From:Emily Moore (CENSUS/ADEP FED) [Emily.Moore@census.gov]Sent:8/3/2020 4:37:35 PMTo:Roberto Ramirez (CENSUS/POP FED) [Roberto.R.Ramirez@census.gov]Subject:Re: A lot has happened in the last two weeks...

b) (5)

Emily Moore, QDM/COMET Business Team Innovation & Technology Office/ADEP/Headquarters U.S. Census Bureau O: <u>301-763-9594</u> | M: (b) (6) census.gov | @uscensusbureau Shape your future. START HERE > <u>2020census.gov</u>

On Aug 3, 2020, at 12:07 PM, Roberto Ramirez (CENSUS/POP FED) <<u>Roberto.R.Ramirez@census.gov</u>> wrote:

FYI

Roberto Ramirez Assistant Division Chief, Special Population Statistics Population Division U.S. Census Bureau O: 301.763.6044 census.gov | @uscensusbureau Shape your future. START HERE> 2020.census.gov

From: Karen Battle (CENSUS/POP FED) <<u>karen.battle@census.gov</u>> Sent: Monday, August 3, 2020 11:48 AM To: POP All Staff <<mark>(b) (6)</mark> Subject: A lot has happened in the last two weeks...

Hello Everyone -

A lot has happened in the last two weeks.



Thanks!

Karen Battle Division Chief Population Division U.S. Census Bureau

karen.battle@census.gov Office 301.763.2071

census.gov Connect with us on Social Media

Office of the Press Secretary FOR IMMEDIATE RELEASE July 21, 2020

July 21, 2020

MEMORANDUM FOR THE SECRETARY OF COMMERCE

SUBJECT: Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census

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

Section 1. Background. In order to apportion Representatives among the States, the Constitution requires the enumeration of the population of the United States every 10 years and grants the Congress the power and discretion to direct the manner in which this decennial census is conducted (U.S. Const. art. I, sec. 2, cl. 3). The Congress has charged the Secretary of Commerce (the Secretary) with directing the conduct of the decennial census in such form and content as the Secretary may determine (13 U.S.C. 141(a)). By the direction of the Congress, the Secretary then transmits to the President the report of his tabulation of total population for the apportionment of Representatives in the Congress (13 U.S.C. 141(b)). The President, by law, makes the final determination regarding the "whole number of persons in each State," which determines the number of Representatives to be apportioned to each State, and transmits these determinations and accompanying census data to the Congress (2 U.S.C. 2a(a)). The Congress has provided that it is "the President's personal transmittal of the report to Congress" that "settles the apportionment" of Representatives among the States, and the President's discretion to settle the apportionment is more than "ceremonial or ministerial" and is essential "to the integrity of the process" (Franklin v. Massachusetts, 505 U.S. 788, 799, and 800 (1992)).

The Constitution does not specifically define which persons must be included in the apportionment base. Although the Constitution requires the "persons in each State, excluding Indians not taxed," to be enumerated in the census, that requirement has never been understood to include in the apportionment base every individual physically present within a State's boundaries at the time of the census. Instead, the term "persons in each State" has been interpreted to mean that only the "inhabitants" of each State should be included. Determining which persons should be considered "inhabitants" for the purpose of apportionment requires the exercise of judgment. For example, aliens who are only temporarily in the United States, such as for business or tourism, and certain foreign diplomatic personnel are "persons" who have been excluded from the apportionment base in past censuses. Conversely, the Constitution also has never been understood to exclude every person who is not physically "in" a State at the time of the census. For example, overseas Federal personnel have, at various times, been included in and excluded from the populations of the States in which they maintained their homes of record. The discretion delegated to the executive branch to determine who qualifies as an "inhabitant" includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status.

In Executive Order 13880 of July 11, 2019 (Collecting Information About

Citizenship Status in Connection With the Decennial Census), I instructed executive departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country. As the Attorney General and I explained at the time that order was signed, data on illegal aliens could be relevant for the purpose of conducting the apportionment, and we intended to examine that issue.

