CBAMS Survey), designed to understand mindsets or correlated attitudes and barriers that relate to census participation across demographic subgroups. The 2020 CBAMS Survey was a self-administered mail and Internet data collection covering a range of topics related to respondents' knowledge of and attitudes toward the 2020 Census. Results will be used to understand how demographic subgroups respond to these questions. Results of the quantitative survey will also serve as an input to understanding the mindsets used in an audience segmentation analysis. The audience segmentation analysis considers tracts and clusters them based on their propensity to self-respond, their demographic characteristics, and our understanding of their mindsets based on responses to the 2020 CBAMS Survey. This audience segmentation analysis will drive creative development and media planning.

Because the survey could not achieve 100 percent response and because we cannot obtain enough cases for small demographic groups or otherwise hard-to-count populations, the Census Bureau supplemented the survey data collection with qualitative research. The qualitative research was achieved through conducting focus groups (2020 CBAMS Focus Groups) aimed at gathering insights from subgroups unable to participate in the 2020 CBAMS Survey or from subgroups that would not have a large enough number of respondents from which to draw meaningful inferences. Although the results of the focus groups will not be directly incorporated into segmentation, they will provide an anecdotal guide that will be effective in planning communications.

The qualitative research provided better reach for small and hard-to-count communities. It provided deeper insights that will further inform message development and creation. The CBAMS qualitative research comprised 42 focus groups with six to eight participants per group. The following are the groups for the English language focus groups:

- Two focus groups with rural, economically disadvantaged individuals.
- Four focus groups with low Internet proficiency individuals.
- Four focus groups with Black/African Americans individuals with a hard-to-count focus.
- Six focus groups with American Indian and Alaska Native individuals—two in Alaska and four in the continental United States.
- Four focus groups with Middle East, North African individuals.
- Four focus groups with Native Hawaiian and Pacific Islander individuals.
- Two focus groups with young, single, mobile individuals with mixed race/ethnicity.

The following are the groups for non-English speaking focus groups:

- Four focus groups with Spanish-speaking individuals who live on the U.S. mainland.
- Four focus groups with Spanish-speaking individuals in Puerto Rico.
- Four focus groups with Chinese-speaking individuals.
- Four focus groups with Vietnamese-speaking individuals.

English-speaking audiences prioritized for the 2020 CBAMS Focus Groups represent groups who either will not be surveyed by the 2020 CBAMS Survey or who are anticipated to be underrepresented in that dataset. During this phase of the research, there will not be dedicated focus groups with additional hard-to-count audiences such as people experiencing homelessness, undocumented immigrants, children, persons who are angry at and/or distrust the government, and LGBTQ persons. However, individuals from these groups may be represented within focus groups planned at this stage. They will also be part of the creative testing research, for which more resources should be available to increase capacity to reach and engage audiences. In addition, IPC plans to engage these groups through mechanisms outside of focus groups.

We will advertise in multiple languages and work with the “trusted voices” in communities across the nation to encourage response to the 2020

Census. The Census Bureau will expend resources to reach the hard-to-count populations using both traditional and digital media, as well as the use of ethnic and local media. However, final decisions on how much to allocate to each of these efforts have not been made pending results of the CBAMS research efforts. Digital media will allow us to reach hard-to-count populations more effectively than ever before. Census Bureau partners include national organizations, but also churches and other faith-based organizations, health clinics, legal aid centers, and other support organizations that traditionally undercounted populations rely on.

Partnerships educate people about the importance of the census, motivate them to return their questionnaires, and encourage cooperation with enumerators. The Census Bureau traditionally focuses on establishing partnerships with organizations that represent hard-to-count populations. For the 2010 Census, the Census Bureau established over 250,000 partnerships and has sustained as many of those relationships as possible during the intercensal years to be in a better position to start the 2020 Census than previous censuses in a variety of different ways. In order to optimize self-response, the Census Bureau has a robust relationship through the Partnership Program that includes state, local, and tribal governments; nongovernmental organizations at the national and local level; national companies; and schools. Within the Partnership Program, the Community Partnership and Engagement Program includes objectives to:

- Increase self-response.
- Use “trusted voices” to make census messages relevant at the local level.
- Grow the partnership audience.
- Increase awareness among the general public.
- Increase partnership engagement at the local level through new or improved programs.

The Census Bureau relies on the support of partners throughout the country to help perform a complete and accurate count. We work together with our partners to extend our outreach efforts and connect with hard-to-count populations. From a HTC Framework perspective, IPC focuses on the Hard-to-Contact, Hard-to-Persuade, and Hard-to-Interview segments.

Internet Self-Response Operation

A goal of the 2020 Census Optimizing Self-Response is to generate the largest self-response, reducing the need to conduct expensive in-person follow-up with nonresponding households. This is done in several ways by:

- Enabling people to respond via multiple modes (Internet, paper, or telephone) and allowing people to respond on devices such as a home computer, laptop, tablet, or smartphone.
- Allowing respondents to submit a questionnaire without a unique Census identifier (see Non-ID Processing Operation below.)
- By providing online forms in multiple languages (see Language Services above.)
- The operational design for Internet Self-Response Operation includes, but is not limited to the following:
 - Ability to capture larger households than is possible in a traditional paper-based survey.
 - Deployments of an application that can be used across modern Internet devices and browsers.
 - An application user interface that is available in English and non-English languages.
 - A self-response contact strategy that is tailored to demographic and geographic areas, designed to encourage Internet self-response.

While the 2020 Census operational design mailing strategy is tailored to demographic and geographic areas to encourage self-response, the strategy recognizes that the Internet first response option is not optimal for some populations who may have the will, but not the ability to respond online. As such, when areas have known characteristics, such as low Internet connectivity and concentrations of elderly populations, providing a paper questionnaire with the first mailing provides maximum response opportunities and increases the likelihood of receiving a self-response. Because many people need more encouragement and reminders, our mail strategy involves up to five mailings with a combination of letters, reminders, and for anyone who has not responded, a paper questionnaire with the fourth mailing. Any address that does not self-respond is included in the workload for NRFU and subject to in-person contact attempts to collect decennial census response data.

Non-ID Processing (NID) Operation

The NID Operation is focused on making it easy for people to respond anytime, anywhere to increase self-response rates. We will do this by:

- Providing response options that do not require a unique Census identifier.
- Maximizing real-time matching of NID respondent addresses to the census address inventory.
- Accurately assigning nonmatching addresses to census blocks.

The NID response option provides opportunities to populations who predominantly use mobile devices and may respond while taking a bus to work, sitting in a doctor's offices where they see a 2020 Census poster, etc. The NID response option may also improve coverage by reaching households that were not on our frame and may not have received any census mailing but saw an advertisement and were able to respond.

Update Leave (UL) Operation

The UL Operation is designed to update the address frame and deliver questionnaires in geographic areas where the majority of housing units either do not have mail delivered to the physical location of the housing unit, or the mail delivery information for the housing unit cannot be verified. The purpose of the operation is to update the address and feature data for the area assigned, and to leave a 2020 Census Internet Choice Questionnaire Package at every housing unit identified to allow the household to self-respond. In many ways, the UL Operation is an extension of a Self-Response area with the major difference being that a Census Bureau employee, rather than a U.S. Postal Carrier, is delivering the 2020 Census invitation to respond, along with a paper questionnaire. While the Census Bureau hand delivers questionnaires, respondents will also have the option to respond online or over the telephone by calling Census Questionnaire Assistance. The UL Operation—similar to In-Field ADC—involves walking a geographic area to update the address list, identify missing and hidden housing units, and knocking on every door to inquire about the existence of additional housing units.

Hard-to-count populations often reside in UL areas. In order to effectively count these populations, their location must be accurately verified.

UL can occur in geographic areas that:

- Do not have city-style addresses.
- Do not receive mail through city-style addresses.
- Receive mail at post office boxes.
- Have been affected by major or natural disasters such as hurricanes, earthquakes, wild fires, tornadoes, etc.
- Have high concentrations of seasonally vacant housing.

From a HTC Framework perspective, the focus of the UL Operation is primarily on the Hard-to-Locate and Hard-to-Contact segments.

Update Enumerate (UE) Operation

The UE Operation is designed to update the address frame and enumerate respondents in geographically remote areas with low housing-unit density that are sparsely populated, or have challenges with accessibility.

UE will occur in the following geographic areas:

- Remote areas of Maine and Southeast Alaska.
- Select tribal areas.
- Remote Alaska, which is considered a suboperation of UE.

In the UE Operation, field staff update the address and feature data, and enumerate respondents in person. UE offers respondents in areas with limited or no (broadband) Internet access and limited cell phone access (with expensive data plans in remote areas) an effective and familiar enumeration method.

Many of the hard-to-count populations reside in areas where the Census Bureau is not confident in the accuracy of the address or demographic data, and where updates may not be conducted as often as in areas that are more populous. In order to be thorough and accurate, yet cost-effective, UE will ensure that data for listing and enumeration are collected together. UE addresses hard-to-count populations by:

- Linking enumerated housing units to listing data, ensuring accurate processing of both listing and enumeration data.
- Involvement with the local community or tribe in order to optimize effective operational

implementation and to encourage higher response rates.

- Hiring from local population for enumerators, guides, or cultural facilitators who are familiar with the residents and have the language or other necessary skills to facilitate a response.

Group Quarters (GQs) Operation/Service-Based Enumeration (SBE) Program

The Census Bureau conducts a number of operations designed for the enumeration of populations in special living arrangements. GQs are places where people live or stay in a group living arrangement, which are owned or managed by an entity or organizations providing housing or other services for the residents. GQs may have administrators or gatekeepers that make residents of these facilities hard to interview. Some GQs facilities are for persons experiencing homelessness, making the populations receiving services both hard to interview and hard to contact. SBE is designed specifically to enumerate at service-based locations such as emergency and transitional shelters, soup kitchens, regularly scheduled mobile food vans, and Targeted Non-Sheltered Outdoor Locations. The SBE process is specifically designed to approach people using service facilities because they may be missed during the traditional enumeration of housing units and GQs.

An additional special enumeration operation designed for a specific population group is the Federally Affiliated Count Overseas (FACO), where the Census Bureau will receive administrative records for all military personnel and their dependents from the Defense Manpower Command Divisions under the Department of Defense or from federal agencies who have staff stationed overseas.

Enumeration at Transitory Locations (ETL) Operation

A Transitory Location (TL) is a location comprised of nontraditional living quarters where people are unlikely to live year-round, due to the transitory/temporary/impermanent nature of these living quarters. At TLs, we enumerate highly mobile populations. TLs include places such as recreational vehicle parks, campgrounds, hotels, motels, marinas, racetracks, circuses, or carnivals.

From a HTC Framework perspective, the special enumeration operations including GQ, SBE, Military Enumeration, FACO, and the ETL focus on populations that are both Hard-to-Contact and Hard-to-Interview segments.

Nonresponse Followup

The NRFU Operation is entirely about hard-to-count populations. NRFU is focused on contacting and persuading residents of nonresponding addresses to provide their census responses. The objective on NRFU is to determine or resolve the housing unit status (occupied, vacant, or non-existent) for all addresses for which a self-response has not been received and to collect census response data for housing units determined to be occupied.

Administrative records, when high-quality data exist, are used in place of repeated attempts to reach nonresponding housing units. This enables the Census Bureau to focus its NRFU contact attempts on those housing units not represented well by high-quality administrative records, likely the harder-to-count populations.

NRFU enumerator training, job aids, and frequently asked questions include information and an emphasis on counting young children. Enumerator training includes a case study intended to provide clarity about how to count young children during the 2020 Census. All frequently asked questions and job aids have also been updated to address counting young children. Additionally, the verbiage that enumerators use during the interview will be updated to highlight the count of children when determining the housing unit's roster. For example, rather than using phrases such as "the census counts people/residents..." enumerators will say, "the census counts all adults and children..." Enumerators will also ask the additional coverage questions featured in the Internet self-response mode of data collection.

The NRFU operational design also addresses hard-to-count populations in the procedures used for making contact attempts. While most cases receive a maximum of six attempts, cases in hard-to-count areas may receive more than six attempts to achieve a consistent response rate for all geographic areas. Additionally, all cases are eligible for proxy enumeration after the third

attempt, allowing for four proxy attempts to enumerate the housing unit. These attempts are especially helpful in enumerating hard-to-count populations.

In an effort to increase the likelihood that students and faculty living in geographic areas surrounding colleges and universities will be counted where they lived on Census Day, the Census Bureau will conduct early NRFU. Early NRFU focuses on colleges and universities where the 2020 spring semester concludes prior to mid-May when NRFU begins nationwide. In these select geographic areas, NRFU will begin in early April.

In all NRFU areas, as enumerators are making contact attempts in the communities in which they work, they may encounter language barriers to completing an interview. When a language barrier is encountered, efforts will be made to identify an enumerator who speaks the non-English language of the respondents. If an enumerator with the needed language skills cannot be identified, the Census Bureau will engage the services of an interpreter to facilitate the interview. In addition, if an enumerator visits a nonresponding address and no one answers, the enumerator will leave a Notice of Visit that provides information for the household on how to respond online or over the telephone.

From a HTC Framework perspective, NRFU focuses on the Hard-to-Persuade segment.

Coverage Improvement Operation

The Coverage Improvement Operation is unique in that the Census Bureau has a response from an address. However, there is some question about the response. The objective of the Coverage Improvement Operation is to recontact housing units in an effort to determine if people were missed, counted in the wrong place, or counted more than once during the census.

Criteria for the identification of cases for the Coverage Improvement Operation include:

- Cases with count discrepancies, either high or low, between the population count reported and the number of people for which data are reported.
- Affirmative responses to either the Undercount (shown in image 6) or the Overcount question.

The goal of Coverage Improvement is to resolve potential coverage issues through a recontact with the household, asking questions in an attempt to resolve whether someone has been missed and should be included in the count, or whether someone was included in the count and should be removed. The following is an example of an under-count question or probe asked in the Coverage Improvement instrument: "I'd like to make sure that we are not missing anyone who lived or stayed at this address. Were there any babies, children, grandchildren, or foster children that you did not mention?"

When considering the HTC Framework, Coverage Improvement cases fall in the Hard-to-Locate segment. They are in the Hard-to-Locate segment, not from a missing address perspective as with the frame, but from person perspective in terms of where a person should be counted.

UNEXPECTED EVENTS

Despite the Census Bureau's best efforts to plan for the execution of the 2020 Census, unexpected events, such as natural disasters, can occur. When an unexpected event occurs, geographic areas, populations, or both may become hard to count.

How the Census Bureau reacts and how we approach the 2020 Census enumeration depends on the event. When an event occurs, the Census Bureau will form a rapid-response team to assess the impact of the event and develop a recommended reaction to the event. In forming a response plan, the Census Bureau will consider facts such as the timing of the event, severity, impacted geographic area, access to the impacted area, and other environmental concerns.

Past events impacting a decennial census enumeration have included Hurricanes Katrina and Rita that devastated the Gulf Coast prior to the 2010 Census and necessitated in the planned enumeration methodology. Recently, the devastation resulting from Hurricane Maria that hit Puerto Rico in 2017, resulted in the Census Bureau

reaching a decision to conduct UL in Puerto Rico; this decision allows additional recovery time for the impacted area and will result in Census Bureau staff hand delivering questionnaires to all of the locations where people are living.

The Census Bureau will face the challenges of any unexpected event and will take steps necessary to enumerate the population impacted by any such event.

TOOLS

In the Census Bureau's efforts to enumerate hard-to-count populations, there are tools, techniques, and methods that support the operations and activities outlined above. While not an exhaustive list, included are:

- The Planning Database.
- Response Outreach Area Mapper (ROAM).
- Residence Criteria/Instructions.
- Coverage Questions.
- Language Materials.
- Mailing Strategy.
- Non-ID Response.
- Administrative Records.
- Field Workforce.
- Blitz Enumeration.

The Planning Database and ROAM were not mentioned previously, but are tools that can be used by Census Bureau Partnership Specialists, local officials, and community leaders to identify hard-to-count areas. The ROAM combines low response-score data with an interactive mapping platform to allow users to identify hard-to-count areas and better understand the populations of these areas for the purposes of 2020 Census outreach and promotion. Identifying areas needing extra attention can help make the most of time and resources when devising a communication and outreach strategy for hard-to-count populations.

Each tool listed above is important to supporting an integrated design for the enumeration of hard-to-count populations.

SUMMARY

Efforts to count everyone once, only once, and in the right place—including hard-to-count populations—are infused throughout the operational design of the 2020 Census. From early efforts that engaged hard-to-count populations, such as federal- and state-recognized tribes, through ongoing interactions with our National Advisory

Committee, the Census Bureau devotes resources to research, testing, and an operational design that considers how our environment, societal changes, and technological innovations shape our understanding of our population and the approaches we must take to ensure a complete and accurate enumeration. The approaches we employ consider both traditional enumeration approaches, as well as approaches that are tailored to specific populations such as the hard-to-count populations.



Figure 7: Screenshot From the Response Outreach Area Mapper

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED
PEOPLE, *et al.*,

Plaintiffs,

v.

BUREAU OF THE CENSUS, *et al.*,

Defendants.

No. 8:18-cv-00891-PWG

DECLARATION OF DEIRDRE DALPIAZ BISHOP

I, Deirdre Dalpiaz Bishop, make the following Declaration pursuant to 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I currently serve as the Chief of the United States Census Bureau's Geography Division. I have served in this capacity since May 2016. Previously, I served as the Chief of the Decennial Census Management Division; I served in that capacity from January 2015 to May 2016. I have a bachelor's degree in Urban Studies from Lehigh University and a master's degree in Public Administration from New York University. I have been employed by the Census Bureau since 1996, starting as a GS-9 Geographic Specialist in the New York Regional Office

and serving in positions of increasing responsibility over the past 24 years. I have been a member of the Senior Executive Service since 2015.

2. I am recognized as an expert in the management of geospatial information in both national and international communities. I am a member of the Federal Geographic Data Committee's Executive Committee, guiding the development of the National Spatial Data Infrastructure for the United States. By appointment of the United States Ambassador to the Organization of American States, I serve as President of the United States National Section of the Pan American Institute of Geography and History. By appointment of the Chief Statistician of the United States, I serve as Head of the United States Delegation for the United Nations Committee of Experts on Global Geospatial Information Management.

3. In connection with my job responsibilities I am familiar with this litigation, as well as the government's efforts to defend the Census Bureau and the U.S. Department of Commerce. The following statements are based upon my personal knowledge or on information supplied to me in the course of my professional responsibilities, and these statements are provided in support of Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction.

I. Executive Summary

4. In this declaration, I address the following subjects and draw the following conclusions:

- a. I explain the role, development, and uses of the Census Bureau's Geographic Support program, the sophisticated digital mapping and address system that forms the basis for the Census Bureau's data collection activities, including the Master Address File, a list of all known housing units in the nation. In particular, I explain the participation in the creation of the list by local governments, including those of Prince

George's County, MD; the State of New York; the City of New York; Orange County, NY; and the City of Newburgh, NY in Orange County.

- b. I describe the historical use of address canvassing, both in-field and in-office, to validate address lists used from the 1970 Census through the 2020 Census, focusing on the preparations for the 2020 Census in particular. Based on my work managing geographic operations over the past three decennial censuses, I can confidently conclude that the current Master Address File is the most complete and accurate in history.
- c. I explain the current status of Address Canvassing field operations for the 2020 Census, which are complete. No further in-field canvassing can be done prior to the 2020 Census if the 2020 Census is to be successfully completed.
- d. I respond to the Declarations of Drs. Doms and Hillygus, noting in particular (1) that Dr. Doms was aware of and in a position to influence the design decisions of the 2020 Census that Plaintiffs now criticize; (2) that Dr. Doms's criticism of the imagery-based approach to address canvassing in the 2020 Census is incorrect and based on faulty assumptions; and (3) that Dr. Hillygus's suggestion that canvassing in-field for only part of the country would negatively affect the enumeration of hard to count communities is incorrect. In fact, the combination of in-office and in-field is designed to focus resources on the most difficult to count areas and populations, while avoiding the expenditure of resources in stable, easy-to-enumerate neighborhoods.