Sec. 2. Policy. For the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), to the maximum extent feasible and consistent with the discretion delegated to the executive branch. Excluding these illegal aliens from the apportionment base is more consonant with the principles of representative democracy underpinning our system of Government. Affording congressional representation, and therefore formal political influence, to States on account of the presence within their borders of aliens who have not followed the steps to secure a lawful immigration status under our laws undermines those principles. Many of these aliens entered the country illegally in the first place. Increasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law. States adopting policies that encourage illegal aliens to enter this country and that hobble Federal efforts to enforce the immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives. Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State's entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.

I have accordingly determined that respect for the law and protection of the integrity of the democratic process warrant the exclusion of illegal aliens from the apportionment base, to the extent feasible and to the maximum extent of the President's discretion under the law.

Sec. 3. Excluding Illegal Aliens from the Apportionment Base. In preparing his report to the President under section 141(b) of title 13, United States Code, the Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President's discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary shall also include in that report information tabulated according to the methodology set forth in *Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525 (Feb. 8, 2018).

Sec. <u>4</u>. <u>General Provisions</u>. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

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

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

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

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

DONALD J. TRUMP

###

From:Karen Battle (CENSUS/POP FED) [karen.battle@census.gov]Sent:8/3/2020 4:43:29 PMTo:Redouane Betrouni (CENSUS/POP FED) [Redouane.Betrouni@census.gov]Subject:Re: A lot has happened in the last two weeks...

Thank you Redouane for your message. A team has been formed to address the presidential memo - and whatever approach/method is used will be made transparent to the public.

Karen Battle

Division Chief Population Division U.S. Census Bureau

karen.battle@census.gov Office 301.763.2071

census.gov Connect with us on Social Media

From: Redouane Betrouni (CENSUS/POP FED) <Redouane.Betrouni@census.gov>
Sent: Monday, August 3, 2020 12:07 PM
To: Karen Battle (CENSUS/POP FED) <karen.battle@census.gov>
Subject: Re: A lot has happened in the last two weeks...

Hi Karen,

I just wanted to share this with you:

Speaking of impact and risks:

It is surprising to me to learn that some how, some where some system is able to and using the census for checking/finding out/discovering undocumented immigrants.

I know it is possible and not technically difficult to do by doing some record linkage analysis comparing for example Census 2020 and SSA file+IRS1014+IRS1099+Medicar File+ other files such as Selective service as an example.

b) (5)

Best Regards,

Redouane Betrouni

POP-Health Studies Branch 301-763-2489 redouane.betrouni@census.gov https://www.census.gov/data.html From: Karen Battle (CENSUS/POP FED) <karen.battle@census.gov>
Sent: Monday, August 3, 2020 11:48 AM
To: POP All Staff <pop.all.staff@census.gov>
Subject: A lot has happened in the last two weeks...

Hello Everyone -

A lot has happened in the last two weeks.



Thanks!

Karen Battle Division Chief Population Division U.S. Census Bureau

karen.battle@census.gov Office 301.763.2071

census.gov Connect with us on Social Media

Office of the Press Secretary

FOR IMMEDIATE RELEASE

July 21, 2020

July 21, 2020

MEMORANDUM FOR THE SECRETARY OF COMMERCE

SUBJECT: Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census

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

Section 1. Background. In order to apportion Representatives among the States, the Constitution requires the enumeration of the population of the United States every 10 years and grants the Congress the power and discretion to direct the manner in which this decennial census is conducted (U.S. Const. art. I, sec. 2, cl. 3). The Congress has charged the Secretary of Commerce (the Secretary) with directing the conduct of the decennial census in such form and content as the Secretary may determine (13 U.S.C. 141(a)). By the direction of the Congress, the Secretary then transmits to the President the report of his tabulation of total population for the apportionment of Representatives in the Congress (13 U.S.C. 141(b)). The President, by law, makes the final determination regarding the "whole number of persons in each State," which determines the number of Representatives to be apportioned to each State, and transmits these determinations and accompanying census data to the Congress (2 U.S.C. 2a(a)). The Congress has provided that it is "the President's personal transmittal of the report to Congress" that "settles the apportionment" of Representatives among the States, and the President's discretion to settle the apportionment is more than "ceremonial or ministerial" and is essential "to the integrity of the process" (Franklin v. Massachusetts, 505 U.S. 788, 799, and 800 (1992)).

The Constitution does not specifically define which persons must be included in the apportionment base. Although the Constitution requires the "persons in each State, excluding Indians not taxed," to be enumerated in the BC-DOC-CEN-2020-001602-001923

census, that requirement has never been understood to include in the apportionment base every individual physically present within a State's boundaries at the time of the census. Instead, the term "persons in each State" has been interpreted to mean that only the "inhabitants" of each State should be included. Determining which persons should be considered "inhabitants" for the purpose of apportionment requires the exercise of judgment. For example, aliens who are only temporarily in the United States, such as for business or tourism, and certain foreign diplomatic personnel are "persons" who have been excluded from the apportionment base in past censuses. Conversely, the Constitution also has never been understood to exclude every person who is not physically "in" a State at the time of the census. For example, overseas Federal personnel have, at various times, been included in and excluded from the populations of the States in which they maintained their homes of record. The discretion delegated to the executive branch to determine who qualifies as an "inhabitant" includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status.

In Executive Order 13880 of July 11, 2019 (Collecting Information About Citizenship Status in Connection With the Decennial Census), I instructed executive departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country. As the Attorney General and I explained at the time that order was signed, data on illegal aliens could be relevant for the purpose of conducting the apportionment, and we intended to examine that issue.

Sec. 2. Policy. For the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*), to the maximum extent feasible and consistent with the discretion delegated to the executive branch. Excluding these illegal aliens from the apportionment base is more consonant with the principles of representative democracy underpinning our system of Government. Affording congressional representation, and therefore formal political influence, to States on account of the presence within their borders of aliens who have not followed the steps to secure a lawful immigration status under our laws undermines those principles. Many of these aliens entered the country illegally in the first place. Increasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law. States adopting policies that encourage illegal aliens to enter this country and that hobble Federal efforts to enforce the immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives. Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State's entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.

I have accordingly determined that respect for the law and protection of the integrity of the democratic process warrant the exclusion of illegal aliens from the apportionment base, to the extent feasible and to the maximum extent of the President's discretion under the law.

<u>Sec. 3.</u> Excluding Illegal Aliens from the Apportionment Base. In preparing his report to the President under section 141(b) of title 13, United States Code, the Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President's discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary shall also include in that report information tabulated according to the methodology set forth in *Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525 (Feb. 8, 2018).

Sec. <u>4</u>. <u>General Provisions</u>. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

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

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

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

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

###

From:Karen Battle (CENSUS/POP FED) [karen.battle@census.gov]Sent:8/3/2020 5:20:21 PMTo:Aaron Matthew Dixon (CENSUS/POP FED) [aaron.matthew.dixon@census.gov]Subject:Re: A lot has happened in the last two weeks...

Thank you Aaron for sending this message.

Karen Battle Division Chief Population Division U.S. Census Bureau

karen.battle@census.gov Office 301.763.2071

census.gov Connect with us on Social Media

From: Aaron Matthew Dixon (CENSUS/POP FED) <aaron.matthew.dixon@census.gov>
Sent: Monday, August 3, 2020 1:07 PM
To: Karen Battle (CENSUS/POP FED) <karen.battle@census.gov>
Subject: Re: A lot has happened in the last two weeks...

Karen,

According to the memo, "the Constitution requires the enumeration of the population of the United States every 10 years," with *enumeration* being the key word. (b) (5)

(b) (5)

Thank, Aaron

Aaron Dixon, Survey Statistician Population Division U.S. Census Bureau 301-763-7762 census.gov | @uscensusbureau Shape your future. START HERE > 2020census.gov From: Karen Battle (CENSUS/POP FED) <karen.battle@census.gov>
Sent: Monday, August 3, 2020 11:48 AM
To: POP All Staff <pop.all.staff@census.gov>
Subject: A lot has happened in the last two weeks...