II. Role of the Geographic Support Program at the United States Census Bureau

5. As the Chief of the Geography Division, I lead the ongoing development and implementation of the Geographic Support (GS) Program. This program supports and maintains the geospatial infrastructure required for the Census Bureau's data collection, processing, tabulation, and dissemination programs for the United States, Puerto Rico, and Island Areas. The GS Program provides the foundation for every social and economic data product and geographic service produced by the Census Bureau, including the Decennial Census, American Community Survey, Economic Census, Current Surveys and other intercensal demographic statistics programs (i.e., ongoing surveys such as the Current Population Survey and the Survey of Income and Program Participation), and the Population Estimates Program.

6. "Geospatial infrastructure" refers to the full range of geographic information maintained by the Census Bureau, including addresses and associated address points of latitude and longitude; road features such as local streets and highways; and boundaries. The boundaries represent geographic areas such as states, counties, and municipalities; congressional, state legislative, and voting districts; and statistical areas such as census tracts (roughly equivalent to about 4,000 people or 1,600 housing units), block groups (containing about 600 to 3,000 people or 240 to 1,200 housing units), and blocks (roughly equivalent to a city block).

7. The base of the existing geospatial infrastructure began with the development of the Topologically Integrated Geographic Encoding and Referencing (TIGER) System in preparation for the 1990 Census. Working with the United States Geological Survey (USGS) and tribal, state, and local government officials, the Census Bureau developed the first digital topologically integrated map of the nation. Layers of geographic information in electronic format (e.g., first roads, then census blocks, then city boundaries) allowed for the tabulation and

dissemination of 1990 Census population and housing data at small levels of geography such as the city block.

8. While originally created to support the 1990 Census, TIGER soon became a national resource, providing the foundation for rapid expansion of a new industry called GIS (geographic information systems). TIGER's network of roads and boundaries facilitated the growth and development of the high-quality digital maps now standard on smartphones, tablets, and car navigation systems. Continued maintenance and regular on-line public release (twice per year) of TIGER have provided both the public and private sectors with a reliable source of updates to their geospatial information.

9. The federal Office of Management and Budget has recognized the quality of the Census Bureau's geospatial data and for that reason has designated the agency as the key federal source for geographic area boundaries for the nation. The Census Bureau serves as the lead federal agency for collection, maintenance, and dissemination of tribal, state, county, and local boundaries.

10. Of equal magnitude, in preparation for the 2000 Census, the Census Bureau created the Master Address File (MAF), a list of all known housing units in the nation. Working with the United States Postal Service, and tribal, state, and local governments, this list has grown to approximately 150 million addresses. Each address in the MAF is linked to a reference point of latitude/longitude in the TIGER database. The Census Bureau is prohibited from sharing the MAF under constraint of Title 13 of the U.S. Code. However, the agency has been designated by the Federal Geographic Data Committee as co-lead, along with the Department of Transportation, for the creation of a National Address Database, a key component of the National Spatial Data Infrastructure.

11. Over the past three decades, the Census Bureau has remained a leader in digital mapping and geographic information and, as such, routinely advises other nations' statistical organizations seeking to develop and implement high-quality digital geographic information, digital maps, and national address lists. The Census Bureau has been a leader among statistical organizations in the use of imagery to validate the contents and quality of its address list in comparison to housing on the ground, and has been sought out by other nations' statistical agencies seeking to adopt similar methods.

12. The Census Bureau's geospatial foundation—the dataset used by the Census Bureau as the basis for all of its data collection work for its surveys, including the decennial census—comprises four primary building blocks:

- 1) Addresses – a national address list of all known living quarters and associated address points (latitude and longitude coordinates);
- 2) Features – a national network of roads, highways, rivers, railroads, parks, and landmarks;
- 3) Boundaries – a national inventory of legal, statistical, and administrative boundaries, including tribal, state, county, place, and township boundaries; congressional, state legislative, and voting districts; school districts; and census tracts, block groups, and census blocks; and
- 4) Imagery – a national data set of satellite and aerial imagery.

13. These data are developed and maintained through two key areas of strategic partnerships:

- 1) Relationships with tribal, state, and local governments; federal agencies; international organizations; academia; non-profit organizations, and the private sector in support of our ongoing geospatial programs; and
- 2) Expertise shared across domestic and international domains, with leadership by the U.S. Census Bureau.

14. The GS Program maintains the MAF/TIGER System. This integrated IT system includes:

- The MAF/TIGER Database of addresses, address points, features, boundaries, and imagery;
- A processing environment including hardware and software (e.g., servers, platforms, and database software); and
- The software applications necessary to maintain, update, and create all geographic products and services.

15. An integrated MAF/TIGER System provides the foundation for the Census Bureau's data collection, tabulation, and dissemination activities. The MAF/TIGER System is used to generate the universe of addresses that will be included in a decennial census or survey. Those addresses are then invited to respond, typically through an invitation in the mail. The MAF/TIGER System is used to control responses as they are returned to the Census Bureau and to generate a list of nonresponding addresses that will be visited in person. Finally, the MAF/TIGER System is used to ensure that each person is counted once, only once, and in the right place.

16. Internal and external stakeholders rely on GS Program products and services for analysis and decision-making. In addition to the use of GS Program geographic areas for congressional and legislative redistricting after each Decennial Census, federal, state, and local governments use GS Program geographic area and feature data to implement a variety of programs and products. For example, the USGS relies upon the GS Program as the source for roads on their topographic map series and in the National Map. The Federal Highway Administration uses GS Program data to authorize transportation planning organizations and conduct transportation planning activities. Local governments use GS Program data as inputs when planning expansion of services as well as changes to school attendance area boundaries. Private sector firms producing data for use in dashboard navigation systems and on-line maps utilize GS Program products as a source for geographic area boundaries and as a source for detecting changes to roads and other physical features. Private sector firms also use geographic information produced by the GS Program as an input when conducting analysis to identify potential locations for retail expansion, opening of new offices, and other business-related decisions.

17. GS Program products are used in the design and implementation of the Decennial Census. The MAF/TIGER System is the source for all geographic area boundaries used to tabulate and disseminate Decennial Census data. In addition, road and other features within the MAF/TIGER System are used to define geographic areas used to manage and conduct field operations; for example, to define the assignment areas in which fieldworkers carry out their work.

18. The primary (but not exclusive) way that individuals are directly invited to respond to the Decennial Census is by being contacted by mail at their residence. Accordingly,

the Census Bureau requires a complete and accurate a list of residential addresses in the United States and Puerto Rico. The process of validating the accuracy and completeness of the address list, and making necessary updates and changes, is referred to as “address canvassing.”

19. There are two primary components to address list development—in-office development and in-field development. In-office development involves the regular, on-going acquisition and processing of address information from authoritative sources, such as the U.S. Postal Service (responsible for delivering mail to addresses on a daily basis) and tribal, state, and local governments (responsible for assignment of addresses to housing units), while in-field address list development involves individuals traversing a specified geographic area to which they are assigned and validating or updating the address list based on their observations and, if possible, interaction with residents of the housing units visited.

III. Historical Background

20. It is my understanding that Plaintiffs in this action have challenged the use of in-office address list development for purposes of the 2020 Census.

21. In-office address list development is not new to the 2020 Census. Since 1970, the Census Bureau has relied upon a combination of in-office processing of address lists acquired from external sources and in-field canvassing to develop its address list for the decennial census. In previous decennial censuses that have relied on mailed questionnaires, the Census Bureau has used some form of in-field canvassing to validate and update its address list prior to mailing questionnaires. For the 1970, 1980, and 1990 censuses, the Census Bureau began with a commercially purchased address list for available metropolitan areas, then conducted canvassing operations to improve the list with fieldworkers traversing every road.

22. In support of the 2000 Census, and in response to the Census Address List Improvement Act of 1994 (P.L. 103-430), the Census Bureau began development of a permanent

address list, the MAF. The Census Address List Improvement Act changed the Census Bureau's Decennial Census address list development procedures. The Act expanded the methods the Census Bureau could use to exchange address information with tribal, state, and local governments in order to support its overall residential address list development and improvement efforts.

23. The MAF is maintained and updated in the office primarily through biannual processing of the U.S. Postal Services' address list, the Delivery Sequence File (DSF), with validation and additional updates provided through in-field operations. The use of DSF addresses as a primary source for maintenance and updating of the MAF for the 2020 Census continued the process used for the 2000 and 2010 Censuses. Additional sources of address information, including address lists obtained from tribal, state, and local government partners (often tax and property assessment offices or planning departments), were incorporated into the process over the years.

IV. Preparing for the 2020 Census – Address List Development

24. In support of the 2020 Census, address list development efforts at the Census Bureau incorporated a three-pronged approach: (1) continual assessment and update of the MAF using partner-provided data; (2) In-Office Address Canvassing; and (3) In-Field Address Canvassing.

1. Continual Assessment and Update using Partner-Provided Data

25. Similar to address list development efforts for the 2000 and 2010 Censuses, the U.S. Postal Services' DSF served as a primary source of address updates. Since 2010, the DSF provided 5.9 million new addresses to the MAF. An additional 2.4 million addresses that were new to the DSF matched to addresses already in the MAF, serving as a validation of other sources.

26. Address and spatial data from tribal, state, and local governments provided a critical validation and enhancement of the MAF/TIGER System. The ubiquity of high-quality geospatial data, coupled with sophisticated tools for managing and exchanging data, has increased substantially over the past three decades, in large part due to the Census Bureau's development and ongoing update of the TIGER database and public distribution of geospatial data. The ongoing collaboration of the Census Bureau with federal, tribal, state, and local government agencies in the production and sharing of geospatial data, along with organizations like the Federal Geographic Data Committee, the National Geospatial Advisory Council, and the National States Geographic Information Council, have made it possible to maintain high-quality address and geographic information in the office through exchange of digital files rather than rely on costly fieldwork.

27. Between 2013 and 2019, the Census Bureau accepted nearly 107 million address records from government partners. Over 99.5 percent of those records matched to addresses already contained in the MAF, many of which were obtained from the U.S. Postal Services' DSF. The remaining 0.5 percent of address records from partner governments represented new addresses and were used to update the MAF. In addition, partners submitted over 75 million address points that were either new or enhanced existing address point locations in TIGER. Over 257,000 miles of roads were added to TIGER using data submitted by partners.

28. As part of this process, the Census Bureau accepted 205,792 records from Prince George's County, MD, of which 100 percent matched to the MAF; 232,403 records from the City of New York for Kings County, NY, of which 100 percent matched to the MAF; and 133,467 records from Orange County, NY (encompassing Newburgh city), of which 99.98

percent matched to the MAF. Again, this demonstrates a high level of accuracy within the MAF for Prince George's, MD, Kings County, NY and Orange County, NY.

29. For the third decade, as mandated by the Census Address List Improvement Act of 1994, the Census Bureau implemented the Local Update of Census Addresses (LUCA) Program to provide tribal, state, and local governments an opportunity to review and update the Census Bureau's address list for their respective jurisdictions. In 2018, participants from over 8,300 entities provided 22 million addresses, of which 17.8 million (81 percent) matched to addresses already in the MAF. The Census Bureau added 3.4 million new addresses to the MAF, nationwide, as a result of LUCA. In Prince George's County, the Census Bureau added 12,278 new addresses and corrected 41,370 address records already in the MAF. In Kings County, NY, the Census Bureau added 21,831 new addresses and corrected 13,503 address records already in the MAF. The Census Bureau received 75 new addresses from Newburgh city and three corrections to addresses in the MAF.

30. To allow tribal, state, and local governments one final opportunity to submit addresses where construction was completed between March 2018 and April 1, 2020 (Census Day), the Census Bureau conducted the New Construction Program. As of the date of this Declaration, the processing of New Construction submissions continues. Prince George's County has provided 4,703 addresses to the Census Bureau through the New Construction Program. Of these, 4,394 matched to addresses already contained in the MAF as a result of other address update processes. New York City and the State of New York provided 43,040 addresses to the Census Bureau within Kings County, NY through the New Construction Program. Of these, 20,269 matched to addresses already contained in the MAF as a result of other address update

processes. Although it was free to participate in the New Construction Program, Newburgh city chose not to do so.

31. Throughout the decade, the Census Bureau tailored the GS Program outreach and acquisition strategy, based on continual assessment of geographic areas in which changes had been detected and/or no other external data source contributed information.

2. In-Office Address Canvassing

32. The Census Bureau's decision to reengineer the Address Canvassing Operation to include an imagery-based in-office component developed out of assessments of the 2010 Census Address Canvassing results. In preparation for the 2010 Census, the Census Bureau canvassed the entirety of the United States and Puerto Rico in the field, with canvassers comparing the address list to housing and addresses visible on the ground and either validating or updating the address list accordingly. Analysis of 2010 Census Address Canvassing results indicated that approximately 75 percent of census blocks had no changes to addresses as a result of field work. The results of the 2010 Census Address Canvassing Operation indicated a high level of completeness in the Census Bureau's address list. Between 2011 and 2013, the Census Bureau further evaluated the availability, quality, and completeness of geospatial data available from partners. Results showed high rates of matching between address lists provided by GS Program partners and addresses already in the MAF. For these reasons, the Census Bureau determined that a 100 percent in-field validation was redundant, wasteful, and would not improve quality.

33. In 2014, the Census Bureau announced the decision to implement the use of in-office methods and data sources to detect change or stability moving forward. This decision was affirmed by external stakeholders during multiple public presentations, including Geography Division Address Summits (2011 and 2013); National Academy of Sciences Panel on

Reengineering the 2020 Census meetings; 2020 Census Program Management Reviews (2014 – 2017); Census National Advisory Committee meetings (2015 - 2017); and Census Scientific Advisory Committee meetings (2014 – 2017).

34. Between September 2015 and June 2017, the Census Bureau conducted a 100 percent in-office review of every census block in the nation (11,155,486 blocks), using two different vintages of imagery (one from 2009, which was contemporary with the timing of address list development and Address Canvassing for the 2010 Census, and one concurrent with the day on which in-office review occurred) and housing unit counts from the MAF. The 2009-vintage imagery was acquired from a variety of sources, including the National Agricultural Imagery Program as well as publicly available imagery from state and local governments. Current imagery was acquired through the National Geospatial Intelligence Agency's Enhanced View Program, through which federal agencies can access imagery of sufficiently high quality and resolution to detect individual housing units and other structures, driveways, roads, and other features on the landscape. The quality and resolution of National Geospatial Intelligence Agency's imagery is similar to, if not better than, imagery included in commercial applications available on smart phones and other devices, such as Google Maps and Bing Maps.

35. During the in-office review, clerical staff had access to publicly available street-level images through Google Street View and Bing StreetSide, which provided the ability to see the fronts of structures, as if standing on the sidewalk. The technicians categorized blocks as passive, active, or on-hold. Passive blocks represented stability, meaning the technician verified the currency and accuracy of housing data in the office. Active blocks represented evidence of change and/or coverage issues in the MAF. On-hold blocks represented a lack of clear imagery. In these latter two instances, In-Field Address Canvassing was required. At the end of the initial

review in June 2017, 71 percent of blocks were classified as passive, suggesting a need for in-field review of only 29 percent of blocks.

36. However, since the 2020 Census was still several years away when In-Office Address Canvassing completed its initial review of the nation, the Census Bureau continued the in-office review to ensure the MAF was keeping up with changes on the ground. The Census Bureau used information from the U.S. Postal Services' DSF and partner governments, including Prince George's County, MD, the State of New York, the City of New York, and Orange County, NY to identify areas experiencing recent change and triggered these areas for re-review. Between July 2017 and March 2019, the additional review resulted in the categorization of nearly 87.9 percent of the 11.1 million census blocks as passive, indicating a need for in-field review of only 12.1 percent of census blocks.

3. In-Field Address Canvassing

37. The remaining census blocks, encompassing 39,203,593 addresses, were those in which the Census Bureau could not confirm the accuracy and completeness of the address list through in-office methods, and therefore, required fieldwork to either validate or update addresses. The geography used to manage In-Office Address Canvassing was the census block, while the geography used to manage In-Field Address Canvassing was a different, sometimes larger, geographic area known as the Basic Collection Unit, designed specifically to facilitate navigation in the field. Basic Collection Units included both passive and active blocks. As a result, the total number of addresses included in In-Field Address Canvassing was 50,038,437. This represented 35 percent of all addresses in the portion of the nation in which residents will receive decennial census materials by mail—a larger amount than were actually needed based on the In-Office Address Canvassing results.

38. In-Field Address Canvassing occurred between August 2019 and October 2019, and is now complete. Of the 50,038,437 million addresses in the universe, fieldwork validated 44,129,419 addresses (88.2 percent). The remainder were removed from the universe as deletes, duplicates, or non-residential addresses. New addresses identified during fieldwork amounted to 2,685,190, of which 1,553,275 matched to addresses already in the MAF as a result of contemporaneous in-office update processes. In other words, even the hardest to count areas that required fieldwork to verify the addresses, resulted in only a small percentage of additions to the existing MAF.

39. It is important to note that because In-Field Address Canvassing occurs only during a specific period prior to the Decennial Census, other in-office address update processes, such as on-going processing of the U.S. Postal Services' DSF and the New Construction Program, are required to ensure that the Census Bureau has a complete and accurate address list at the time the 2020 Census invitation mail-out occurs in March 2020. To rely only on In-Field Address Canvassing to construct the address list for the decennial census would mean missing opportunities to include new housing built and occupied after fieldwork occurred as well as conversions of existing units from commercial to residential uses (many of which are difficult to identify in the field, but are identified in address files from partners).

V. Delivery of Address Data in Support of 2020 Census Operations

40. The design for address list development in the decade leading up to the 2020 Census was the most comprehensive in history. Extensive partnerships with tribal, federal, state, and local governments provided multiple opportunities to validate and update the MAF using the most authoritative sources available. This process of continual assessment and update using partner-provided data created a strong foundation on which to implement the use of satellite

imagery to validate existing addresses or detect change during In-Office Address Canvassing. This suite of in-office methods allowed the Census Bureau to focus In-Field Address Canvassing resources in the hardest to validate census blocks.

41. The MAF created the foundation for the 2020 Census, which is now underway. Enumeration in Remote Alaska began on January 21, 2020. Over 147 million households will begin receiving invitations to self-respond in March 2020. The final step in address list development for the 2020 Census will only include processing of new addresses identified during the enumeration process. It is certainly not possible to change the process now or do additional In-Field Address Canvassing.

42. As Chief of the Geography Division, I can confidently say that the Census Bureau's MAF is the most complete and accurate in history. Twenty-four years (encompassing three censuses) of managing geographic operations at the Census Bureau has provided me with the unique opportunity to witness the development of a national address list from its beginning in the 1990s to completion in support of the 2020 Census.

VI. Responses to Drs. Doms and Hillygus

43. In the course of preparing this declaration, I have reviewed the portions of the Declarations of Drs. Mark Doms and D. Sunshine Hillygus submitted in connection with Plaintiffs Motion for Preliminary Injunction that pertain to the issue of address canvassing, specifically paragraphs 32–41 of the Doms Declaration and paragraphs 36–43 of the Hillygus Declaration.

44. It should be noted that I had the opportunity to work with Dr. Doms between September 2015 through August 2016, while he was serving as Under Secretary for Economic Affairs for the Department of Commerce and I was transitioning into my role as Chief of the

Decennial Census Management Division. In May 2014, I was selected to serve as the Senior Advisor for Administrative Records and Data Linkage within the Decennial Directorate of the Census Bureau. Shortly thereafter, I was asked to author “The Path to the 2020 Census.”

45. The path outlined how the Census Bureau would design and conduct a census that cost less per housing unit than the 2010 Census while maintaining high quality. Determining the path involved the identification of cost drivers and innovative methods aimed at reducing those costs. The path focused on four key design areas: Reengineering Address Canvassing; Optimizing Self-Response; Utilizing Administrative Records; and Reengineering Field Operations. If planned and implemented correctly, Decennial Directorate budget staff estimated the avoidance of \$5.1 billion as compared with following the 2010 Census design.

46. On September 5, 2014, I briefed Dr. Doms on “The Path to the 2020 Census Design.” His response was overwhelmingly positive and resulted in his approval for the Census Bureau to share the design publicly. On October 3, 2014, I presented “The Path to the 2020 Census” at the 2020 Census Program Management Review. Immediately following, Timothy F. Trainor, Chief of Geography Division at that time, presented the Geography Division’s 2014 Recommendation to reduce fieldwork for the 2020 Census through more in-office review and validation of addresses. Both presentations are available here:

https://www.census.gov/library/video/2014-10_2020-pmr.html.