Hello Everyone -

A lot has happened in the last two weeks.



Thanks!

Karen Battle

Division Chief Population Division U.S. Census Bureau

karen.battle@census.gov Office 301.763.2071

census.gov Connect with us on Social Media

Office of the Press Secretary FOR IMMEDIATE RELEASE July 21, 2020 July 21, 2020

MEMORANDUM FOR THE SECRETARY OF COMMERCE

SUBJECT: Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census

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

Section 1. Background. In order to apportion Representatives among the States, the Constitution requires the enumeration of the population of the United States every 10 years and grants the Congress the power and discretion to direct the manner in which this decennial census is conducted (U.S. Const. art. I, sec. 2, cl. 3). The Congress has charged the Secretary of Commerce (the Secretary) with directing the conduct of the decennial census in such form and content as the Secretary may determine (13 U.S.C. 141(a)). By the direction of the Congress, the Secretary then transmits to the President the report of his tabulation of total population for the apportionment of Representatives in the Congress (13 U.S.C. 141(b)). The President, by law, makes the final determination regarding the "whole number of persons in each State," which determines the number of Representatives to be apportioned to each State, and transmits these determinations and accompanying census data to the Congress (2 U.S.C. 2a(a)). The Congress has provided that it is "the President's personal transmittal of the report to Congress" that "settles the apportionment" of Representatives among the States, and the President's discretion to settle the apportionment is more than "ceremonial or ministerial" and is essential "to the integrity of the process" (Franklin v. Massachusetts, 505 U.S. 788, 799, and 800 (1992)).

The Constitution does not specifically define which persons must be included in the apportionment base. Although the Constitution requires the "persons in each State, excluding Indians not taxed," to be enumerated in the census, that requirement has never been understood to include in the apportionment base every individual physically present within a State's boundaries at the time of the census. Instead, the term "persons in each State" has been interpreted to mean that only the "inhabitants" of each State should be included. Determining which persons should be considered "inhabitants" for the purpose of apportionment requires the exercise of judgment. For example, aliens who are only temporarily in the United States, such as for business or tourism, and certain foreign diplomatic personnel are "persons" who have been excluded from the apportionment base in past censuses. Conversely, the Constitution also has never been understood to exclude every person who is not physically "in" a State at the time of the census. For example, overseas Federal personnel have, at various times, been included in and excluded from the populations of the States in which they maintained their homes of record. The discretion delegated to the executive branch to determine who qualifies as an "inhabitant" includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status.

In Executive Order 13880 of July 11, 2019 (Collecting Information About Citizenship Status in Connection With the Decennial Census), I instructed executive departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country. As the Attorney General and I explained at the time that order was signed, data on illegal aliens could be relevant for the purpose of conducting the apportionment, and we intended to examine that issue.

Sec. 2. Policy. For the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), to the maximum extent feasible and consistent with the discretion delegated to the executive branch. Excluding these illegal aliens from the apportionment base is more consonant with the principles of representative democracy underpinning our system of Government. Affording congressional representation, and therefore formal political influence, to States on account of the presence within their borders of aliens who have not followed the steps to secure a lawful immigration status under our laws undermines those principles. Many of these aliens entered the country illegally in the first place. Increasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law. States adopting policies that encourage illegal aliens to enter this country and that hobble Federal efforts to enforce the immigration laws passed by the Congress

BC-DOC-CEN-2020-001602-001930

should not be rewarded with greater representation in the House of Representatives. Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State's entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.

I have accordingly determined that respect for the law and protection of the integrity of the democratic process warrant the exclusion of illegal aliens from the apportionment base, to the extent feasible and to the maximum extent of the President's discretion under the law.