47. In October 2014, I was asked to serve as Acting Chief of the Census Bureau’s Decennial Census Management Division. I was non-competitively placed in that position beginning December 28, 2014. I was instructed that my work, and the work of the division, should focus on delivering the 2020 Census design decisions to Executive Leadership within the Census Bureau and Department of Commerce by July 31, 2015. It was expected that a final

version of the 2020 Census Operational Plan would be completed no later than September 2015. To demonstrate progress toward these goals, my team and I briefed Dr. Doms on a regular basis.

48. My records show that topical briefings focused on the four key design areas, as well as the research and testing areas, and occurred as follows:

- i. October 17, 2014 – Utilizing Administrative Records
- ii. December 19, 2014 – The Census Bureau’s Microsimulator
- iii. January 30, 2015 – Optimizing Self-Response
- iv. April 3, 2015 – The 2015 Census Test
- v. May 29, 2015 – The Address Validation Test
- vi. June 19, 2015 – 2020 Census Testing in Fiscal Year 2016
- vii. July 24, 2015 – 2020 Census Operational Plan
- viii. August 7, 2015 – 2015 Census Tests

While Dr. Doms offered thoughtful questions and suggestions during these briefings, at no time did he object to the 2020 Census design plans or the testing of those plans. His approval of the 2020 Census Operational Plan kicked off a series of over twenty presentations in September and early October 2015 to internal and external stakeholders, including the Department of Commerce Milestone Review Board, the Office of Management and Budget, the Government Accountability Office, the Department of Commerce Office of the Inspector General, the House Oversight and Government Reform Committee, the Senate Homeland Security and Governmental Affairs Committee, and both the House and Senate Appropriations Committees that oversee the Census Bureau. The response to the 2020 Census design was overwhelmingly positive.

49. On October 6, 2015, the Census Bureau publicly released the first version of the 2020 Census Operational Plan during a 2020 Census Program Management Review. The transcript is available here: https://www.census.gov/library/video/2014-10_2020-pmr.html. The 2020 Census Operational Plan was released three years ahead of last decade. Implied throughout the development process was Dr. Doms' support and approval of the 2020 Census design.

50. In regard to the points raised by Drs. Doms and Hillygus, particularly with regard to the way in which the address list for each decennial census is developed, my thoughts have been addressed throughout this Declaration. There are two points, however, on which I would like to focus.

51. First, the assertion by Dr. Doms that the imagery-based approach implemented by the Census Bureau is flawed. This statement, I assume, was based on the Department of Commerce Inspector General's report following the 2018 Census Test in Providence, RI, in which we included a sample of passive blocks to test the accuracy of the in-office imagery-based methodology. For the 2018 End-to-End Test, 433 blocks in the Providence site were selected for canvassing in the field in order to evaluate In-Office Address Canvassing processes. Of these, 233 were passive; 200 had been triggered for re-review in the office. Because the Census Bureau's methodology for determining the In-Field Address Canvassing workload converts on-hold and triggered blocks to active status (thus leading them to be verified in-field), the 233 passive blocks are the appropriate universe for evaluating the accuracy of In-Office Address Canvassing in identifying blocks as passive. The Census Bureau reviewed the In-Field Address Canvassing results for the 233 passive blocks after applying its standard process for reviewing data from fieldwork to assure the quality and accuracy of address updates prior to updating the MAF and establishing the list of addresses for Decennial Census enumeration. This review

identifies addresses that were erroneously added or deleted as well as adds that duplicate addresses already on the MAF. This review also identifies instances in which canvassers used a combination of add and delete actions to correct an address's location (i.e., deleting from one block and adding to another). While this combination of actions corrects coverage at a block-level, it does not indicate an error in the overall address list. In other words, this combination of actions improves our mapping information. It does not have any implications for an individual's ability to receive mailings from the Census Bureau and be enumerated. It is inappropriate to treat these add/delete combinations as an indication that households might not receive a questionnaire in the mail and might be missed in the Decennial Census. Based on our review of processed In-Field Address Canvassing results, we found that 98 percent of the addresses in the in-sample passive blocks were validated and only 2 percent of the addresses returned from the field represented coverage errors. The Census Bureau documented our disagreement with the OIG's methodology in a memo dated September 21, 2018 and attached here as Exhibit A.

52. Second, Dr. Hillygus noted the low rate of participation in LUCA by jurisdictions in Texas along the border with Mexico and implied that this, coupled with the dependence on the in-office imagery-based review, would lead to undercoverage of addresses and undercounting of population, particularly in predominantly Hispanic communities called colonias. We note that at the time she conducted her analysis and wrote her report, the Census Bureau had not yet identified, and released to the public, the specific blocks in which it would conduct In-Field Address Canvassing. The percentage of housing units canvassed in the field in the most populous counties along the border (listed east to west) was:

- Cameron County: 73.7 percent
- Hidalgo County: 65.7 percent

- Starr County: 72.1 percent
- Webb County: 44.2 percent
- El Paso County: 29.5 percent

The Census Bureau published the In-Field Address Canvassing Viewer to illustrate where the in-field work would be occurring. It provides a visual of the numbers cited above, at this link:

[https://gis-](https://gis-portal.data.census.gov/arcgis/apps/webappviewer/index.html?id=1a0004d1745547888c8fd2f4d929d42f)


[portal.data.census.gov/arcgis/apps/webappviewer/index.html?id=1a0004d1745547888c8fd2f4d929d42f](https://gis-portal.data.census.gov/arcgis/apps/webappviewer/index.html?id=1a0004d1745547888c8fd2f4d929d42f)

53. Within the colonias in these counties, the percentage of housing canvassed in the field ranged from 72.5 percent in El Paso County to 92.2 percent in Cameron County.

Percentages were generally higher than the national average in these counties, and in the colonias. Because in-office methods detected differences between address list coverage relative to housing observed in imagery, the Census Bureau was able to target In-Field Address Canvassing resources in the kinds of communities that need them most and avoid expending resources in stable, easy-to-enumerate neighborhoods.

54. In short, the example raised by Dr. Hillygus demonstrates that the Census Bureau focused in particular on the hardest to count areas in conducting In-Field Address Canvassing. She is mistaken to assume that In-Office Address Canvassing is somehow less accurate or inferior to In-Field Address Canvassing in most cases. Whether or not her assumption was correct, it would still be incorrect to draw the conclusion that the decision to conduct In-Office Address Canvassing in some areas in lieu of In-Field Address Canvassing would negatively affect the enumeration of hard to count communities.

Executed on this 10th day of February, 2020.



Deirdre Dalpiaz Bishop
Chief, Geography Division
United States Census Bureau


Exhibit A



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

SEP 21 2018

MEMORANDUM FOR: Carol N. Rice
Assistant Inspector General
for Audit and Evaluation
Office of Inspector General

From: Ron S. Jarmin 
Performing the Non-Exclusive Functions
and Duties of the Director
U.S. Census Bureau

Subject: *2020 Census: Issues Observed During the 2018 End-to-End Census Test's Address Canvassing Operation Indicate Risk to Address List Quality Draft Report*

The attached comments respond to your August 16, 2018 draft report "*2020 Census: Issues Observed During the 2018 End-to-End Census Test's Address Canvassing Operation Indicate Risk to Address List Quality.*" The Census Bureau appreciates the opportunity to review and provide comments on this draft report.

Attachment

Census Bureau Comments on Office of Inspector General Draft Report:

"2020 Census: Issues Observed During the 2018 End-to-End Census Test's Address Canvassing Operation Indicate Risk to Address List Quality"

September 2018

The U.S. Census Bureau appreciates the opportunity to comment on this draft report. We disagree with several of the findings in this draft and also with three of the seven recommendations.

Overall, we are concerned that the Office of Inspector's General (OIG) draft report and its title fail to adequately present the full scope of the Census Bureau's process for updating and validating 2020 Census the address frame. As a result, the draft report does not place the In-Office Address Canvassing (IOAC) operation in proper context. In addition to our planned Address Canvassing operations, the Census Bureau has multiple processes to update and validate the 2020 Census address frame. These processes include:

1. **Biannual processing of the United States Postal Service's Delivery Sequence File (DSF).** The DSF is the Census Bureau's primary source for address updates, having supported the Census Bureau in adding 4.8 million new residential addresses to the Master Address File (MAF) since 2010.
2. **Tribal, state, and local government address lists and road files provided through the Geographic Support System (GSS) Program.** Between 2013 and 2018, the GSS Program accepted approximately 107 million addresses for use in updating the MAF. Of these 107 million addresses, roughly 106 million (99.5 percent) matched addresses that were already in the MAF. The GSS Program helped demonstrate to us and these participating governments the completeness of the MAF, and resulted in more accurate spatial coordinates for many addresses.
3. **The Ungeocoded Resolution Project (URP).** The URP is a program in which Census Bureau staff research and identify the census block to which an address should be assigned, when the automated geocoding process is unable to make the determination. Since the project began in 2017, over 772,000 addresses (73 percent of addresses reviewed) have been geocoded to census blocks. Once geocoded, addresses are added to the initial decennial census address frame.
4. **The Local Update of Census Addresses (LUCA) Program.** LUCA, including its appeal process, is now underway providing an opportunity for tribal, state, and local governments to review the Census Bureau's address list for their respective jurisdictions.

5. **The New Construction Program.** Local governments may provide addresses for housing units built after LUCA, but ready for occupancy by April 1, 2020.
6. **The Count Review Program (CRP).** The CRP is conducted in collaboration with state members of the Federal-State Cooperative for Population Estimates. It provides an additional opportunity for states to review counts of housing units prior to the 2020 Census.

Additional comments on each of the four findings and seven recommendations are as follows:

Regarding Finding I -- In-office address canvassing did not correctly identify blocks for in-field address canvassing at the Providence test site.

The Census Bureau disagrees with the OIG's findings regarding the analysis of passive blocks in the Providence site. We have serious concerns about the OIG's methodology.

For the 2018 End-to-End Census Test, 433 Basic Collection Units (BCU) in the Providence site were selected for canvassing in the field in order to evaluate IOAC processes. Of these total BCUs, 233 were passive BCUs (i.e., all blocks within the BCU were passive) and 200 BCUs contained blocks that had been triggered for re-review in IOAC. The OIG's reasoning is incorrect in this instance, as the Census Bureau considered all of the BCUs to be active because a second review had not been conducted. The OIG stated that it included the 200 "passive-triggered" BCUs in the universe because the OIG believed that there is no assurance that a second review would have changed the status to active. The Census Bureau respectfully disagrees. Because the Census Bureau has no way of knowing what the outcome of a second review would be and what proportion of the triggered blocks might remain passive, it treats all of the triggered blocks as active until proven otherwise. Thus, the Census Bureau believes that the 233 passive BCUs are the appropriate universe for evaluating the accuracy of IOAC in identifying blocks as passive.

Further, the OIG analyzed the "raw" unprocessed results from fieldwork. In doing so, the OIG included in its findings actions taken in the field that did not result in coverage changes when processed prior to updating the MAF. As a result, the OIG over-stated error levels. For example, a canvasser fails to notice that a side door on a house leads to a basement apartment and, as a result, deletes the address, which a previous canvassing operation added to the MAF and that local government-provided address lists have also included. Geography Division, referencing the source history in the MAF for the address, rejects the deletion. Therefore, there is no net change from this action, but it would have been included in OIG's findings as an error. Based on our review of processed IFAC results, we found that 98 percent of the addresses in the in-sample passive blocks were validated, and only 2 percent of the addresses returned from the field represented potential coverage errors.

Regarding Finding II -- Resolution of alerts indicating potential instances of low quality and fraud/abuse was untimely or non-existent.

The Census Bureau believes that this headline is misleading and implies most alerts were not resolved in a timely fashion. We do not believe the data support such a conclusion. Overall, as OIG notes on p. 5, only 6 percent of all alerts (592 out of 10,021) were not resolved. We suggest that a more accurate statement: "Resolution of alerts indicating potential instances of low quality and fraud/abuse was not always timely, and sometimes did not occur at all."

Of 81 "Block Failed quality control (QC)" alerts, 21 alerts - less than 1 percent of all 10,021 alerts - were unresolved. These unresolved alerts did not lead to a failure to conduct or complete the QC. If selected for QC, the block was sent to the Operations Control System for assignment to the QC staff. Even if the "Block Failed QC" alert was not resolved by the supervisor, the failed QC block was re-canvassed. Based on what we learned in the 2018 End-to-End Census Test Address Canvassing operation, we agree that we need to continue to improve our alert process for these situations to ensure listers with poor quality work are identified quickly during the 2020 Census Address Canvassing operation.

Regarding Finding III -- The Bureau's ability to inform the 2020 Census address canvassing operation using the 2018 E2E Test is limited.

The Census Bureau disagrees with the conclusion that the 2018 E2E was not successful in testing IFAC. We successfully implemented quality control for the first time using LiMA (our listing and mapping application); successfully integrated the first field test with the ECaSE system (our Internet response application); deployed the systems and procedures that will be used during the 2020 Census; and, gleaned important lessons learned that we already are using to improve our systems and processes. Specifically, these lessons include:

- The Census Bureau used laptops that it already had in-house to support the field operations for the 2018 End-to-End Census Test. While a newer model of the laptops will be used for 2020 Address Canvassing, no significant changes will be introduced, and operational testing with the 2020 equipment will be conducted in Spring 2019. The laptops used in the 2018 End-to-End Census Test deployed all of the software applications planned for 2020 listing operations (LiMA, Mobile Case Management (MCM), and Field Operational Control System (FOCS) software).
- The Census Bureau also believes we successfully tested the Optimizer to make assignments to listers during the 2018 End-to-End Census Test. As we observed the impacts and behaviors that our business rules triggered during production, we did make manual changes to some assignments. Based on these observations, we have made further changes and improvements to how the Optimizer assigns listing work. We never envisioned using the Optimizer to make all assignments during the 2018 End-to-End Census Test. The Optimizer is a tool for ensuring the majority of assignments are made in an efficient and logical manner. We will adhere to the same plan for 2020, that is, there is no intent to have the

Optimizer make all assignments without any intervention.

With regard to passive blocks only being studied in one test site, by design and given available budget, the Census Bureau only assigned passive blocks into the workload in the Providence test site. This was done to support a sample that would enable further analysis in that test site. Both of the remaining test sites followed the 2020 Address Canvassing workload model that will not include passive blocks.

Regarding Finding IV – The Bureau is unsure of whether 26 Listers who updated addresses were qualified.

The Census Bureau agrees with this finding, but notes that the 2018 End-to-End Census Test Address Canvassing training was the first time we used the Decennial Learning Management System (LMS). The LMS consisted of online training modules, including the final assessment component referenced in the report. The Census Bureau successfully demonstrated the ability to deliver online training to field staff.

However, we agree that the test demonstrated the need for more robust monitoring and tracking of the final assessment. Specifically, final assessment scores from the LMS were not connected to the FOCS, making tracking a manual task for managers. After this was identified during Address Canvassing, we introduced a series of actions for later 2018 End-to-End Census Test operations. For example, we added custom reporting and monitoring tools in the LMS to provide managers with better information on the status of the Final Assessment. These custom tools were implemented for the Nonresponse Followup (NRFU) operation in the 2018 End-to-End Census Test; however, we agree that further refinements are needed for 2020.

Response to Recommendations

Recommendation 1: Evaluate how the number of incorrectly categorized passive blocks will affect Census quality and how those errors may affect demographic groups.

To the extent that this recommendation calls for the conduct of a new evaluation providing nationally representative data of the type described before the 2020 Census, the Census Bureau disagrees with this recommendation. We agree with the recommendation, if the recommendation calls for us to conduct an evaluation of the results of the 2020 Census. The Census Bureau is planning an evaluation in the 2020 Census that will try to measure the accuracy of the address canvassing operation, including the in-office and in-field components. For the former, the error profiles of blocks identified as passive and active will be estimated, although not necessarily according to their effects on the coverage of different demographic groups.

Recommendation 2: Identify in-office operational errors that are causing clerks to incorrectly categorize blocks and implement procedures to prevent errors from continuing.

The Census Bureau agrees with this recommendation. While we disagree with the scale of errors reported by the OIG (as described in more detail in our comments on Finding I, above), we agree that errors occurred. Corrective action will be taken.

Recommendation 3: Include a nationally representative statistical sample of passive blocks in the 2020 Census in-field operation and report the estimated number of missed households.

The Census Bureau agrees with the recommendation to study housing unit coverage in the 2020 Census. For that study, we plan to use the Post Enumeration Survey areas, which will be a statistically representative sample of blocks.

Recommendation 4: Develop procedures to prioritize the resolution of OCS alerts indicating risks to quality and potential fraud/abuse.

The Census Bureau disagrees with this recommendation to prioritize between alerts. We believe all alerts are important and require supervisory notification and resolution. However, we agree we need to continue revising procedures and supervisor training regarding alerts to ensure alerts are effectively used during the operation.

Recommendation 5: Assess the risks to the 2020 Census that have arisen as a result of not fully meeting the objectives of the 2018 E2E Test's address canvassing operation.

The Census Bureau disagrees with this recommendation, because we disagree with the conclusion that we did not substantially meet our test objectives. Our position is described in more detail in our comments on Finding III, above.

Recommendation 6: Determine why manual overrides of the Optimizer occurred and assess whether the Optimizer is a feasible solution to efficiently route staff.

The Census Bureau agrees with the recommendation that we need to study what we learned from the test, including revisions that will enhance the use of the Optimizer to make assignments. While we expect the use the Optimizer to make the majority of assignments, manual assignments will need to be made in some situations. We will continue to develop refinements to the Optimizer in 2020.

Recommendation 7: Determine why final training assessment documentation was missing for 26 Listers and develop a management control to ensure that (1) trainee assessments are documented, and (2) only qualified trainees are retained for a 2020 Census Lister position.

The Census Bureau agrees with the recommendation that we need to continue to revise procedures for using the training assessments as a tool for managing field staff in 2020.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED
PEOPLE, *et al.*,

Plaintiffs,

v.

BUREAU OF THE CENSUS, *et al.*,

Defendants.

No. 8:18-cv-00891-PWG

DECLARATION OF BURTON H. REIST

I, Burton H. Reist, make the following Declaration pursuant to 28 U.S.C. § 1746, and state under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I have served for over a decade in a leadership position overseeing decennial census activities at the U.S. Census Bureau, and for over two years at the Department of Commerce. I am currently the Assistant Director of the Communications Directorate with responsibility for operations and management, where I have served since December 2018. I currently oversee the Public Information Office, the National Partnership Program, and the Program Management Office for the Integrated Communications Contract, which provides extensive communications support for the 2020 Census. In all of these areas, I provide executive leadership for ensuring the development of the Integrated Partnership and Communications (IPC) Program and ongoing strategic communications for the 2020 Census Program.

2. Previously, I served as Chief, Decennial Communications and Stakeholder Relations since February 2017. My duties included oversight of the budget and communications for the three Decennial Programs – the 2020 Census, the American Community Survey, and the Census Bureau’s Geographic Programs. From October 2014 and January 2017, I was the Director of External Affairs for the Economic and Statistics Administration (ESA), a former component of the Department of Commerce, where I reported to the Chief of Staff for the Undersecretary of Economic Affairs. My duties in this position included oversight of communications activities at the Census Bureau and the Bureau of Economic Analysis, and I provided advice to the Undersecretary on the 2020 Census Program. Prior to taking this position at ESA, I ran the 2020 Census Research and Planning Office at the Census Bureau from December 2011 through September 2014, where I directed the research and testing program for the early development of the 2020 Census design. I was the Assistant Director of the Communications Directorate during the 2010 Census, and I was part of the leadership team directing the 2010 Census communications program.

3. I have served with the Census Bureau, and its parent bureau the Economic and Statistics Administration (a former component of the Department of Commerce), for 20 years in the areas of communications and outreach, policy coordination and senior management. In addition to the responsibilities described above, I also served as the Census Bureau’s FOIA Officer for two years from 2005 through 2007.

4. I hold a Bachelor’s Degree in Politics from the University of California, Santa Cruz, and a Master’s Degree in Public Administration from Cornell University.

5. I am knowledgeable and well informed about 2020 Census Operations generally and the IPC in particular, and I make this declaration based on my personal knowledge and/or information supplied to me in the course of my professional duties.

I. Executive Summary

6. In this declaration, I address the following topics and draw the following conclusions:
- a. I describe the Integrated Partnership and Communications Program for the 2020 Census, which includes both (1) an advertising and communications campaign and (2) a partnership program, each of which are designed to encourage self-response from everyone in the United States, particularly hard-to-count communities.
 - b. I explain the innovations in the Partnership Program for the 2020 Census, most significantly the decision to double the number of Partnership Specialists, the professional staff that fulfills the core mission of the partnership program of reaching out and forming partnerships with local organizations to encourage self-response. The Partnership Program for the 2020 Census is anticipated to have a greater effect, based on a larger number of partnerships, than in the 2010 Census.
 - c. I explain that the elimination of the Partnership Assistant position—a clerical position in the 2010 Census that has become obsolete as a result of the 2020 Census’s new design—is unlikely to have a negative effect on the Partnership Program’s success, but will save taxpayer money from being wasted.
 - d. I explain that the Advertising and Communications Campaign is larger in terms of dollars spent, both in total and per person, than the campaign was in the 2010

Census and is better designed and tested to make each dollar spent more effective than in 2010.

- e. I explain the mistakes Drs. Doms and Hillygus make about the IPC in their declarations submitted in this case, particularly (a) assuming incorrectly that each dollar spent on the Partnership Program has an equal effect, when in fact dollars spent on Partnership Specialists are significantly more valuable in terms of their effect than dollars spent on Partnership Assistants, and (b) ignoring the significant effect and importance of the Advertising and Media Campaign in their focus on the Partnership Program. These mistaken assumptions render their conclusions about IPC unreliable.
- f. I explain my experience working with Dr. Doms and his contemporaneous support for the innovations in the 2020 Census design that he now criticizes.

II. The Integrated Partnership and Communications Program

7. The purpose of the IPC is to communicate the importance of participating in the Census and encourage self-response from all people living in the United States, with a particular focus on hard-to-count communities that have been historically undercounted. This includes population groups, such as African American, Hispanic/Latino, Native American, Asian & Pacific Islander, and other segments of the population including young children, single young mobiles like college students, people who speak languages other than English, renters, low income households, and single parent households. Subsidiary goals are to generate good will for census workers going door-to-door in the non-response follow up (NRFU) and other operations, and to assist with data dissemination after the census. The overriding goal of the IPC, however, is to motivate and enable self-response.

8. The IPC program accomplishes its goal of motivating and encouraging self-response to the census through both (1) the Integrated Communications Contract (“ICC”), and (2) the Partnership Program.

A. The ICC

9. The ICC is the major contract that supports all components of the communications campaign. Each decade since the 2000 Census, the Census Bureau has mounted an increasingly robust and sophisticated communications campaign that includes paid media (prior to 2000 we relied on Public Service Announcements and earned media). These campaigns have included paid print, television, radio, and social media ads targeted at English-speaking audiences, as well as specific population groups, including: Black/African American, Hispanic/Latino, Asian, American Indian and Alaska Native, and Native Hawaiian and Other Pacific Islanders. Advertising has been extensive, and included mass media consumed by English-speaking audiences, and national and local media that focuses on the following specific population groups: Black/African American, Hispanic/Latino, Asian, American Indian and Alaska Native, and Native Hawaiian and Other Pacific Islanders.

10. For the 2020 Census the Census Bureau will mount a paid media campaign that is more extensive than ever before. It will include creative placements in all of the media streams included in the 2010 Census, as well as an expanded presence in social and digital media. This is the first census where we are making a significant investment in digital advertising, and spending time and resources targeting online sites including Facebook, Instagram, paid search engines, display ads, and programmatic advertising. The push to have a greater digital presence will allow the Census Bureau to reach a mobile audience, tailor messages, micro-target, and shift campaign ads and messages as needed. The country is moving online and one way to reach

people is to expand how we connect with them. Online media, particularly search engines and social networking sites, make up a significant portion of digital connections. Should a specific area of the country generate lower than expected responses, the Census Bureau can increase advertising outreach to that area. Micro-targeting to regions allows the Census Bureau to tailor its messaging, including directing appropriate messages to hard-to-reach communities and those who distrust government, both of which have been traditionally undercounted. Also, if the Census Bureau call centers (we will have 9 call centers around the nation accepting census responses and answering questions about the census) detects a sizable number of calls or comments surrounding a specific concern, digital advertising will allow us to respond more directly. These changes are expected to make each dollar spent on the advertising campaign more effective than in any previous census.

11. We also will continue to mount a traditional media campaign that will inform stories in news media across the country in print, social, and digital media. This campaign will include a national events strategy that is more robust than what we saw in previous censuses. This began with the “One Year Out 2020 Census Kick-Off on April 1, 2019, and included events on Constitution Day in September 2019 and a recruiting event in October 2019. Upcoming events include a 2020 Census Interfaith Summit, an event focused on counting young children, and events focused on Census Day, April 1, 2020, and other key dates during the self-response phase of the census. Additional components of the outreach, communications, and partnership effort include a strong research foundation, paid advertising, the Partnership Program, social and digital media, the Statistics in Schools Program, and stakeholder engagement, each of which build on the experience of prior censuses.

12. Since the 2000 Census, the Census Bureau has hired a major advertising firm to build the paid advertising campaign and provide support for the key components of the communications program. For the 2020 Census, this contract was awarded to VMLY&R, a major legacy-advertising firm with over 80 years of experience. They are managing a contract worth over \$500 million that will include an advertising buy that will exceed the 2010 campaign's ad buy when adjusted for inflation. Known as Team Y&R, or TYR, by the Census Bureau, the contracting team includes 13 subcontractors. TYR includes firms with expertise in reaching and working with the major audiences that will receive advertising through the media outlets directed toward their population groups, including the Black/African American, Hispanic/Latino, Asian, American Indian and Alaska Native, and Native Hawaiian and Other Pacific Islander populations. The campaign will be conducted in all of the thirteen languages supported by the 2020 Census.¹ By relying on firms with these individual skill sets, the Census Bureau was able to better tailor the media and messaging toward individual groups and gauge the response before going live with the advertising. It also allowed for more creative risk-taking, and less of a one-size-fits-all approach.

13. TYR has been working with the Census Bureau to produce a thoroughly tested platform. Starting earlier in the decade has led to a more integrated campaign for the census program. As compared to 2010, the 2020 Census relied much more on feedback and focus group testing of the 2020 Census campaign messages and taglines. The result of the research testing and creative development produced the "Shape Your Future" campaign platform and over 1,000 creative treatments across all of the key population groups.

¹ The thirteen languages are English, Spanish, Chinese (Mandarin and Cantonese), Vietnamese, Korean, Russian, Arabic, Tagalog, Polish, French, Haitian Creole, Portuguese, and Japanese.

14. The campaign launched with recruitment advertising in October 2019 and will continue with four key phases in 2020:

- Awareness: January–March. Educating the public about the 2020 Census.
- Motivation: March–May. Issuing a call to action to respond the 2020 Census.
- Reminder: May–June. Letting the public know that census takers will be visiting their homes and that it's not too late to respond.
- Thank You: September. A small campaign to the public and our partners for supporting and participating in the 2020 Census.

15. The campaign is already underway in local media, and digital advertising is in place nationwide. The full mass media campaign will be live on February 17, 2020, and peak in March, April and May. At its height it will match the major advertising campaigns being deployed by the nation's largest companies. A music video developed by the firm working with the Native Hawaiian/Pacific Islander population group has gone viral and already has over 1 million hits on YouTube.

16. Since 1990, the Census Bureau has invested heavily in building a robust partnership program, as history has taught us the criticality of having strong partner relationships for a healthy census. The Census Bureau considers the partnership program to be one of the most essential components of the IPC in reaching traditionally undercounted populations.

B. The Partnership Program

17. There are two prongs to the Partnership Program:

- The National Partnership Program works from Census Bureau headquarters mobilizing national organizations.

- The Community Partnership and Engagement Program works through the regions at the local level to reach organizations that directly touch their communities. The National Partnership Program and Community Partnership and Engagement Program are more integrated than ever before, and the target for both programs will significantly exceed the totals reached in prior censuses.

18. Census partners include national organizations like the National Urban League, the Mexican American Legal Defense Fund, the National Association of Latino Elected Officials (NALEO), the National Association for the Advancement of Colored People (NAACP),² and the U.S. Chambers of Commerce. Major corporations also become census partners. At the local level, partners can be churches, synagogues and mosques, legal aid clinics, grocery stores, universities, colleges, and schools. Partners are the trusted voices in their communities; they have a profound impact on those who listen when they say the census is important and safe. We depend on our partners to seal the deal with communities that may be fearful or distrustful of the government. Even with all the Census Bureau's innovation and improvements to the self-response system, we have learned—and confirmed through research—that when communities and leaders recognize the importance of participating in the census, this message is better conveyed to households within those communities. The best, most trusted information comes from a person of trust.

² The NAACP has been a trusted partner in the last three censuses.

I. Innovations for the 2020 Census Partnership Program

19. The Census Bureau's planned Partnership Program for the 2020 Census builds on the successes and lessons learned from the 2010 Census, and the program as a whole has been expanded and improved since the 2010 Census.

20. The most significant change to the Partnership Program since the 2010 Census was the decision to effectively double the number of local Partnership Specialists as compared to 2010. Our 2020 Census plan includes hiring over 1500 Partnership Specialists, compared with only 800 hired for the 2010 Census. Partnership Specialists are the professional staff that carry out the core mission of the partnership program, directly interacting with the various communities who need to be encouraged to respond to the census, and securing partnerships with local organizations in order to encourage self-response. While exact numbers change on a weekly basis, at this time we already have over 1,500 professional partnership staff on board and working to secure partnerships with state, local, and tribal governments, community and faith-based organizations, schools, businesses, and other organizations at the grassroots level. As of February 10, 2020 we have already secured over 266,000 local partners and anticipate entering into 300,000 partnerships, an increase over the approximately 257,000 local partnerships we secured in 2010. Another important improvement over 2010 is that the Census Bureau hired 40 Partnership Specialists in January, 2017, two years earlier than in the previous decade. Hiring these professional staff earlier in the decade enabled us to get a "head start" establishing crucial local connections.

21. One of the significant lessons learned in 2010 was that the early establishment of Complete Count Committees boosted partnership activities. Complete Count Committees unite government and community leaders who then play a pivotal role in establishing, organizing, and

integrating census partners at the state, local, and tribal levels. We did not track the Complete Count Committees in 2010, but we know that they were unevenly organized across the regions. In 2020, thanks to our early deployment of staff, we now have over 8,000 Complete Count Committees at the state, local and tribal levels working diligently to educate the public about the census. Maryland and New York each have a Complete Count Committees at the State level, and there are 52 and 676 in these states respectively. This includes 2 Complete Count Committees in Prince George's County, Maryland, 5 Complete Count Committees in Orange County, New York, and 1 Complete Count Committee in Newburgh, New York. In March, they will echo the advertising campaign and call on their states and communities to respond to the census. The Census Bureau does not control or pay for Complete Count Committees, but all have access to census materials that can help with promotion and education.

22. The National Partnership Program also builds on lessons learned in the 2010 Census, and also benefits from augmented staffing. Nearly twice as many staff members are working with the National Partnership Program when compared to 2010, and they are matched by dedicated support from TYR. These staff members are focused on developing quality relationships that have a lasting impact on the communities they reach. To date, we have established relationships with over 660 participating organizations at the national level, and many of them have dedicated staff working on the 2020 Census. Organizations with dedicated staff include AARP, Target, Comcast, that National Urban League, the NAACP, and NALEO to name just a few. Participating organizations are engaged in partnership activities with the Census Bureau, such as highlighting the 2020 Census in their member or employee communications, inviting us to speak at national or regional conferences, and assisting with recruitment. We do not include an organization on the national partnership list unless both (a) we

have an established point of contact with it, and (b) the organization has made specific commitments to support the 2020 Census. The goal is to establish 850 national partnerships for the 2020 Census. This goal is comparable to 2010 in number, but the program for the 2020 Census has been improved, as the partners are now better organized and more rigorously evaluated to ensure that they are doing substantive work on behalf of the 2020 Census.

II. Elimination of the “Partnership Assistant” Position

23. It is my understanding that Plaintiffs in this litigation have criticized the Census Bureau’s decision to eliminate the “Partnership Assistant” position employed as part of the 2010 Census program, from the 2020 Census program. It is true that the 2010 Census program employed Partnership Assistants, and that none will be hired for the 2020 Census. We do not intend to hire these individuals for the 2020 Census because we do not need them. These Partnership Assistants were added late in the 2010 planning cycle when the Census Bureau received un-planned for funds as part of the American Recovery and Reinvestment Act. One purpose for adding these positions to the 2010 Census was to create jobs with those stimulus funds, so while they contributed to the 2010 program, we did not consider them as a critical component for the success of the Partnership Program in 2010, nor do we consider them necessary now. In particular, because Partnership Assistants typically did not interact directly with partners, they had little or no direct impact on the number of partnerships secured, and thus only a limited impact on increasing participation in the census.

24. In addition, technological changes employed in the 2020 Census have eliminated the need for hiring Partnership Assistants. The Partnership Assistants performed clerical functions in the Local Census Offices, primarily assisting with paper and pencil administrative activities. These administrative activities are now obsolete with the more automated census in

2020. In short, in the 2020 Census we do not need dedicated clerical office staff to support the Partnership Specialists.

25. Eliminating the Partnership Assistant position for 2020 not only prevents the waste of tax dollars on unnecessary positions, but also enabled us to almost double the number of professional Partnership Specialists, and thus significantly expand the program's ability to reach and increase the participation in the census of hard-to-count communities. Thus, although the elimination of the Partnership Assistant role technically leads to a reduction in staff from 2010 to 2020, the size of the staff performing the core mission of the program—the Partnership Specialists—has increased significantly. The number of Partnership Specialists is the relevant number for determining the relative scope of the Partnership Program.

26. At this time we believe that we have a strong partnership staff in place that is getting the job done for the 2020 Census. With just two months to go before Census Day, we do not believe that it would be constructive to add additional staff to the program.

III. Innovations in the Advertising and Communications Program

27. The budget for the 2020 Integrated Communications Contract is currently funded at a higher level than in the 2010 Census, adjusted for both inflation and population growth. The cost of the 2010 Census Integrated Communications Contract, in 2020 constant dollars, would be \$456 million. The Census Bureau currently plans to spend approximately \$583 million on the 2020 Census Integrated Communications Contract. This increase more than covers population growth since the 2010 Census, which is estimated at about 30 million. For example, the 2010 Census indicated a population of approximately 309 million, so the \$456 million spent on the communications program for that census was the equivalent of approximately \$1.47 per person. The population projection for the 2020 Census is approximately 336 million, so the \$583 million

spent on the communications program will mean an 18% increase in spending to about \$1.74 per person.

28. In addition to spending more on the communications contract (in constant dollars), changes in the media landscape also result in significantly greater reach and frequency for the 2020 advertisements. The 2020 media plan will achieve at least a 99.9% reach during the awareness and motivation phases of the campaign, compared to 95% in the 2010 campaign, based on standard measures used throughout the media industry. During the motivation phase of the campaign, when advertising reaches its peak, we expect viewers to see our advertisements on average 61 times compared to up to 48 times in 2010. Given the increase in digital and social media in support of the 2020 Census, we have created over 1,000 separate creative media pieces. These creative pieces are designed to reach all components of the U.S. population, including hard to count populations; this compares to roughly 400 separate creative pieces created in 2010. A sample of these creative pieces can be seen on the Census Bureau's YouTube channel website.

29. Every part of the 2020 Census communications program is grounded in research. Prior to the 2020 Census, the Census Bureau built the strongest research foundation ever to support a United States census communications program that will drive messaging and media placement for the communications campaign. This process began with the analysis of the public's response to censuses and surveys throughout the decade, and the use of other sources including third-party data, to build predictive models that provide estimates of the likelihood that people in all population groups, and all levels of geography, will respond to the census. These models were then translated into "low response scores" that help the Census Bureau anticipate respondent behavior so that messaging, media, and other communications activities can be deployed to maximize impact. These low response scores are then combined with additional

information including media usage data to allocate groups into larger segments of the population that will drive the purchase and placement of advertising in the campaign.

30. In a parallel effort, the Census Bureau conducted the Census Barriers, Attitudes, and Motivators Study (CBAMS). This was similar, but far more robust, than the study conducted in 2010. First, we fielded a quantitative survey with a random sample of 50,000 that achieved a response rate of over 39 percent. We supplemented the results with 42 focus groups conducted throughout the country with the major populations groups that make up the focus of the communications program. The goal of CBAMS was to understand the perceptions and knowledge gaps that inform the likelihood of people to respond to the census, so that messaging and communications activities could be better focused to motivate self-response. For example, CBAMS revealed a lack of knowledge about the questions being asked in the 2020 Census, and the uses of census data. CBAMS also indicated that a significant portion of the public is concerned that census data can be used against respondents, for example in the enforcement of immigration laws, which is not true. We worked with TYR to create advertisements to address these factors and target those advertisements to the specific groups who indicated their self-response might be affected by them. Our message has consistently been that a respondent's information will never be used for law enforcement purposes, but only for the statistical purposes for which it is collected.

31. Taken together, CBAMS and the segmentation analysis provided the foundation for the creative development of the advertising treatments, which were then tested through 122 focus groups conducted nationwide. The result is the most well researched advertising campaign put in place for a decennial census.

32. As part of a larger effort to increase participation in the 2020 Census, and to help ensure that everyone is included in the count, the Bureau has concentrated more efforts around counting complex households: where more than one family live together or families that live in nontraditional arrangements (grandparents raising a child, single parents, etc.). Previous census counts and subsequent differential undercount analysis have shown that people sometimes do not include everyone living in their homes. To address this, the Census Bureau has undertaken significant promotional and partnership work designed to encourage households to include every single person living in their home for the 2020 Census, and to ensure that no one is left off, either intentionally or inadvertently.

33. It is particularly challenging to count young children under the age of five. Our research indicates that children 0-5 are the fastest growing undercounted population. This undercount happens in two distinct ways. First, families with young children miss the census questionnaire entirely. This can happen because these families are mobile, their lives are changing, and this may be the first census they have filled out so they may not entirely understand how it works. Second, young children are undercounted when their household fills out a census questionnaire and accounts for the adults living at home, but does not include the child in the response. Young children are more likely to be left off forms from complex households. The 2020 Census has dedicated significant resources through our communications program to increase the likelihood that everyone in a household—including very young children—will be counted on Census Day. For example, we will be doing a direct mailing to 14 million households in zip codes we have determined include many complex households with messaging encouraging respondents to include “everyone under the roof,” including children, even if they are not related to the person answering the census. We also have advertising that

tackles this issue head on with children carrying the message that everyone must be included in the count.

34. Taken together, these improvements have resulted in a robust IPC that fully prepared to support the 2020 Census. It is my informed, professional opinion that the 2020 Census IPC is superior to the 2010 Census IPC in every material respect.

IV. Response to Drs. Doms and Hillygus on the IPC

35. In the course of preparing this declaration, I have reviewed the portions of the Declarations of Drs. Mark Doms and D. Sunshine Hillygus submitted in connection with Plaintiffs Motion for Preliminary Injunction that pertain to the issue of the IPC.

36. Their analysis is based on mistaken assumptions, which makes their conclusions wholly unreliable. For instance, Dr. Hillygus explicitly states that she assumes “each partnership staff person contributed equally to the partnership contact rate.” Hillygus Decl. ¶ 22. But the decrease in partnership budget since the 2010 census is a direct result of eliminating the obsolete partnership assistant position, which even during the 2010 census did not contribute significantly to the partnership contact rate. Dr. Hillygus also implicitly assumes that each dollar spent on partnership programs has an equal impact in the number of partnerships. But that is untrue for the same reason: a dollar spent on a Partnership Specialist is worth far more in terms of developing contacts and partnerships than a dollar spent on a Partnership Assistant, for example. Unlike Partnership Specialists, who make direct contact with partners, Partnership Assistants typically did not, and the elimination of this position is unlikely to have any effect on the overall effectiveness of the partnership program. As noted above, the number of professional Partnership Specialists has been nearly doubled from the 2010 Census in the 2020 Census. This

increase will directly increase the number and quality of partnerships and should have a beneficial impact on the enumeration of hard to count populations, including African Americans.