<u>Sec. 3.</u> Excluding Illegal Aliens from the Apportionment Base. In preparing his report to the President under section 141(b) of title 13, United States Code, the Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President's discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary shall also include in that report information tabulated according to the methodology set forth in *Final 2020 Census Residence Criteria and Residence Situations*, 83 Fed. Reg. 5525 (Feb. 8, 2018).

Sec. <u>4</u>. <u>General Provisions</u>. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

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

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

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

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

Coverage of Director Dillingham's Statement

This report documents coverage of Director Dillingham's statement on the Census Bureau's new operational plan designed to deliver data collection and apportionment counts by the statutory deadline of December 31, 2020. As of 9 am, there have been an estimated 14 articles on this subject.

National News

[HYPERLINK "https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finishall-counting-efforts-by-sept-30" \h] NPR – Hansi Lo Wang, August 3

The U.S. Census Bureau is ending all counting efforts for the 2020 census on Sept. 30, a month sooner than previously announced, the bureau's director confirmed Monday in [HYPERLINK "https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html"]. That includes critical door-knocking efforts and [HYPERLINK "https://my2020census.gov/"], [HYPERLINK "https://2020census.gov/en/ways-to-respond/responding-by-phone.html"] and by mail.

The latest updates to the bureau's plans are part of efforts to "accelerate the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce" who oversees the bureau, Director Steven Dillingham said in the [HYPERLINK "https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html"].

These last-minute changes to the constitutionally mandated count of every person living in the U.S. threaten the accuracy of population numbers used to determine the distribution of political representation and federal funding for the next decade.

With roughly [<u>HYPERLINK "https://twitter.com/hansilowang/status/1290354793639301127</u>], and already delayed by the coronavirus pandemic, the bureau now has less than two months left to try to reach people of color, immigrants, renters, rural residents and other members of historically undercounted groups who are not likely to fill out a census form on their own.

The bureau's announcement comes after [HYPERLINK

"https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sendsalarming-mixed-signals"] that the agency had decided to cut short [HYPERLINK "https://www.npr.org/2020/07/16/891894280/early-census-door-knocking-to-expand-to-hawaiipuerto-rico-and-other-areas"] for the 2020 census. Those in-person interviews with unresponsive households started last month in [HYPERLINK "https://public.tableau.com/profile/us.census.bureau" \["!/vizhome/StatusofCurrentOperations/ACOMap"] and are set to expand nationwide on Aug. 11.

For days, the bureau has been sending mixed signals about its plans by [HYPERLINK "https://twitter.com/hansilowang/status/1289942574661165061"]references to Oct. 31 — the previously announced end date for all counting efforts — from its website. Before the pandemic hit, counting for the 2020 census was originally supposed to be finished by the end of July. But in April, with <u>HYPERLINK</u>

"https://www.youtube.com/watch?v=_XBmxj2mKiM&feature=youtu.be&t=2834"], the bureau announced that it needed to extend its timeline, including pushing back the end of counting to Oct. 31.

But during a hearing last week before the House Oversight and Reform Committee, Dillingham signaled a shift in plans by [HYPERLINK

"https://www.youtube.com/watch?v=SKXS8e1Ew7c&feature=youtu.be&t=13909"] that "the Census Bureau and others really want us to proceed as rapidly as possible."

The bureau also asked Congress to push back by four months the legal deadline of Dec. 31 for reporting the latest state population counts to the president. Delaying that deadline would allow the bureau to keep counting through Oct. 31 to "ensure the completeness and accuracy of the 2020 Census," Dillingham and Commerce Secretary Wilbur Ross said in [HYPERLINK "https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=100000011751624"].

Democrats in Congress and many census advocates have become increasingly concerned that the White House is pressuring the bureau to stop counting soon in order to benefit Republicans when House seats are reapportioned and voting districts are redrawn.