37. Dr. Doms and Dr. Hillygus also make the mistake of disregarding or failing to appreciate the impact of the communications program in their focus on partnerships. Not only will the communications program be larger than it was for the 2010 Census on a dollar for dollar basis—a point grudgingly acknowledged by Dr. Doms, although he under-reports the expected increase in advertising funding by at least \$100 million—it will also be significantly more effective as a result of the innovations I described above, including the ability to micro-target our messages to specific populations.

38. In short, the IPC is not only larger than ever before in terms of the actual amount spent and staffing devoted to outreach, it is also far more sophisticated than in past censuses. There is no reasonable basis to assume that changes to the communications program since the 2010 Census will result in any increase in a differential undercount.

V. Response to Dr. Doms on the 2020 Census Operational Design

39. Between 2012 and 2014, when I served at the Census Bureau as the Chief of the 2020 Census Research and Planning Office, I regularly briefed Dr. Doms on our plans for researching, testing and developing a new design for the 2020 Census. He was very supportive of our work, and while he asked clarifying questions, he did not object to any of the innovations we were pursuing. He also supported our work on the Lifecycle Cost Estimate that we developed in 2014. In fact, he sponsored a Silver Medal Award that I received as part of the team of budget and subject matter experts that built the original Lifecycle Cost Estimate. That team included the Chief Financial Officer of the Economic and Statistics Administration (ESA), former component of the Department of Commerce that was overseen by Dr. Doms.

40. In October, 2014 I moved into a position in ESA. As an integral member of the staff, I joined Dr. Doms in many meetings and discussions on this program and it appeared from every indication I observed that he relied on my knowledge of the 2020 Census Program. In this capacity I participated in the meetings that Deirdre Bishop discusses in her declaration. Again, while Dr. Doms asked questions and offered insights into the development of the 2020 Census operational design, he never objected to any of the innovations the Census Bureau was exploring, and he offered his unqualified support for the Operational Plan that Ms. Bishop presented in July 2015.

Executed on this 11th day of February, 2020.

A handwritten signature in black ink, appearing to read "Burton H. Reist", written over a horizontal line.

Burton H. Reist
Assistant Director, Communications Directorate
Bureau of the Census

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED
PEOPLE, *et al.*,

Plaintiffs,

v.

BUREAU OF THE CENSUS, *et al.*,

Defendants.

No. 8:18-cv-00891-PWG

DECLARATION OF PATRICK J. CANTWELL

I, Patrick J. Cantwell, make the following Declaration pursuant to 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I am the Chief of the Decennial Statistical Studies Division (DSSD) at the United States Census Bureau. I have served in this capacity since August 11, 2013. I began my career at the Census Bureau in January, 1988. I was detailed to DSSD from 1998 to 2001 to work on the 2000 Census, and I returned to DSSD in January, 2009 as the Assistant Division Chief for Sampling and Estimation.

2. The following statements are based on my personal knowledge and information supplied to me in the course of my professional duties.

3. My responsibilities as Chief of the DSSD are to manage and oversee the Division's work on the design and implementation of the Decennial Census and the American Community Survey, including research on, developing improvements to, and implementation of those programs. Among other things, the DSSD prepares models and estimates, such as statistical predictions, in order to inform

the development of census operations and design, including response projections. Another important responsibility of DSSD is to evaluate the coverage, accuracy, and efficiency of the decennial census, mainly through the conduct of the Post-Enumeration Survey and the census program of experiments, evaluations, and assessments.

4. The DSSD currently has 98 employees, all but six of whom are mathematical statisticians. The remaining employees include two survey statisticians, three administrative assistants, and an IT support employee.

5. I received an A.B. in mathematics from Harvard University, and an M.S. and Ph.D. in statistics from the University of Connecticut. My work has been published in various places, including the *Journal of Official Statistics*, *Survey Methodology*, *The American Statistician*, the *Encyclopedia of Survey Research Methods*, and others. I have been on the editorial boards of the *Journal of Official Statistics* for more than 25 years, and *Survey Methodology* for more than 15 years. I have been a member of the American Statistical Association for 44 years.

6. In addition to working in research and management on three decennial censuses and two economic censuses, I have led research and implementation of statistical and operational methods for several of the U.S. Government's major demographic and economic surveys.

7. I am acquainted with Dr. Sunshine Hillygus from her work on the Census Scientific Advisory Committee. In this legal action, I find her overall argument and some of the specifics of her Declaration to be without merit, particularly those assertions relating to coverage and undercounts in the census.

I. Executive Summary

8. In this declaration, I address a number of points made by Dr. Hillygus in her declaration with which I disagree. Specifically:

a. I disagree with a number of her conclusions. Dr. Hillygus draws overly simplified projections about a potential differential undercount in the 2020 Census, based on unreliable studies and misleading presentations of data.

b. Dr. Hillygus's conclusions related to the controversy over inclusion of a citizenship question conflict with both the empirical results of the 2019 Census Test and evidence from census after census showing that mid-decade census tests realize lower self-response rates than the census itself. These results, as well as a significant amount of other data, research, and testing, have informed the range of assumptions used in our planning for the 2020 Census.

c. Dr. Hillygus improperly suggests that self-response rates and undercounts can be used interchangeably, when they are different phenomena and the former does not reliably predict the latter.

II. While the differential net undercount is of great concern to the Census Bureau, Dr. Hillygus's conclusions about it are overly simplified

9. The Census Bureau conducts various operations during and after the census, including a post-enumeration survey (PES), to estimate census coverage and accuracy. We are viewed as the authoritative source about coverage in the decennial census, and have published undercount rates for various censuses on our website. These undercount rates are broken down for various important demographic groups, including by race, Hispanic origin, sex, and some age groups. We conduct these efforts and make the results publicly available because we believe it is important to critique our work. As the nation's premier statistical agency, we must review our methods, be transparent about data quality, and use results to improve future operations. Many staff at the Census Bureau, including me, have spent their careers identifying and improving the differential undercount. Dr. Hillygus, no doubt,

shares the Census Bureau's desire to minimize the differential undercount. But some assertions in her declaration are overly simplified or based on assumptions that, to my knowledge, cannot be verified.

10. Dr. Hillygus begins by citing our published undercount rates selectively. For example, she notes on pages 2-3, footnote 3, "the net undercount rate for Black males age 30-49 in 2010 was 10%, with an omission rate of 16.7%. And the net undercount is also worse for young minority children—6.3% for Black children age 0-4 and 7.5% for Hispanic children age 0-4." But Dr. Hillygus's sentence is misleading, as she is citing numbers from different data sources. The numbers she cites for Black males 30-49 (10% and 16.7%) come from the 2010 PES. However, the PES estimates of net undercounts for Black and Hispanic children 0-4 in the 2010 Census are 3.42% and 2.19%, respectively, not 6.3% and 7.5%. The Census Bureau does not dispute the existence of a differential undercount—we are the primary researchers in this area—but it is important to cite documented results accurately.

11. I similarly dispute Dr. Hillygus's reliance (p. 3) on a recent report by the Urban Institute that found that "*even if the 2020 Census performs exactly as the 2010 Census*, the differential undercount of racial and ethnic minorities will worsen simply based on changes in the composition of the population ... Black individuals will be undercounted by 2.43% ... and Hispanic individuals ... by 2.01%." The Urban Institute analysis is based on unproven and unreliable assumptions, and should not be taken as a serious expectation. First, if we always define a specific demographic group (e.g., Hispanics) as "hard to count," even as it grows through immigration, we ignore the fact that people who have been in the United States for one or many generations may well behave differently than recent immigrants. Second, factors other than race and Hispanic origin play an important role in propensity to be under- or overcounted, as one can see from the Census Bureau's PES results. Even though the percentage of the population that is Hispanic has grown over the censuses of 1990, 2000, and 2010, their estimated net undercount rates have not grown steadily larger: 4.99% in 1990 (with a standard error of

0.82), 0.71% in 2000 (0.44), and 1.54% in 2010 (0.33%). (While the decrease from 1990 to 2000 is statistically significant, the increase from 2000 to 2010 is not.)

12. Dr. Hillygus states on page 7 that “the imputation procedure used by the Census Bureau will fail to mitigate a differential self-response rate because it estimates the household size of uncounted households based on households who responded, which will underrepresent minority households.” I disagree, and don’t believe that the imputation procedures we use will have much effect on the undercount rates, for two reasons: (1) the nearest-neighbor imputation procedures we employ, and (2) the extremely low rate of count imputation.

13. The Census Bureau’s count imputation procedure is used for all addresses or households that are “unresolved” at the end of all data collection. The number of unresolved cases in the census has historically been very small. Among other situations, count imputation determines a count in households for which the count is unknown. This situation is a subset of all unresolved cases.

14. First, the Census Bureau plans to apply a “nearest-neighbor” *count imputation* procedure in the 2020 Census, using information from a household next door or nearby. Compared to 2010, the procedure employed in 2020 will use a donor that tends to be much closer to the household with missing data. Further, the *characteristic imputation* procedure—which assigns characteristics (race, Hispanic origin, sex, etc.) that are missing—uses a hierarchy of possible actions, each of which tries to use information from within the household, from the household’s administrative records (when available), or from nearby housing units. Because people of similar demographics often live in neighborhoods together, the imputed counts and missing characteristics of people in minority households will tend to reflect those of similar demographics and situations.

15. Second, but more important, it should be noted that, in the last five censuses (1970, 1980, 1990, 2000, and 2010), after all data collection has been completed, the number of people included in

the census via count imputation has *always been less than half of one percent* (0.50%). Thus, the disposition of these cases through count imputation should have very little effect, if any, on the estimated differential undercount.

III. It is unclear what effect, if any, the controversy about the citizenship question will have on response rates and, subsequently, the net undercount in the 2020 Census

16. Dr. Hillygus's conclusions about the proposed addition of a citizenship question are not supported by empirical evidence from the 2019 Census Test. The U.S. Census Bureau conducted the 2019 Census Test this past summer to study the operational effects on self-response of including a citizenship question on the 2020 Census questionnaire. The test was a nationally representative randomized field experiment designed to inform hiring levels for the Nonresponse Follow-Up (NRFU) operation, which collects responses from households that do not self-respond, as well as to offer insight for the integrated partnership and communication campaign.

17. The major finding of the test was that there was no statistically significant difference in self-response rates between forms with and forms without a citizenship question. While we observed statistically significant differences in some areas and for some subgroups, these differences were small. For example, for those receiving a form with the citizenship question, response was 1.1% lower for census tracts with more than 49.1% Hispanic residents, and 0.8% lower for tracts with between 5.0% and 20.0% Asian residents. Although the 2020 Census will not include a citizenship question, these test results indicate that the inclusion of a citizenship question would not have affected hiring for the NRFU operation.¹

¹ Poehler, E., Barth, D., Longsine, L., Heimel, S., and Mills, G. (2019). "2019 Census Test Report." Washington, D.C.: U.S. Census Bureau. Retrieved on February 3, 2020 from <https://www.census.gov/programs-surveys/decennial-census/2020-census/research-testing/testing-activities/2019-census-test/2019-census-test-report.html>.

18. The 2019 Census Test did not definitively answer the question of whether the public controversy about the inclusion of the citizenship question will affect overall self-response. But looking at data from 2018 and 2019, we have not seen lingering ill effects regarding self-response rates in the American Community Survey. However, Dr. Hillygus's assertion that the 2019 test results displayed low self-response (and because of the citizenship controversy) does not hold up. The self-response rates observed in the 2019 Census Test, 51.5 percent and 52.0 percent for the two panels, were similar to other mid-decade tests, including the 2018 Census Test, which had a 52.3 percent self-response rate. History indicates that self-response rates in a census will be higher than that experienced in intercensal tests. Because the 2020 Census will take advantage of an extensive advertising and media campaign to boost self-response, we expect that, consistent with our observations from past censuses, self-response rates will be higher than those associated with the 2019 Census Test and other mid-decade census tests.

19. Dr. Hillygus draws her conclusions based in part on a survey experiment conducted by Dr. Matt Barreto. She notes that it concludes that if a citizenship question would be included on the census form, the Census Bureau would experience "an eleven-point drop in the percentage of foreign-born respondents who said they would complete the census, a six-point drop among Latinos, and a two point drop for the overall sample." Of course, there will be no citizenship question on the 2020 Census, rendering this speculative conclusion irrelevant to a prediction of any response rate to the 2020 Census as it will actually be conducted.

20. It should also be noted that three federal judges gave Dr. Barreto's survey "limited weight" after trial due to various deficiencies in his survey design and methodology. See *Kravitz v. U.S. Dep't of Commerce*, 366 F. Supp. 3d 681, 720 (D. Md. 2019) (Hazel, J.); *California v. Ross*, 358 F. Supp. 3d 965, 985 (N.D. Cal. 2019) (Seeborg, J.); *New York v. U.S. Dep't of Commerce*, 351 F. Supp. 3d

502, 581 n.36 (S.D.N.Y.) (Furman, J.), *aff'd in part, rev'd on the grounds and remanded sub nom. Dep't of Commerce v. New York*, 139 S. Ct. 2551 (2019).

21. It is my professional opinion that the results of Dr. Barreto's survey should not be taken seriously as an indicator of what might happen in the 2020 Census. First, Dr. Barreto's survey contacted his sample households only by telephone. But in the 2020 Census and our mid-decade tests, we contact households by mail, and allow them to respond on-line, by mail, or by telephone. The mode differences in both inviting and accepting responses can lead to very different types of people responding. Second, Dr. Barreto's survey asked only about respondents' *intention* to self-respond; it did not measure actual behavior in the field. Third, Dr. Barreto's survey instrument did not reflect what the Census Bureau will include on its census form, or what a respondent would see. To the contrary, Dr. Barreto's survey instrument provided leading information about citizenship *before* asking survey respondents their opinion (see, for example, his questions 2 and 3). Fourth, Dr. Barreto's survey realized only a 28.1% response rate, far below what would be acceptable for Census Bureau tests. Finally, Dr. Barreto's survey asked only *respondents* a question about participation a second time on the same questionnaire in place of eliciting more information from the nonrespondents. *This is in stark contract to NRFU, which is designed to contact people who have not yet responded weeks after the mailed self-response invitation.*

22. In summary, most of the projections of self-response—and, as a consequence, undercount rates—that Dr. Hillygus presents, and those found in the reports she cites, depend on faulty assumptions and survey methodology that would be difficult (if not impossible) to validate.

23. The 2019 Census Test, even without an advertising and media campaign, *comes as close as anything can* to what the 2020 Census environment will be like. It was a nationally representative randomized field experiment. It was sent by the Census Bureau, and used the questionnaire, mailing

materials, format, and schedule of cohort mailings that we will use in several weeks in the 2020 Census. The results from the 2019 Census Test indicated no statistically significant difference in self-response rates between forms with and forms without a citizenship question, and only small differences (1.1% and 0.8%, respectively) in areas with larger Hispanic and Asian populations. Even if the impact of a citizenship question were somehow relevant to this case, the Court should credit the Census Bureau's 2019 Census Test results over the speculation found in Dr. Hillygus's declaration.

IV. Self-response rates and undercounts are different phenomena and should not be used interchangeably

24. Unlike Dr. Hillygus's speculative statements, the 2020 Census self-response projections reflected in the Census Bureau's life-cycle cost estimate (LCCE) are robust and reflect years of research and testing. The LCCE projections provide response rates by date and the portion of responses within each self-response mode—internet, mail, and telephone. Various factors went into the projections, including self-response rates from prior censuses, differential self-response rates by mode (including internet) from the American Community Survey, general trends of response to surveys conducted by the Federal Government, considerations on the integrated partnership and communications campaign, and other demographic and socio-economic data.

25. Given inherent uncertainty and variability on response behavior, the Census Bureau constructed a range around its self-response rate projections. These ranges are reflected in our budgeting and planning. As explained further in Ben Taylor's Declaration, our national-level self-response rate projection at the start of NRFU is 60.5% with a range of 55.5% to 65.5%.

26. The Census Bureau has, of course, observed a differential in self-response between White and Non-White populations in our censuses and surveys for many years. In the 2010 Census, for example, White householders had the highest mail return rate at 79.3%; all other racial groups were

lower. Analyses also show the results for other demographics (age, Hispanic origin, tenure, household size).² There are sizeable differences across some of these other demographics as well. We have observed differences in the various census tests since 2010.

27. Dr. Hillygus states that “researchers inside and outside the Census Bureau use self-response rates (historically, mail return rates) as a proxy for the risk of being missed in the census.” This statement is overly general, unsupported, and generally not true. It is my professional opinion that data from post-enumeration surveys more accurately measure the net undercount and omissions in the census, and that data from the PES or demographic analysis should be used for this purpose rather than response or return rates. My view is consistent with the way the Census Bureau typically addresses these questions.

28. Dr. Hillygus states that “All of the factors that affect the willingness of a household to self-respond also impact their willingness to respond and to respond honestly to a census enumerator.” I am not aware of data from the Census Bureau or other sources that support this assertion. As a counterexample, consider someone who is very willing to participate in the census, but simply ignores his or her mail and advertisements. This person may in fact be less likely to self-respond, but may be happy to cooperate with an enumerator. We cannot simply generalize from self-response to enumerator response, as the conditions and procedures are so different.

29. Finally, on page 7 of her Declaration, Dr. Hillygus states that “the available evidence shows a statistical relationship between self-response rates and undercounts,” and “analyses of the 1990 Census find correlation between the mail non-return rate and the net undercount of .41 and between the mail non-return rate and the omissions of .71.” These statements about correlation should not be taken

² Letourneau, E. (2012). “2010 Mail Response/Return Rates Assessment Report.” 2010 Census Planning Memorandum Series No. 198. Retrieved from U.S. Census Bureau website: https://census.gov/content/dam/Census/library/publications/2012/dec/2010_cpex_198.pdf.

to imply that lower self-response rates necessarily cause greater net undercount. Basic statistical principle holds that a statistical relationship between two events does not necessarily imply cause and effect. That is, although we can measure a statistical relationship (as through linear correlation, as used by Dr. Hillygus) between A and B, without other probative evidence, we cannot necessarily conclude that A implies B, or that B implies A. Assuming so violates basic statistical principle.

30. Although there may well be a correlation between two events A and B, it is possible that each event is driven (caused) by a third event, C. For example, consider people who change residence around the time of the census (event C)—whether moving in or out of university housing; starting or ending a job; because of a family event such as marriage, a birth or death, a child entering first grade, etc. For these “movers,” it could be that their response or return rate in the census is lower (event A) due to the change of address, the preoccupation with the move, or any other reason(s). Based on analysis of data from the American Community Survey and the 2010 PES³, we have evidence that areas with a higher percent of movers in 2010 were undercounted at higher rates in the 2010 Census (event B). It may have been that a household’s mobility around census time (event C) increased their propensity not to respond *and* their propensity to be missed in the census. But we cannot conclude that the lower response (event A) caused the higher undercount (event B) or vice versa—even though the two may be correlated due to the mobility of these people.

31. Looking at available data, we see that return rates⁴ for African Americans increased from 59.7% in the 2000 Census to 65.4% in the 2010 Census⁵. *Despite an increase in the return rate of more*

³ Keller, A. and Fox, T. (2014), “Using Data From the American Community Survey to Better Understand Coverage Measurement Results in the 2010 Census,” in JSM Proceedings, Survey Research Methods Section, American Stat. Assoc., Boston, MA, August 2-7, 2014. Alexandria, VA. 2019-2033. Retrieved from http://www.asasrms.org/Proceedings/y2014/files/312005_88544.pdf.

⁴ We look at “return rates” when analyzing the response from demographic groups because return rates don’t include vacant housing units in the denominator; “response rates” do. For vacant units, there are no people, and thus no designation of race, ethnicity, age, sex, etc.

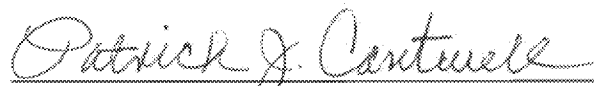
⁵ I am not aware of comparable data from the census of 1990 or prior decades.

than 5%, the net undercount rate for African Americans did not go down, but rather changed from 1.84% (with a standard error of 0.43) to 2.07% (0.53). (This increase is not statistically significant.) Despite a minor increase in return rates for Hispanics, from 64.5% in 2000 to 65.2% in 2010, the net undercount for Hispanics changed from 0.71% (with a standard error of 0.44) to 1.54% (0.33). (Again, not statistically significant.) These results simply demonstrate that self-response rates, while perhaps correlated with net undercount rates, are not good predictors of the latter. In summary, even if the Census Bureau were to experience a lower self-response rate than projected in the 2020 Census—overall or for specific demographic groups—that does not necessarily imply that either the overall undercount rate or any differential undercount rates will increase.

V. The Census Bureau planned the 2020 Census—as with prior censuses—to minimize census error, including the differential undercount

32. The Census Bureau is committed to maximizing self-response rates and minimizing coverage error and differential undercount across all demographic and socio-economic groups in the 2020 Census, especially for traditionally hard-to-count populations. Over the decades, many researchers at the Census Bureau, included me, have devoted their life's work trying to achieve a complete and accurate enumeration, and to reduce the differential undercount.

Executed on this 11th day of February, 2020.



Patrick J. Cantwell
Chief, Decennial Statistical Studies Division
Bureau of the Census

From: Freitas, Jessica (Federal) [JFreitas@doc.gov]
Sent: 12/6/2019 12:46:54 PM
To: Heller, Megan (Federal) [MHeller@doc.gov]; Olson, Stephanie (Federal) [SOlson@doc.gov]; Sharma, Sapna (Federal) [SSharma@doc.gov]; Ryan, Miles F III [miles.f.ryan.iii@census.gov]
CC: DiGiacomo, Brian (Federal) [bDiGiaco@doc.gov]; Cannon, Michael (Federal) [MCannon@doc.gov]
Subject: LUPE [b(5) - AC/WP/DP]
Attachments: [b(5) - AC/WP/DP] RE: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 ; 1-US_DIS_MDD_8_19cv2710_COMPLAINT.pdf

CUI//PRIV

Hello team,

Pursuant to our discussion, please find attached the last-circulated draft of [b(5) - DP/AC/WP]
[b(5) - AC/WP/DP] Please send
comments by next Wednesday, December 11th [b(5) - AC/WP/DP]

[b(5) - AC/WP/DP] Thanks all!

Best,

Jessica Freitas

Counsel to the General Counsel
Office of the General Counsel
U.S. Department of Commerce
Desk: (202) 482-2753
Cell: [b(6)]
jfreitas@doc.gov

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

Thais-Lyn –

b(5) - DP/AC/WP

Please let me know if you have any questions.

Megan

Megan Heller
Associate Chief Counsel, Office of Appellate Services
Senior Counsel, General Litigation Division
Office of the Assistant General Counsel for Employment, Litigation, & Information
Office of the General Counsel
U.S. Dept. of Commerce
1401 Constitution Ave. NW, Room 5890
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mheller@doc.gov

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

Hi all,

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

Thanks,

Thais-Lyn

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

Thais-Lyn,

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

Best regards,

Mike

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

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

To: Ehrlich, Stephen (CIV) <[b(6)]>; Cannon, Michael (Federal) <MCannon@doc.gov>; Heller, Megan (Federal) <MHeller@doc.gov>; Freitas, Jessica (Federal) <JFreitas@doc.gov>

Cc: Lynch, Christopher M. (CIV) <[b(6)]>; Sinzduk, Gerard J (CIV)

<[b(6)]> Stern, Mark (CIV) <[b(6)]>

Subject: RE: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

Hi all,

b(5) - DP/AC/WP

Thanks,

Thais-Lyn

Thais-Lyn Trayer
Civil Appellate Staff
United States Department of Justice

[b(6)]

From: Ehrlich, Stephen (CIV) <[b(6)]>

Sent: Monday, August 12, 2019 4:39 PM

To: Cannon, Michael <MCannon@doc.gov>; Heller, Megan <MHeller@doc.gov>; Freitas, Jessica <JFreitas@doc.gov>

Cc: Trayer, Thais-Lyn (CIV) <[b(6)]>; Lynch, Christopher M. (CIV) <[b(6)]>; Sinzduk,

Gerard J (CIV) <[b(6)]>; Stern, Mark (CIV) <[b(6)]>

Subject: FW: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

b(5) - DP/AC/WP

Stephen Ehrlich
Trial Attorney
U.S. Department of Justice
Civil Division | Federal Programs Branch

[b(6)]

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

Hi all,

I received the below email from opposing counsel just now

b(5) - DP/AC

b(5) - DP/AC/WP

Thanks very much,

Thais-Lyn

From: Alderdice, Jacob D. <[REDACTED]>
Sent: Monday, August 12, 2019 3:50 PM
To: Trayer, Thais-Lyn (CIV) <[REDACTED]>
Cc: DL_Jenner-NAACP <[REDACTED]>; [REDACTED] <[REDACTED]>; 'Michael Wishnie' <[REDACTED]>; [REDACTED] <[REDACTED]>; Renee Burbank <[REDACTED]>; Berry, Bradford <[REDACTED]>; [REDACTED] <[REDACTED]>; Alter, Benjamin <[REDACTED]>
Subject: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

Counsel,

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

Regards,
Jake

Jacob D. Alderdice

Jenner & Block LLP
919 Third Avenue, New York, NY 10022-3908 | jenner.com

[REDACTED] TEL
[REDACTED] [\[REDACTED\]@jenner.com](mailto:[REDACTED]@jenner.com)
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From: Taylor, Benjamin K [benjamin.k.taylor@census.gov]
Sent: 8/13/2019 6:19:44 PM
To: Heller, Megan (Federal) [MHeller@doc.gov]; Cannon, Michael (Federal) [MCannon@doc.gov]
CC: Jones, Christa D [christa.d.jones@census.gov]; Whiteley, Everett G [everett.g.whiteley@census.gov]; Styles, Kathleen M [kathleen.m.styles@census.gov]
Subject: Re: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal
Attachments: [b(5) - WP] [b(5) - WP]

Megan,

b(5) - DP/AC/WP

b(5) - DP/AC/WP

I hope these help.

Thanks,
Ben

Ben Taylor
Chief
Decennial Budget Office
U.S. Census Bureau [b(6)]
301-763-4032 (desk) [b(6)] cell/text

From: Heller, Megan (Federal) <MHeller@doc.gov>

Sent: Tuesday, August 13, 2019 3:01 PM

To: Benjamin Taylor (CENSUS/ADDC FED) <benjamin.k.taylor@census.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>

Cc: Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; Everett G Whiteley (CENSUS/BUD FED) <Everett.G.Whiteley@census.gov>; Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov>

Subject: RE: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

Ben –

b(5) - DP/AC/WP

Please let me know if you have any further questions, and thank you again for your help on this.

Megan

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

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From: Benjamin Taylor (CENSUS/ADDC FED) <benjamin.k.taylor@census.gov>

Sent: Tuesday, August 13, 2019 2:18 PM

To: Heller, Megan (Federal) <MHeller@doc.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>

Cc: Jones, Christa D <christa.d.jones@census.gov>; Whiteley, Everett G <everett.g.whiteley@census.gov>; Styles, Kathleen M <kathleen.m.styles@census.gov>

Subject: Re: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

Megan,

b(5) - DP/AC/WP

b(5) - DP/AC/WP

Thanks,
Ben

Ben Taylor
Chief

Decennial Budget Office
U.S. Census Bureau **b(6)**
301-763-4032 (desk) **b(6)** cell/text

From: Heller, Megan (Federal) <MHeller@doc.gov>
Sent: Tuesday, August 13, 2019 10:54 AM
To: Cannon, Michael (Federal) <MCannon@doc.gov>
Cc: Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; Everett G Whiteley (CENSUS/BUD FED) <Everett.G.Whiteley@census.gov>; Benjamin Taylor (CENSUS/ADDC FED) <benjamin.k.taylor@census.gov>
Subject: FW: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

Christa, Ben, Everett –

b(5) - DP/AC/WP

Thank you, and please let us know if you have any questions.

Megan

Megan Heller
Associate Chief Counsel, Office of Appellate Services
Senior Counsel, General Litigation Division
Office of the Assistant General Counsel for Employment, Litigation, & Information
Office of the General Counsel
U.S. Dept. of Commerce
1401 Constitution Ave. NW, Room 5890
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mheller@doc.gov

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From: Trayer, Thais-Lyn (CIV); [redacted] **b(6)**
Sent: Tuesday, August 13, 2019 9:30 AM
To: Cannon, Michael (Federal) <MCannon@doc.gov>; Heller, Megan (Federal) <MHeller@doc.gov>; Freitas, Jessica (Federal) <JFreitas@doc.gov>; DiGiacomo, Brian (Federal) <bDiGiaco@doc.gov>; Dewhirst, David (Federal) <DDewhirst@doc.gov>
Subject: RE: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

Hi Mike,

b(5) - DP/AC/WP

Thanks,

Thais-Lyn

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

Thais-Lyn,

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

Best regards,

Mike

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

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

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

Hi all,

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

b(5) - DP/AC/WP

Thanks,

Thais-Lyn

Thais-Lyn Trayer
Civil Appellate Staff
United States Department of Justice

[b(6)]

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

b(5) - DP/AC/WP

Stephen Ehrlich
Trial Attorney
U.S. Department of Justice
Civil Division | Federal Programs Branch

[b(6)]

From: Trayer, Thais-Lyn (CIV) [b(6)]
Sent: Monday, August 12, 2019 4:10 PM

To: Stern, Mark (CIV) [b(6)], Sinzdak, Gerard J (CIV) [b(6)]
Ehrlich, Stephen (CIV) [b(6)], Lynch, Christopher M. (CIV) [b(6)]
Subject: FW: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

Hi all,

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

b(5) - DP/AC/WP

Thanks very much,

Thais-Lyn

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

Counsel,

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

Regards,
Jake

Jacob D. Alderdice

Jenner & Block LLP
919 Third Avenue, New York, NY 10022-3908 | jenner.com

[b(6)] TEL
[b(6)]@jenner.com
[Download V-Card](#) | [View Biography](#)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO,
PROMISE ARIZONA, LYDIA
CAMARILLO, and JUANITA VALDEZ-
COX,

Plaintiffs,

v.

WILBUR L. ROSS, sued in his official
capacity as U.S. Secretary of Commerce,

STEVEN DILLINGHAM, sued in his
official capacity as Director of the U.S.
Census Bureau,

U.S. DEPARTMENT OF COMMERCE,
and

U.S. CENSUS BUREAU,

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

COMPLAINT

INTRODUCTION

1. On July 11, 2019, President Trump issued Executive Order 13880, Collecting Information about Citizenship Status in Connection with the Decennial Census (“EO 13880”), that directs: (1) Secretary Ross to instruct the Census Bureau to create an inter-agency working group to collect citizenship data in connection with the 2020 decennial census for redistricting; (2) the Department of Commerce to “strengthen its efforts, consistent with law, to obtain State administrative records concerning citizenship”; and (3) all federal agencies to provide citizenship data via administrative records to the Census Bureau. On July 12, 2019, the Census Bureau

published a notice dated July 3, 2019, stating that Secretary Ross had directed the Census Bureau to collect and produce Citizenship Voting Age Population (“CVAP”) information prior to April 1, 2021 that states may use in redistricting.

2. The President’s order and Secretary Ross’s directive that the Department of Commerce provide states with CVAP information for redistricting is motivated by a racially discriminatory scheme to reduce Latino political representation and increase the over-representation of non-Latino Whites, thereby advantaging White voters at Latino voters’ expense. As the Department of Commerce and the Census Bureau comply with Secretary Ross’s directive and EO 13880 to collect citizenship data and when they produce population tabulations that purport to exclude non-citizens for purposes of drawing state and local districting plans, voters will be denied their constitutionally guaranteed rights to equitable political representation based on actual population.

3. The Court should enjoin Defendants’ actions as violative of the Administrative Procedure Act (“APA”) for a number of reasons. First, Defendants failed to articulate an adequate rationale for making the decision to collect and produce citizenship data from administrative records. Second, for discriminatory reasons, EO 13880 and Secretary Ross’s directive instructs the Census Bureau to perform an impossible task contrary to law: to determine the total number of non-U.S. citizens without an actual enumeration of the non-U.S. citizen population. Administrative records cannot provide citizenship data to the states without the use of statistical sampling and estimation, and therefore cannot provide a total enumeration of the citizen and non-citizen population. Third, Secretary Ross’s compliance with EO 13880 is in excess of the statutory authority that the Secretary has to conduct the decennial census. By deciding to collect citizenship data in response to EO 13880, Secretary Ross is improperly

allowing the President's judgment to displace his own discretion over the census. The Constitution vests Congress, not the President, with discretion over the conduct of the census. Congress delegated this responsibility to the Secretary, not the President. Fourth, Defendants failed to comply with the mandated procedures and requirements for making a substantive change to the data collected and reported by the Census Bureau in connection with the 2020 decennial census, in violation of the requirements of federal laws and regulations.

4. Defendants' actions should also be enjoined because they are motivated by racial animus, are discriminatory toward Latinos and non-citizens, and are the result of a partisan conspiracy intended to dilute the representation of non-citizens and Latinos, in violation of the equal protection guarantee of the Fifth Amendment of the U.S. Constitution, and 42 U.S.C. § 1985(3).

5. Plaintiffs seek declaratory and injunctive relief to prevent Defendants from violating the APA, the equal protection guarantee of the Fifth Amendment of the U.S. Constitution, and 42 U.S.C. § 1985(3).

PARTIES

Plaintiffs

6. Plaintiff La Unión del Pueblo Entero ("LUPE") is a nonprofit membership organization founded by labor rights activists César Chávez and Dolores Huerta. LUPE's mission is to build strong, healthy communities in the Texas Rio Grande Valley through community organizing and civic engagement. To promote civic engagement in the communities it serves, LUPE conducts know-your-rights discussions and membership meetings, participates in issue-focused advocacy, connects its members to social services, conducts census outreach, and conducts voter registration, education, and non-partisan get-out-the-vote campaigns.

7. LUPE is headquartered in San Juan, Texas, and its members primarily reside in Hidalgo, Cameron, Willacy, and Starr Counties, Texas. LUPE has over 8,000 members, including Latinos, U.S. citizens, and non-U.S. citizens. Some LUPE members are immigrants not authorized to be present in the United States. LUPE has members that live in neighborhoods, cities, counties, and voting districts with relatively larger Latino and non-U.S. citizen populations when compared to Texas and the United States.

8. Plaintiff Promise Arizona (“PAZ”) is a nonprofit, faith-based membership organization founded in 2010 in response to the passage of Arizona Senate Bill 1070. It is headquartered in Phoenix, Arizona. PAZ’s mission is to build Latino and immigrant political power to ensure family unity, a path to citizenship, worker protections, and a path to equitable educational opportunities for all immigrants. To achieve its mission, PAZ promotes civic engagement, provides scholarships to members and other individuals for immigration-related expenses, partners with community colleges to conduct educational and job training programs, conducts youth leadership programs, and provides assistance with applications for immigration relief. To promote civic engagement, PAZ registers members and individuals to vote, educates members about important voting issues, conducts get-out-the-vote campaigns, and participates in various issue-focused advocacy.

9. PAZ has members and serves individuals who primarily reside in Maricopa, Yuma, and Pinal Counties, Arizona. PAZ has hundreds of members, including Latinos, U.S. citizens, non-U.S. citizens, and members of mixed-status families (in which some members are citizens or non-U.S. citizens with legal status and others are not). Some PAZ members and some of the individuals PAZ serves are immigrants not authorized to be present in the United States. PAZ has members and serves individuals who live in neighborhoods, cities, counties, and voting

districts with relatively larger Latino and non-U.S. citizen populations when compared to Arizona and the United States.

10. Plaintiff Juanita Valdez-Cox is a member and the Executive Director of LUPE, and has held that position since approximately 2007. She identifies as Latina, is a registered voter, and lives in Donna, Texas. According to American Community Survey (“ACS”) data, the total population of Donna, Texas, is 16,507 and Latinos constitute approximately 92.3 percent of the total population.

11. Plaintiff Lydia Camarillo is the President of Southwest Voter Registration Education Project (“SVREP”) and has worked with SVREP for approximately twenty years. Ms. Camarillo identifies as a Latina, is a registered voter, and lives in San Antonio, Texas. According to ACS data, the total population of San Antonio, where Plaintiff Lydia Camarillo resides, is 1,461,623, and Latinos constitute approximately 64 percent of the total population.

Defendants

12. Defendant Wilbur L. Ross is Secretary of the U.S. Department of Commerce. The Secretary of Commerce carries out the functions and duties imposed on him by the Census Act, issues rules and regulations to carry out his responsibilities, and delegates functions and duties as necessary. 13 U.S.C. § 4. The Secretary of Commerce prepares questionnaires, determines inquiries, and determines the number and form of statistics, surveys, and censuses. 13 U.S.C. § 5. Congress delegated the duty to conduct the census to the Secretary of Commerce, who must take a census on April 1 every 10 years “in such form and content as he may determine [.]” 13 U.S.C. § 141 (a); *see also* 13 U.S.C. § 5. In that capacity, Defendant Ross directed the Census Bureau to produce CVAP information as part of the redistricting dataset

provided to States prior to April 1, 2021, for the purpose of affording states the option of using a voter-eligible population base for redistricting. Defendant Ross is sued in his official capacity.

13. Defendant Steven Dillingham is the Director of the U.S. Census Bureau. The Director of the U.S. Census Bureau oversees the 2020 decennial census operations and is responsible for ensuring the accuracy of the 2020 decennial census count. Defendant Dillingham directs the Census Bureau and performs census-related duties assigned by law, regulation, or the Secretary of Commerce. 13 U.S.C. § 21. He is sued in his official capacity.

14. Defendant U.S. Department of Commerce is an agency of the U.S. government which oversees the U.S. Census Bureau and its conduct of the decennial census and other census programs.

15. Defendant U.S. Census Bureau is an agency within the U.S. Department of Commerce. 13 U.S.C. § 2. The Census Bureau is responsible for conducting all census programs, including the development and implementation of the 2020 decennial census and the collection of information for and formulation of the P.L. 94-171 population tabulations used by states for redistricting.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Plaintiffs' causes of action under the United States Constitution and federal statutes. This Court has jurisdiction under 5 U.S.C. §§ 702 and 704 over Plaintiffs' claims under the APA. This Court may grant Plaintiffs' request for declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

17. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1), because: (1) Defendants Dillingham (in his official capacity) and United States Census Bureau

reside in Prince George's County within this District, and (2) a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

FACTUAL ALLEGATIONS

A. Background on the U.S. Census and P.L. 94-171 Redistricting Data File

1. The Census Act and the Census Bureau

18. The U.S. Constitution requires an "actual Enumeration" of every person living in the United States to take place every ten years. U.S. Const. art. I, § 2, cl. 3.

19. The Constitution gives Congress authority to conduct the census "in such a Manner as [Congress] shall by Law direct," U.S. Const. art. I, § 2, and "vests Congress with wide discretion over . . . the conduct of the census," *Wisconsin v. City of N.Y.*, 517 U.S. 1, 15 (1996). Pursuant to this authority, Congress delegated the duty of conducting the census to the Secretary of Commerce, subject to the provisions of the Census Act of 1976, 13 U.S.C. § 141, *et seq.* (the "Census Act"), and other applicable federal statutes and regulations promulgated thereunder.

20. Section 141(f) of Title 13, requires that the Secretary report his "determination[s]" as to the content of the next census within certain deadlines in advance of the Census Date. 13 U.S.C. § 141(f); 90 Stat. 2462.

21. The Census Act authorizes the Secretary to collect information "other" than total population only "as necessary." 13 U.S.C. § 141(a). The Secretary may not modify the "subjects" for the decennial census report to Congress under § 141(f)(1), without finding that "new circumstances exist under which necessitate" such a modification and reporting that finding to Congress. *Id.* § 141(f)(3).