As early as May, [<u>HYPERLINK "https://www.documentcloud.org/documents/7007573-July-8-2020-</u> <u>Census-Bureau-Transcript-of-2020.html" \l "document/p21/a573697" \h]</u> said the bureau had already "[<u>HYPERLINK "https://www.youtube.com/watch?v=F6lyJMtDDgY&feature=youtu.be&t=4689" \h]</u>" of meeting the current census deadlines.

As [HYPERLINK "https://www.npr.org/2020/08/03/898381129/still-a-long-ways-to-go-for-a-newcoronavirus-relief-package"] continue, there is a window for lawmakers to include a provision that would give the bureau more time.

So far, however, only Democrats have introduced legislation that would extend deadlines, and [<u>HYPERLINK "https://www.npr.org/2020/07/28/895744449/republicans-signal-theyre-willing-to-cut-short-census-counting"</u>].

[HYPERLINK "https://www.washingtonpost.com/local/census-bureau-says-counting-will-end-a-monthearlier-than-planned/2020/08/03/16990c5e-d5fb-11ea-930e-d88518c57dcc_story.html" \h] The Washington Post – Frederick Kunkle, August 3

The Census Bureau announced late Monday that door-knocking and other field activities for the 2020 Census will cease a month earlier than planned.

The agency had given indications last week that field activities would cease Sept. 30 instead of Oct. 31, to submit the population count to the president by Dec. 31.

The deadline for field activities, including online and telephone reporting, had been adjusted earlier this year in anticipation that the decennial tally would be extended because of complications arising from the coronavirus pandemic.

Plans to shut down the count earlier drew fierce criticism from Democrats and civil rights groups, which have pushed back against a broader effort by the Trump administration to change how the population is counted and how the data is used. New York's census director denounced Monday's announcement by the bureau that field activities would be terminated Sept. 30.

"This is nothing but a disgusting power grab from an Administration hell-bent on preserving its fleeting political power at all costs," New York state's census director, Julie Menin, said in a statement. "From day one, it has been abundantly clear that Donald Trump is going to try everything possible to stop New Yorkers from filling out the census, and now, amid a global pandemic that's severely impacted outreach, they are straight-up trying to steal it."

Last month, President Trump issued a memorandum saying undocumented immigrants should not be factored into congressional apportionment, which legal experts say would be unconstitutional. Civil rights groups and congressional Democrats have also said an earlier deadline would lead to an inaccurate census that undercounts harder-to-tally populations, including minorities, immigrants and low-income people.

The Census Bureau's director, Steven Dillingham, issued a statement about 9 p.m. Monday announcing the earlier cessation of field activities, including the self-response option. He also said that monetary incentives would be offered to census takers to encourage them to work at maximum efficiency, and that additional staff would be hired and trained to accelerate data collection and processing apportionment counts ahead of Dec. 31, the statutory deadline.

"Of course, we recognize that events can still occur that no one can control, such as additional complications from severe weather or other natural disasters," Dillingham said.

By law, a count of the U.S. population must be delivered to the president by Dec. 31 of the census year. But field activities for the constitutionally mandated count were disrupted this year by the coronavirus pandemic. Under a plan designed to extend data collection, the bureau resumed field activities on June 1 and moved the deadline for data collection from July 31 to Oct. 31.

[HYPERLINK "https://www.nytimes.com/2020/08/04/us/elections/primary-election-michigan-arizonakansas.html" \I "link-4696b81d" \h] The New York Times – Staff Writer, August 4

Abruptly reversing its stated schedule, the Census Bureau confirmed late Monday that it would end its count of the nation's 330 million residents by Sept. 30, a month earlier than it had stated only this spring.

The four-week acceleration sounds small, but census experts have said it would wreak havoc with efforts to reach the very hardest-to-count households — immigrants, minorities, young people and others — that have long been flagged as most likely to be missed in this year's tally.

Critics of the sped-up schedule pounced on the announcement, casting it as an unvarnished attempt by the administration to twist the nation's population count to exclude groups that, by and large, tended to support Democrats.