22. Section 6 of Title 13 addresses the methods that the Secretary is authorized to use in collecting data other than the enumeration of total population for apportionment purposes. In particular, Section 6 provides:

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

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

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

13 U.S.C. § 6.

23. The Census Bureau is a statistical agency subject to the standards and directives of the Office of Management and Budget (“OMB”) under the Paperwork Reduction Act (“PRA”), 44 U.S.C. §§ 3501-21, and the federal Information Quality Act (“IQA”), *see* consolidated Appropriations Act of 2001, Pub. L. No. 106-554, 114 Stat. 2763 (2000) (amending PRA).

24. The PRA sets forth standards that federal agencies must meet before the OMB can approve a proposed data collection, and requires the OMB to “coordinate the activities of Federal statistical system to ensure the efficiency and effectiveness of the system[] and the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes.” 44 U.S.C. § 3504(e)(1).

25. Under the OMB's Policy Directive No. 1, federal statistical agencies must: (1) provide objective, accurate, and timely information; (2) have credibility with data users; (3) have the trust of the individuals whose information is collected; and (4) be independent from political and other undue external influence in the development, production, and dissemination of statistics.¹

26. Policy Directive No. 1 states that the Census Bureau is a federal statistical agency. The Directive also states that federal statistical agencies must "seek input regularly from the broadest range of private-and public-sector data users" in any plans for information collection or dissemination and must "apply sound statistical methods to ensure statistical products are accurate."²

27. The Census Bureau must also "conduct objective statistical activities," which means that they must "produce data that are impartial, clear, and complete" and make information available on an "equitable, policy-neutral, transparent, timely, and punctual basis."³ The agency "must seek to avoid even the appearance that agency design, collection, processing, editing, compilation, storage, analysis, release, and dissemination processes may be manipulated."⁴ To guarantee such impartiality, statistical agencies including the Census Bureau "must function in an environment that is clearly separate and autonomous from the other administrative, regulatory, law enforcement, or policy-making activities within their respective

¹ Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units ("Policy Directive No.1"), 79 Fed. Reg. 71611-12 (Dec. 2, 2014), *available at* <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

² *Id.* at 71615.

³ *Id.*

⁴ *Id.*

Departments” and “must be able to conduct statistical activities autonomously when determining information to collect and process.”⁵

28. Pursuant to the IQA, the Census Bureau’s Information and Quality Guidelines state that the Census Bureau must “provide information that is accurate, reliable, and unbiased.”⁶

2. **Apportionment, the Bureau’s Apportionment Tabulation, State Redistricting, and the P.L. 94-171 Redistricting Data File**

29. The decennial count of the national population is used to allocate seats in the U.S. House of Representatives to states based on the “whole number of persons in each State.” U.S. Const. amend. XIV, § 2.

30. Federal law requires the Secretary of Commerce to deliver the “tabulation of total population of states . . . for the apportionment of Representatives in Congress among the several States” to the President by the end of the census year, who must report them to Congress within a week after the start of Congress’s new session. 13 U.S.C. § 141(a)-(b); 2 U.S.C. § 2a.

31. After the Secretary of Commerce takes the census in a form and content determined by the Secretary of Commerce, he reports the population tabulations to the President. 13 U.S.C. § 141(b). “After receiving the Secretary’s report, the President ‘shall transmit to the Congress a statement showing the whole number of persons in each State . . . as ascertained under the . . . decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions[.]’” *Franklin v. Massachusetts*, 505 U.S. 788, 792 (1992) (quoting 2 U.S.C. § 2a(a)).

⁵ *Id.* at 71615.

⁶ Information Quality Guidelines Objectivity, U.S. Census Bureau, <https://www.census.gov/about/policies/quality/guidelines/objectivity.html> (last visited Aug. 28, 2019).

32. Decennial census data are also used for state legislative redistricting. *See, e.g.*, 13 U.S.C. § 141(c) (“tabulations of population of each State . . . shall . . . be completed, reported, and transmitted to each respective State within one year after the decennial census date” by the Secretary of Commerce).

33. Public Law (P.L.) 94-171, enacted in 1975, “directs the Census Bureau to make special preparations to provide redistricting data needed by the fifty states. Within a year following Census Day, the Census Bureau must send the data agreed upon to redraw districts for the state legislature to each state’s governor and majority and minority legislative leaders.”⁷

34. To fulfill this obligation, the Census Bureau is also required to conduct the program in a non-partisan manner. 13 U.S.C. § 141(c).

35. To comply with the requirements of P.L. 94-171, “the Census Bureau set up a voluntary program that enables participating states to receive data for voting districts (e.g., election precincts, wards, state house and senate districts) in addition to standard census geographic areas such as counties, cities, census tracts, and blocks.”⁸

36. While P.L. 94-171 only requires the Census Bureau to furnish counts of the total population, additional data items are also included. For example, since 1990 the Census Bureau has included summaries for the major race groups specified by the Statistical Programs and Standards Office of the OMB in Directive 15 (as issued in 1977 and revised in 1997).⁹

⁷ *Public Law 94-171 (P.L. 94-171)*, U.S. Census Bureau, Fact Finder, https://factfinder.census.gov/help/en/public_law_94_171_p_1_94_171.htm (last visited Aug. 15, 2019).

⁸ *Id.*

⁹ *Decennial Census P.L. 94-171 Redistricting Data*, U.S. Census Bureau (Mar. 8, 2017), available at <https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html>.

37. The 2020 Census Redistricting Data Program (“2020 CRDP”) provides states the opportunity to delineate voting districts and to suggest census block boundaries for use in the 2020 census redistricting data tabulations (“P.L. 94-171 Redistricting Data File”). The CRDP is also “responsible for the effective delivery of the 2020 Census P.L. 94-171 Redistricting Data prior to April 1st, 2021, one year from census day.”¹⁰

38. On July 15, 2014, the Census Bureau announced and sought public comments on the establishment of the 2020 CDRP.¹¹

39. As part of its process, the Census Bureau issued a “prototype product to illustrate what the states can expect from the decennial census.”¹² The “prototype data product [is used] to illustrate and solicit feedback on what the 2020 Census P.L. 94-171 Redistricting Data File will look like and how it addresses the needs of the states for their legislative redistricting requirements. This prototype is used to build and test systems in advance of the official data release so that states can begin work immediately, as many have short statutory deadlines that begin with the receipt of their data.”¹³

40. The Census Bureau’s standard procedure is “[i]f substantive changes are needed to the 2020 Census P.L. 94-171 Redistricting Data File design based on comments received

¹⁰ Redistricting & Voting Rights Data Office, *Redistricting Data Program Management*, U.S. Census Bureau (last revised Dec. 27, 2018), <https://www.census.gov/programs-surveys/decennial-census/about/rdo/program-management.html?>

¹¹ Establishment of the 2020 Census Redistricting Data Program, 79 Fed. Reg. 41258 (Jul. 15, 2015), *available at* <https://www.govinfo.gov/content/pkg/FR-2014-07-15/pdf/2014-16532.pdf>.

¹² Redistricting & Voting Rights Data Office, *Redistricting Data Program Management*, U.S. Census Bureau (last revised Dec. 27, 2018), <https://www.census.gov/programs-surveys/decennial-census/about/rdo/program-management.html?>

¹³ *Id.*

regarding this prototype, then an additional Federal Register Notice explaining those differences will be issued.”¹⁴

41. On November 8, 2017, the Census Bureau published a notice in the Federal Register asking for public comment on the “Proposed Content for the Prototype 2020 Census Redistricting Data File.”¹⁵ The prototype did not include citizenship population tabulation data as substantive content to be included in the P.L. 94-171 file. The Census Bureau received three public comments. None of the public comments requested that the Census Bureau include citizenship data in the 2020 Census Redistricting File.¹⁶

42. The final Prototype 2020 Census Redistricting Data File published in the Federal Register on May 1, 2018, did not include citizenship population tabulation data as substantive content to be included in the P.L. 94-171 file.¹⁷

43. On December 28, 2018, in connection with the Census Bureau’s submission to OMB for clearance, the Census Bureau submitted a proposal for collection of information under the provisions of the PRA.¹⁸ The proposal posted to the Federal Register, included the following notice:

¹⁴ *Id.*

¹⁵ Ron Jarmin, *Final Content Design for the Prototype 2020 Census Redistricting Data File* (Apr. 24, 2018), available at <https://www.federalregister.gov/documents/2018/05/01/2018-09189/final-content-design-for-the-prototype-2020-census-redistricting-data-file>.

¹⁶ *Id.*

¹⁷ *2020 Census Prototype Redistricting Data (Public Law 94-171) Summary File from the End-to-End Census Test*, U.S. Census Bureau, https://www2.census.gov/programs-surveys/decennial/rdo/about/2020-census-program/Phase3/Phase3_prototype_schematic_final.pdf?# (last visited Aug. 27, 2019).

¹⁸ *OMB Information Collection Request, 2020 Census, OMB Control Number 0607-1006*, Department of Commerce and U.S. Census Bureau, available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=88197702> (last visited Sep. 13, 2019).

The purpose of the 2020 Census Redistricting Data Program (RDP) is to provide to each state the legally required redistricting data tabulations by the mandated deadline of one year from Census Day: April 1, 2021. In compliance with Public Law (Pub. L.) 94-171, the Census Bureau will tabulate for each state the total population counts by race and Hispanic origin. The Census Bureau will tabulate these counts for the total population and for the population age 18 and over in a prototype redistricting data file released as part of the 2018 End-to-End Census Test. The Census Bureau intends to work with stakeholders, specifically “the officers or public bodies having initial responsibility for the legislative apportionment of each state,” to solicit feedback on the content of the prototype redistricting data file. If those stakeholders indicate a need for tabulations of citizenship data on the 2020 Census Public Law 94-171 Redistricting Data File, the Census Bureau will make a design change to include citizenship as part of that data.¹⁹

44. The December 28, 2018 notice was issued in connection with a prior proposal that included a citizenship question on the 2020 decennial census for the pretextual reason of using the data for VRA enforcement.

45. Since its creation, citizenship population data has not been included in any of the tabulations contained within the P.L. 94-171 Redistricting Data File.

46. In February 2019, the Department of Commerce released the final version of the OMB request.²⁰ The request noted that the issue of whether a citizenship question would be included in the 2020 census was still being litigated.²¹ The document also provides that if “stakeholders indicate a need for tabulations of citizenship data on the 2020 Census P.L. 94-171 Redistricting Data File, the Census Bureau will make a design change to include citizenship as part of that data, *if collected*. That new design would then be published in the Federal Register after it is completed in the summer of 2019.”²²

¹⁹ *Id.* at 38-39.

²⁰ *Information Collection Request 2020 Census – Enumeration Operations OMB Control Number 0607-1006*, U.S. Census Bureau, available at <https://t.co/j0FuZmgUKf?amp=1>

²¹ *Id.* at 38-42.

²² *Id.* at 30-31 (emphasis added).

47. On March 29, 2019, the Census Bureau published the prototype redistricting data file to states based on the test enumeration of Providence County, Rhode Island, that took place in 2018.²³ The Providence County, Rhode Island test did not collect citizenship data, and the prototype redistricting data file did not contain citizenship data.

3. Citizenship Data From the Census Bureau’s American Community Survey

48. There will not be a question on the 2020 decennial census regarding the citizenship of respondents and their households. Therefore, the decennial census hard count will not include a count of the total population divided into citizen and non-citizen categories.

49. The ACS is an ongoing, yearly survey by the Census Bureau that collects demographic information including ancestry, citizenship, educational attainment, income, language proficiency, migration, disability, employment, and housing characteristics from approximately 2.5 percent of U.S. households.

50. ACS data are an estimate of population characteristics, including citizenship, are based on sample data, and are not a count of citizens and non-citizens. ACS data are not used to determine whether voting districts are equipopulous and comply with the “one person, one vote” constitutional requirement. Rather, “in the overwhelming majority of cases, jurisdictions have equalized total population, as measured by the decennial census” total population enumeration. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016).

B. Defendants’ Collection of Citizenship Data For Apportionment and Redistricting Purposes

51. On March 26, 2018, Defendant Ross directed the Census Bureau to add a citizenship question to the 2020 census and to use federal and state administrative records to

²³ See U.S. Census Bureau Press Release, *2018 Census Test Complete, Prototype Redistricting File Sent to States* (Mar. 29, 2019), available at <https://www.census.gov/newsroom/press-releases/2019/prototype-redistricting-file.html>.

validate census responses to the citizenship question. Defendant Ross falsely claimed that the reason for adding the citizenship question was to collect citizenship data to assist the Department of Justice (“DOJ”) in its enforcement of the VRA.

52. Several lawsuits successfully challenged the addition of the citizenship question as unlawful and three federal courts permanently enjoined Defendants from adding a citizenship question to the 2020 census.²⁴

53. On June 27, 2019, the United States Supreme Court determined that the “VRA enforcement rationale—the sole stated reason [for adding a citizenship question]—seems to have been contrived.” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2575 (2019).

54. Defendants were also permanently enjoined from “delaying the process of printing the 2020 decennial census questionnaire after June 30, 2019 for the purposes of including a citizenship question; and from asking persons about citizenship status on the 2020 Census questionnaire or otherwise asking a citizenship question as part of the 2020 decennial Census.” *Kravitz v. Dep’t of Comm.*, No. 18-cv-1041, ECF No. 203; *see also California*, 358 F. Supp. 3d at 1050 (permanently enjoining defendants from including citizenship question on 2020 census); *New York*, 351 F. Supp. 3d 502 at 679 (same).

55. On July 11, 2019, President Trump issued EO 13880 requiring that, among other things, all executive departments and agencies provide the Department of Commerce “the maximum assistance permissible, consistent with law, in determining the number of citizens and non-citizens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing” the objective of collecting

²⁴ *See Kravitz v. Dep’t of Commerce*, 366 F. Supp. 3d 681, 755 (D. Md. 2019); *California v. Ross*, 358 F. Supp. 3d 965, 1050 (N.D. Cal. 2019); *New York v. Dep’t of Commerce*, 351 F. Supp. 3d 502, 679 (S.D.N.Y.), *aff’d in part, rev’d in part and remanded sub nom. Dep’t of Commerce v. New York*, 139 S. Ct. 2551 (2019).

citizenship data.²⁵ EO 13880 also directs Secretary Ross to instruct the Census Bureau to create an inter-agency working group to collect citizenship data in connection with the 2020 decennial census for redistricting, directs the Department of Commerce to “strengthen its efforts, consistent with law, to obtain State administrative records concerning citizenship,” and later directs that the Department “shall strengthen its efforts, consistent with law, to gain access to relevant State administrative records.”²⁶

56. EO 13880 states several pretextual reasons for collecting robust citizenship data from all federal agencies and states, including: (1) “data on the number of citizens and aliens in the country is needed to help us understand the effects of immigration on our country and to inform policymakers considering basic decisions about immigration policy”; (2) “the lack of complete data on numbers of citizens and aliens hinders the Federal Government’s ability to implement specific programs and to evaluate policy proposals for changes in those programs”; and (3) “data identifying citizens will help the Federal Government generate a more reliable count of the unauthorized alien population in the country,” which is necessary “evaluat[e] many policy proposals.”²⁷

57. The executive order also lists, at least in part, the true reason for the order and for Secretary Ross’s prior decision to add a citizenship question to the 2020 census: so that “State and local legislative districts [can redistrict] based on the population of voter-eligible citizens.”²⁸ EO 13880 further states that “because eligibility to vote depends in part on citizenship, States

²⁵ *Executive Order on Collecting Information about Citizenship Status in Connection with the Decennial Census* at § 1 (July 11, 2019), available at <https://www.whitehouse.gov/presidential-actions/executive-order-collecting-information-citizenship-status-connection-decennial-census/>.

²⁶ *Id.* at §§ 1, 3(b), and 3(d).

²⁷ *Id.* at § 1.

²⁸ *Id.*

could more effectively exercise this option with a more accurate and complete count of the citizen population.”²⁹

58. To that end, EO 13880 instructs the Census Bureau to continue its efforts to “make a design change to make [tabulations of citizenship data] available” for interested states to use for state and local redistricting purposes.³⁰

59. That same day during a press conference, President Trump stated that his intention in issuing EO 13880 is so that “[t]he Census Bureau can use [citizenship] information, along with information collected through the questionnaire, to create the official census. In other words, as a result of today’s executive order, we will be able to ensure the 2020 Census generates an accurate count of how many citizens, non-citizens, and illegal aliens are in the United States of America.”³¹

60. The President further stated that, “[t]his information is also relevant to administering our elections” because “[s]ome states may want to draw state and local legislative districts based upon the voter-eligible population,” and that the Supreme Court “would not review certain types of districting decisions, which could encourage states to make such decisions based on voter eligibility.”³²

61. Attorney General William Barr added that “there is a current dispute over whether illegal aliens can be included for apportionment purposes. Depending on the resolution of that

²⁹ *Id.*

³⁰ *Id.*

³¹ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census/>.

³² *Id.*

dispute, this data may be relevant to those considerations,” and that the DOJ “will be studying this issue.”³³

62. On July 12, 2019, the Census Bureau published a revision of the February 2019 OMB request, reportedly backdated to July 3, 2019, that stated that Defendant Ross “directed the Census Bureau to proceed with the 2020 Census without a citizenship question on the questionnaire, and rather to produce Citizen Voting Age Population (CVAP) information prior to April 1, 2021 that states may use in redistricting.”³⁴

C. Shortcomings of Citizenship Data Derived From Administrative Records

63. “[T]he Census Numident is the most complete and reliable administrative record source of citizenship data currently available to the Census Bureau. The Numident file is a record of individual applications for Social Security cards and certain subsequent transactions for those individuals.”³⁵

64. On March 1, 2018, Chief Scientist and Associate Director for Research and Methodology, John M. Abowd, prepared a memorandum for Defendant Ross that set forth the various reasons why collecting citizenship data from administrative records does not produce 100 percent accurate data on citizenship.³⁶

³³ *Id.*

³⁴ *Paperwork Reduction Act Program, Information Collection Request 2020 Census - Enumeration Operations OMB Control Number 0607-1006*, Department of Commerce and U.S. Census Bureau at 18 (July 3, 2019), available at <https://www.documentcloud.org/documents/6192581-2020-Census-Supporting-Statement-A-Revised-July.html#document/p18/a512146>.

³⁵ J. David Brown, *et al.*, *Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census*, U.S. Census Bureau, Center for Economic Studies (August, 2018), available at <https://www2.census.gov/ces/wp/2018/CES-WP-18-38.pdf>.

³⁶ Memorandum from John M. Abowd, Chief Scientist & Assoc. Dir. for Research & Methodology, U.S. Census Bureau, to Wilbur L. Ross, Sec’y, U.S. Dep’t of Commerce (Mar. 1, 2018) (hereinafter “Abowd Memo.”).

65. For example, “[i]n the 2017 Numident . . . , 6.6 million persons born outside the U.S. have blank citizenship among those born in 1920 or later with no year of death. The evidence suggests that citizenship is not missing at random. Of those missing citizenship in the Numident, a much higher share appears to be U.S. citizens than compared to those for whom citizenship data are not missing . . . some of the blanks may be noncitizens.”³⁷

66. Dr. Abowd further stated that another weakness in administrative records is that there are questions about how complete the Numident citizenship data are and how timely it updates naturalization. Although naturalized citizens are instructed to apply for a social security number, “we do not know what fraction of naturalized citizens actually notify the [Social Security Administration], and how soon after being naturalized they do so.”³⁸

67. Additionally, “[a] third potential weakness of Numident citizenship is that some people are not required to have a Social Security Number (SSN), whether they are a U.S. citizen or not.” According to Dr. Abowd, although U.S. Citizenship and Immigration Services (“USCIS”) and State Department memoranda of understanding could provide some context for gaps in citizenship data, USCIS data on naturalizations, lawful permanent residents, and I-539 non-immigrant visa extensions can only partially address the weakness of the Numident. “The data do not cover naturalizations occurring before 1988, as well as not covering and some between 1988-2000. USCIS data do not always cover children under 18 at the time a parent became a naturalized U.S. citizen” and some of the data for children may not be in electronic form.³⁹

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

68. Other data gaps in administrative records includes the following categories: (1) U.S. citizens from birth with no SSN or U.S. passport; (2) U.S. citizens from birth born outside the U.S., who do not have a U.S. passport and either applied for an SSN prior to 1974 and were 18 years or older, or applied before the age of 18 prior to 1978; (3) U.S. citizens who were naturalized prior to 2001 and did not inform SSA of their naturalization because they originally applied for an SSN after they were naturalized, and it was prior to when citizenship verification was required for those born outside the U.S. (1974); (4) U.S. citizens who were automatically naturalized if they were under the age of 18 when their parents became naturalized in 2000 or later, and did not inform USCIS or receive a U.S. passport; (5) Lawful permanent residents (“LPR”) who received that status prior to 2001 and either do not have an SSN or applied for an SSN prior to when citizenship verification was required for those born outside the U.S. (1974); (6) noncitizen, non-LPR residents who do not have SSN or ITIN and who did not apply for a visa extension; and (7) persons with citizenship information in administrative data, but the administrative and decennial census data cannot be linked due to missing or discrepant Protected Identification Key.⁴⁰

69. Because of the gaps in administrative data, the Census Bureau “will most likely never possess a fully adequate truth deck to benchmark [citizenship] to.”⁴¹

D. Defendants’ Decision to Produce Citizenship Data For Use With the P.L. 94-171 File is Motivated By Racially Discriminatory Intent

70. Throughout the litigation challenging the addition of a citizenship question to the decennial census, including before the U.S. Supreme Court, Defendant Ross maintained that he decided to add the citizenship question to the 2020 decennial census so that the DOJ could better

⁴⁰ *Id.*

⁴¹ *Id.*

enforce the VRA. The documents produced during that litigation revealed instead that Defendant Ross, members of the Trump Administration, A. Mark Neuman, then-Kansas Secretary of State Kris Kobach, members of the DOJ, including then-Attorney General Jefferson Sessions (“AG Sessions”) and head of the DOJ’s Civil Rights Division John Gore, and Republican strategist Dr. Thomas Hofeller conspired to add a citizenship question to the 2020 census to reduce the response rates of people of color and immigrants, and exclude them from congressional apportionment and redistricting to achieve the objective of reducing their political power.

71. After consulting with the White House and Mr. Kobach, Defendant Ross used the Department of Commerce to facilitate the conspiracy by directing staff to research the exclusion of immigrants from apportionment and to create an alternative justification for the addition of the citizenship question to the census. Defendant Ross and the Department of Commerce then solicited the assistance first of the DOJ and then of the Department of Homeland Security (“DHS”), before finally securing the participation of the DOJ, including AG Sessions.

72. Defendant Ross, through the Department of Commerce, coordinated with AG Sessions, other members of the DOJ, and the White House to fabricate a “need” for the citizenship question that resulted in a letter from the DOJ requesting the addition of the question to the 2020 census (the “DOJ Letter”).

73. Without their knowledge, Defendant Ross used the Census Bureau to continue to facilitate the conspiracy and directed the Census Bureau to look into the DOJ request. In a March 28, 2018 memorandum, Defendant Ross ignored the findings and recommendation of the Census Bureau and reached the conspiracy’s predetermined conclusion to add a citizenship question on the 2020 census questionnaire.

74. After Defendant Ross issued the March 28 memorandum, the Trump Administration publicly admitted its role in the conspiracy in campaign emails to supporters. Defendant Ross has continued to facilitate the conspiracy to exclude non-citizens from congressional apportionment and redistricting to achieve the objective of reducing the political power of non-citizens and Latinos.

75. Following the Supreme Court's rejection of the contrived rationale in *Department of Commerce v. New York*, Defendants continued to pursue the collection of data that would allow non-citizens to be excluded from apportionment and redistricting, as evidenced by EO 13880 and Defendant Ross's July 2019 directive.

76. On June 3, 2019, plaintiffs in *LUPE v. Ross*, filed a motion for relief from final judgment and request for indicative ruling that included documents belonging to the late Dr. Hofeller, a leading Republican redistricting strategist and map-drawing expert for the Republican National Committee. *La Unión Del Pueblo Entero, et al. v. Secretary Ross, et al.*, No. 18-CV-1570 (D. MD.) (hereinafter, "*LUPE v. Ross*"), ECF No. 136.

77. The Hofeller documents demonstrate that the addition of the citizenship question, and now the directives that the Census Bureau to collect citizenship data to be produced for use with the P.L. 94-171 Redistricting Data File, was motivated by a racially discriminatory scheme to reduce Latino representation and increase over-representation of non-Latino Whites, thereby serving Republican political ends at Latinos' expense.

78. Dr. Hofeller acknowledged that the shift from redistricting based on total population to CVAP was a "radical departure"—one that would alienate Latino voters. But, he concluded, "[a] switch to the use of citizen voting age population as the redistricting population base for redistricting would be advantageous to Republicans and Non-Hispanic Whites." To

generate the necessary CVAP data and achieve this goal of diluting Latino representation while increasing over-representation of non-Latino Whites, Dr. Hofeller concluded that a citizenship question must be added to the 2020 census.

79. The Hofeller documents show that Dr. Hofeller drafted and gave to Commerce and DOJ officials, including Mr. Neuman, part of President Trump's transition team, and Mr. Gore, the substantive content of the December 2017 DOJ letter requesting the addition of the citizenship question.

80. The Hofeller documents demonstrate a partisan and discriminatory purpose behind the addition of the citizenship question.

81. The same discriminatory motivation behind adding the citizenship question motivated Defendants to continue their unlawful course of action to collect citizenship data and produce citizenship population tabulation data for use with the P.L. 94-171 Redistricting Data File so that states can exclude non-U.S. citizens from apportionment to the advantage of non-Latino White Republican voters and at the expense of the Latino community.

E. The Production of Citizenship Data For Use With The P.L. 94-171 Redistricting Data File Population Tabulations Harms Latinos and Non-U.S. Citizens and Increases the Chances of Malapportioned State Legislative and Local Districts

82. Plaintiffs and members of organizational plaintiffs live in states where there is a higher population of non-citizens.

83. Under Article I, Section 2, Clause 3 of the U.S. Constitution, as amended by the Fourteenth Amendment, the decennial population counts are used to determine the number of congressional representatives apportioned to each state. Exclusion of non-citizens from the population count used for apportionment creates a significant risk that states in which large

numbers of non-citizens reside, including Texas and Arizona, will suffer a reduction in the number of congressional seats that would otherwise be apportioned to them.

84. Plaintiffs and members of organizational plaintiffs also live in states where lawmakers have expressed an interest and desire to use CVAP as a population base for drawing congressional and state legislative redistricting plans in 2021.⁴² Plaintiffs and members of organizational plaintiffs reside in areas in which, according to recent ACS data, the population has a higher percentage of non-citizens than the population of their states as a whole. Latinos and non-U.S. citizens, including individual Plaintiffs and members of Plaintiff organizations will be injured when the Census Bureau provides those states with citizenship data to be used along with the total population tabulations in the P.L. 94-171 Redistricting Data File, resulting in the exclusion of non-citizens from the population base used for redistricting congressional, state legislative and local districts. As a result, Plaintiffs will suffer vote dilution and loss of representation in unconstitutionally overpopulated districts.

CAUSES OF ACTION

COUNT I

(Administrative Procedure Act, 5 U.S.C. § 706 (2)(A))

(Inadequate Rationale)

85. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

86. The APA prohibits final agency action that is “arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law[.]” 5 U.S.C. § 706(2)(A).

⁴² See, e.g., Nick Brown, *Republicans want census data on citizenship for redistricting*, Reuters (Apr. 8, 2019), available at <https://www.reuters.com/article/us-usa-census-redistricting-insight/republicans-want-census-data-on-citizenship-for-redistricting-idUSKCN1RK18D>.

87. Defendants represent or are agencies subject to the requirements of the APA. 5 U.S.C. § 701 (b)(1).

88. Defendants failed to provide any independent analysis or support to justify collecting citizenship data to produce this data for use with the population tabulations provided to states in the 2020 Census P.L. 94-171 Redistricting Data File. Defendants' decision to collect citizenship data and produce citizenship population tabulations for use alongside the 2020 Census P.L. 94-171 Redistricting Data File is thus arbitrary and capricious, discriminatory, an abuse of discretion, and otherwise not in accordance with law, and therefore violates the APA and must be set aside.

89. Plaintiffs suffered and will suffer permanent and irreparable injury unless Defendants are enjoined from collecting citizenship data and producing tabulations of citizenship population for use along with the 2020 Census P.L. 94-171 Redistricting Data File.

COUNT II

(Administrative Procedure Act, 5 U.S.C. § 706 (2)(B))

(Contrary to Law)

90. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

91. The APA prohibits final agency action that is “contrary to constitutional right, power, privilege or immunity[.]” 5 U.S.C. § 706(2)(B).

92. Defendants represent or are agencies subject to the requirements of the APA. 5 U.S.C. § 701 (b)(1).

93. Defendants seek to collect and produce tabulations of citizenship population for use along with the 2020 Census P.L. 94-171 Redistricting Data File to discriminate against Plaintiffs and organizational Plaintiffs' members because of their race, national origin, or

alienage. Exclusion of non-citizens from the population base used for redistricting without a hard count of citizens and non-citizens will result in unconstitutionally malapportioned congressional and state legislative districts. Defendants' decision to collect citizenship data and produce citizenship population tabulations for use along with the 2020 Census P.L. 94-171 Redistricting Data File is contrary to constitutional right, power, privilege or immunity, and therefore violates the APA and must be set aside.

94. Plaintiffs suffered and will suffer permanent and irreparable injury unless Defendants are enjoined from collecting citizenship data and producing tabulations of citizenship population for use along with the 2020 Census P.L. 94-171 Redistricting Data File.

COUNT III

(Administrative Procedure Act, 5 U.S.C. § 706 (2)(C))

(Excess of Lawful Authority)

95. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

96. The APA prohibits final agency action that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right[.]” 5 U.S.C. § 706(2)(C).

97. Defendants represent or are agencies subject to the requirements of the APA. 5 U.S.C. § 701 (b)(1).

98. Presidential power is limited to the authority conferred on the President by acts of Congress or by the Constitution itself. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). The Constitution gives Congress authority to conduct the census “in such a Manner as [Congress] shall by Law direct,” U.S. Const. art. I, § 2, and “vests Congress with wide discretion over . . . the conduct of the census,” *Wisconsin*, 517 U.S. at 15. Under to this authority, Congress delegated the duty of conducting the census to the Secretary of Commerce,

subject to the provisions of the Census Act. Neither the Census Act nor the Constitution vests the President with authority over the *conduct* of the census.

99. Defendant Ross has exceeded his statutory authority over the conduct of the decennial census by following EO 13880, thus improperly allowing President Trump to usurp the discretion delegated to the Secretary by Congress. Secretary Ross has directed the Census Bureau to collect citizenship data not because he finds that it is necessary to collect this data, but because President Trump, as a co-conspirator in the continuing scheme to deprive Plaintiffs of political representation, finds that it is necessary for the Census Bureau to collect this data.

100. For the foregoing reasons, Defendant Ross's decision to follow EO 13380 and direct the Census Bureau to, among other things, collect citizenship data and produce citizenship population tabulations for use along with the 2020 Census P.L. 94-171 Redistricting Data File is in excess of the Secretary's statutory jurisdiction, authority, or limitations, or short of statutory right, and therefore violates the APA and must be set aside.

101. Plaintiffs suffered and will suffer permanent and irreparable injury unless the Secretary is enjoined from following EO 13380.

COUNT IV

(Administrative Procedure Act, 5 U.S.C. § 706 (2)(D))

(Improper Procedure)

102. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

103. The APA prohibits final agency action that is “without observance of procedure required by law[.]” 5 U.S.C. § 706(2)(D).

104. Defendants represent or are agencies subject to the requirements of the APA. 5 U.S.C. § 701 (b)(1).

105. Defendants departed from statutory and regulatory requirements under 13 U.S.C. § 141(c) and Public Law 94-171, as well as OMB and Census Bureau standards and practices, to collect and produce specific tabulations of population other than total population, race, and Hispanic/non-Hispanic origin for use along with the 2020 Census P.L. 94-171 Redistricting Data File. Defendants' decision to collect citizenship data and produce citizenship population tabulations for use along with the 2020 Census P.L. 94-171 Redistricting Data File is thus without observance of procedure required by law, and therefore violates the APA and must be set aside.

106. Plaintiffs suffered and will suffer permanent and irreparable injury unless Defendants are enjoined from collecting citizenship data and producing tabulations of citizenship population for use along with the 2020 Census P.L. 94-171 Redistricting Data File.

COUNT V

(Equal Protection Clause of the Fifth Amendment to the United States Constitution)

107. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

108. The Due Process Clause of the Fifth Amendment incorporates the equal protection guarantee of the Fourteenth Amendment.

109. The collection of citizenship data and the production of citizenship population tabulations for use along with the P.L. 94-171 Redistricting Data File violates the equal protection guarantee of the Fifth Amendment because it is motivated by racial animus towards Latinos, and animus towards non-U.S. citizens and foreign-born persons.

110. Defendants' violation caused and will cause harm to Plaintiffs.

COUNT VI

(Conspiracy to Violate Civil Rights Under 42 U.S.C. § 1985(3))

111. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

112. Motivated by their racial and class-based animus toward Latinos, President Trump, Defendant Ross, Defendant Dillingham, John Gore, Attorney General Sessions, Kris Kobach, and Stephen Bannon conspired to collect citizenship data and produce citizenship data for use along with the P.L. 94-171 Redistricting Data File so that states can use CVAP data to apportion state and local districts.

113. By taking the actions described herein, President Trump, Defendant Ross, Defendant Dillingham, John Gore, Attorney General Barr, Kris Kobach and Stephen Bannon conspired to deprive Latinos and non-U.S. citizens of their Fifth Amendment right to equal protection of the laws under the Fifth Amendment of the U.S. Constitution in violation of 42 U.S.C. § 1985(3).

114. Defendants' unlawful conduct to conspire to violate the constitutional rights of Latinos and non-U.S. citizen persons caused and will cause harm to Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

- (a) Declare that production of citizenship data for use along with the P.L. 94-171 Redistricting Data File and population tabulations, or including citizenship data in the File, violates the Equal Protection guarantee of the Fifth Amendment;
- (b) Declare that Secretary Ross's decision to follow EO 13380 and order the Census Bureau to produce tabulations of citizenship population data for use along with the P.L. 94-171 Redistricting Data File, or to include citizenship data in the File, violates §§ 706(2)(A)-

(D) of the APA because it is arbitrary and capricious, an abuse of discretion, and not in accordance with law; contrary to constitutional power, right, privilege or immunity; and/or in excess of statutory jurisdiction and authority, and without observance of procedure required by law;

- (c) Enjoin Defendants and their agents from collecting data as dictated by EO 13380 and from producing tabulations of citizenship population for use alongside the P.L. 94-171 Redistricting Data File and population tabulations or including citizenship data in the File and from taking any irreversible steps to produce tabulations of citizenship population for use alongside with the File or including tabulations of citizenship population in the File;
- (d) Award Plaintiffs reasonable costs, expenses, and attorneys' fees pursuant to 28 U.S.C. § 2412; and
- (e) Award such additional relief as the interests of justice may require.

Dated: September 13, 2019

Respectfully submitted,

By /s/ Terry Ao Minnis

**ASIAN AMERICANS ADVANCING JUSTICE |
AAJC**

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Niyati Shah (NJ Bar No. 026622005)*°
Terry Ao Minnis (MD Bar No. 20547)°
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* Pro hac vice *applications forthcoming*
** *Application for admission forthcoming*
° *Not admitted in DC.*

JS 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

La Union Del Pueblo Entero, Promise Arizona, Juanita Valdez-Cox, and Lydia Camarillo

(b) County of Residence of First Listed Plaintiff Hidalgo County, Texas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Terry Ao Minnis, Asian Americans Advancing Justice | AAJC, 1620 L Street, NW, Suite 1050, Washington, DC 20036 (see attachment)

DEFENDANTS

Wilbur L. Ross, in his official capacity as U.S. Secretary of Commerce, et al. (see attachment)

County of Residence of First Listed Defendant Prince George's Cty., MD
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSJ (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. § 706 (APA); Fifth Amendment of the U.S. Constitution, 42 U.S.C. § 1985(3)

Brief description of cause:

The Census Bureau's collection and reporting of citizenship data for redistricting is unlawful and unconstitutional

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. George Jarrod Hazel DOCKET NUMBER 8:18-cv-01570

DATE

9/13/19

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ATTACHMENT TO CIVIL COVER SHEET

Defendants

Wilbur L. Ross, sued in his official capacity as U.S. Secretary of Commerce;

Steven Dillingham, U.S. Census Bureau Director;

U.S. Department of Commerce; and

U.S. Census Bureau

Attorneys for Plaintiffs

Denise Hulett (CA Bar No. 121553)*

Andrea Senteno (NY Bar No. 5285341)**

Tanya G. Pellegrini (CA Bar No. 285186)*

Julia Gomez (CA Bar No. 316270)*

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^o Admitted in New Jersey and New York only. DC practice limited to federal courts.

*Pro hac vice applications forthcoming

** Application for Maryland admission forthcoming

UNITED STATES DISTRICT COURT

for the

District of Maryland

La Union Del Pueblo Entereo, et al.

Plaintiff(s)

v.

Wilbur L. Ross, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Wilbur L. Ross, Jr.
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Terry Ao Minnis
ASIAN AMERICANS ADVANCING JUSTICE | AAJC
1620 L Street, NW, Suite 1050
Washington, DC 20036

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 9/13/2019

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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UNITED STATES DISTRICT COURT

for the

District of Maryland

La Union Del Pueblo Entereo, et al.

Plaintiff(s)

v.

Wilbur L. Ross, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington DC 20230

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Terry Ao Minnis
ASIAN AMERICANS ADVANCING JUSTICE | AAJC
1620 L Street, NW, Suite 1050
Washington, DC 20036

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 9/13/2019

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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UNITED STATES DISTRICT COURT

for the

District of Maryland

La Union Del Pueblo Entereo, et al.

Plaintiff(s)

v.

Wilbur L. Ross, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) U.S. Census Bureau
4600 Silver Hill Road,
Suitland, MD 20746

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Terry Ao Minnis
ASIAN AMERICANS ADVANCING JUSTICE | AAJC
1620 L Street, NW, Suite 1050
Washington, DC 20036

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 9/13/2019

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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_____ on *(date)* _____; or

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_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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UNITED STATES DISTRICT COURT

for the

District of Maryland

La Union Del Pueblo Entereo, et al.

Plaintiff(s)

v.

Wilbur L. Ross, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Steven Dillingham
Director of the U.S. Census Bureau
U.S. Census Bureau
4600 Silver Hill Road
Suitland, MD 20746

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Terry Ao Minnis
ASIAN AMERICANS ADVANCING JUSTICE | AAJC
1620 L Street, NW, Suite 1050
Washington, DC 20036

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 09/13/2019

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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To: Cannon, Michael (Federal)[MCannon@doc.gov]
From: Olson, Stephanie
Sent: Mon 2/10/2020 3:53:59 PM (UTC-05:00)
Subject: FW: Census: Edits to Q&A's
CENSUS Section.docx

Stephanie Olson
Acting Deputy General Counsel for Litigation
D: 202.482.5981
M: b(6)

From: Foti, Anthony (Federal) <AFoti@doc.gov>
Sent: Monday, February 10, 2020 3:41 PM
To: Stanley, Christopher J <christopher.j.stanley@census.gov>; Mason, Jacque (Federal) <JMason1@doc.gov>
Cc: Brebbia, Sean (Federal) <SBrebbia@doc.gov>; Olson, Stephanie (Federal) <SOlson@doc.gov>; McGaan, Duncan (Federal) <DMcGaan@doc.gov>; Dombrowski, Eileen (Federal) <EDombrowski@doc.gov>
Subject: Census: Edits to Q&A's

Hi Chris and Jacque. The Secretary has reviewed your draft of hearing Q&A's. A couple of overall points b(5) - DP

b(5) - DP

Please use only the attached document when supplying edits b(5) - DP and submit your update to Duncan, cc'd, no later than COB Thursday, Feb 13. Thanks for your help.

Anthony

Anthony Foti
Performing the delegated duties of the
Assistant Secretary for Legislative and Intergovernmental Affairs
U.S. Department of Commerce
1401 Constitution Ave, NW
Washington, DC 20230
202-482-1148