"This is a whole systemic attack on the census for political gain," Julie Menin, the census director for New York City, said in an interview. "There's an intentional attempt here to basically steal the census to politicize this census to gain Republican seats across the country."

The bureau has offered no explanation for the change posted on its website. But outside experts said the explanation was clearly rooted in politics — in particular, in a demand by Mr. Trump last month to exclude undocumented immigrants from the population totals that are used every 10 years to reallocate House seats among the states.

Slammed by the pandemic, the Census Bureau had said earlier that it wanted to delay its final delivery of population totals to April 2021, rather than the statutory deadline of December 31. The speedup announced late Monday reverses that request and assures that the totals will be delivered to the White House by year's end — before any new president or Congress might take office.

That gives the White House its best opportunity to act on Mr. Trump's effort to remove undocumented immigrants from the reapportionment totals.

The announcement on Monday by the Census Bureau speeds up the last counts of some 60 million households that have failed to respond to requests to turn in census forms. The pandemic-delayed schedule called for that count to be completed by October 31. The plan announced on Monday, which had been reported last week, will move that deadline up by one month, to September 30.

[HYPERLINK "https://www.cnn.com/2020/08/03/politics/2020-census-field-collection-endearly/index.html" \h]

CNN - Paul LeBlanc and Gregory Wallace, August 3

The Census Bureau announced Monday evening that field data collection will end a full month earlier than originally planned.

it's a sign that the Trump administration has abandoned its plan to extend the window for counting the nation's population, which it earlier said needed to be longer because of the coronavirus pandemic. To be counted, households must complete the survey by September 30, rather than October 31, as the Census Bureau had announced when it adjusted plans due to the virus. The bureau will also end its labor-intensive efforts to knock on the doors of households that have not filled out the survey online, by paper form, or by phone.

The shift is part of an effort to "accelerate the completion of data collection and apportionment counts" by the end of the year deadline, Census Bureau Director Steven Dillingham said in a statement.

"The Census Bureau's new plan reflects our continued commitment to conduct a complete count, provide accurate apportionment data, and protect the health and safety of the public and our workforce," he said.

But the truncated timeline is likely to fuel fresh scrutiny about the accuracy of the bureau's US population count that has already been disrupted by the ongoing coronavirus pandemic.

The pandemic hit just as the massive once-a-decade effort to count the US population was getting underway and scrambled the agency's plans. It suspended field operations for a time, although field work has resumed in some areas and is set to be underway nationwide by later this month.

The census, which happens every 10 years, determines how many representatives each state gets in Congress, and how billions of dollars in federal funding is spent. Schools, roads, and other important things in your community will gain -- or lose -- funding over the next 10 years depending on this official population tally.

And while this year's census has relied more heavily on collecting responses by phone, mail or online, the operation will still need a robust field operation in the coming weeks to reach minority communities as well as of students on college campuses, seniors in assisted living facilities and people experiencing homelessness.

Not only are these groups at high risk for infection, they're also among those most in need of in-person outreach. With many senior facilities on lockdown and college students living at home, an accurate count may become increasingly difficult under a tighter deadline.

Still, Dillingham maintained Monday evening that the bureau is "committed to a complete and accurate 2020 Census."

"Building on our successful and innovative internet response option, the dedicated women and men of the Census Bureau, including our temporary workforce deploying in communities across the country in upcoming weeks, will work diligently to achieve an accurate count," he said.

Last week, Dillingham declined to say whether the bureau needed additional time to complete the 2020 census while testifying before the House Oversight Committee.

The Trump administration this spring requested Congress extend the completion deadlines by four months, but several House Democrats said they are concerned the administration has since backed away from that request.

The conversation about extending the timeframe "wasn't at my level," Dillingham testified. He said his focus is moving "as rapidly as possible and to get a complete and accurate count as soon as possible." But the possibility of less time to count the population concerned advocates for minority groups that have historically been under-counted in the census.

"This new deadline allows Trump to cheat hard-to-count communities of color out of the resources needed for everything from health care and education to housing and transportation for the next 10 years," said Asian Americans Advancing Justice, one of the groups that successfully sued over the administration's plan to ask a citizenship question to the census.

The Lawyers' Committee for Civil Rights Under Law said it condemned the plan to shorten collection "in no uncertain terms" because it could lead to "missing millions in Black and immigrant communities."

[HYPERLINK "https://www.usatoday.com/story/news/health/2020/08/04/covid-updates-hawaii-travelguarantine-florida-cases-census-end-early/5578158002/" \h] USA Today – Jessica Flores and John Bacon, August 4

Census Bureau to end all counting operations a month early

The Census Bureau plans to end all counting operations by Sept. 30, a month earlier than planned, the bureau's director announced Monday. The bureau delayed its original date to complete the census from July 31 to Oct. 31 because of the coronavirus pandemic. The announcement comes after President Donald Trump signed a memorandum on July 21 asking the bureau to not count undocumented immigrants to decide how many members of Congress are apportioned to each state.

[HYPERLINK "https://www.latimes.com/politics/story/2020-08-03/census-will-rush-to-complete-itscount-by-sept-30-a-month-earlier-than-planned" \h] Los Angeles Times – Sarah Wire, August 3

The Census Bureau is ending efforts to count the country's population on Sept. 30, a month sooner than planned, the bureau's director announced Monday.

Only 63% of the nation's estimated 121 million households have responded to the 2020 Census by mail or phone or online. The last-minute change to the timeline raise concerns about the accuracy of the count, which is used to determine representation in Congress and state legislatures.

The statistical information collected every 10 years is also the bedrock for federal and local policy decisions such as how much federal money states and cities receive, where to build water and sewer systems, where to locate fire departments, even such minutiae as how many first-grade teachers a school district should hire. Businesses and nonprofit groups use it to determine where to expand or contract.

Door-knocking by census takers will end Sept. 30, as will the option to respond by other methods. In order to obtain as many responses as possible by that date, the bureau will be hiring additional census takers and provide incentives for those who work the maximum hours possible.

The agency needs time to process and verify the count by Dec. 31, the deadline set under federal law, said Steven Dillingham, the Census Bureau director.

"We will improve the speed of our count without sacrificing completeness," he said in the statement. "Under this plan, the Census Bureau intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities."

In April, Commerce Secretary Wilbur Ross, who oversees the bureau, asked Congress to allow four extra months to finish the count and present the results to the president.

The COVID-19 outbreak has delayed much of its outreach, including the scheduled knocking on millions of doors to gather information about people who have not already responded and entreaties into traditionally difficult-to-count populations, including college students, the homeless and people living in rural areas.

Door knocking that was supposed to begin in April and end in July has just recently begun in a handful of communities and will expand nationwide Aug. 11.

In 2010, when online response was not an option, about 75% of households responded to the Census by mail or phone.
The Democrat-led House passed legislation to allow the agency additional time, but the Republican-led Senate has not followed, and the administration appears to have withdrawn its request. Congress could delay the deadline in the current coronavirus economic aid package being considered, but it is unclear if that is being considered.

In a congressional hearing last week, four former Census directors raised concerns that without extra time to follow up in person with households that don't respond and to visit traditionally hard-to-contact communities, many people won't be counted, lowering the federal and state funds tied to their regions' populations and lessening their political representation.

"The chances of having a census accurate enough to use is unclear — very, very much unclear," said Kenneth Prewitt, who was director from 1998 to 2001.

The agency had sent mixed signals for several days about whether it would continue to push for the additional time and when door knocking would end.

Beltway/Other Online News

[HYPERLINK "https://www.politico.com/news/2020/08/03/census-bureau-data-trump-391146?nname=playbook&nid=0000014f-1646-d88f-a1cf-5f46b7bd0000&nrid=00000168-e6fa-d9b6abfd-eefa0df40000&nlid=630318" \h] Politico – Steven Shepard, August 4

[HYPERLINK "https://www.politico.com/playbook" \h]

The Census Bureau said late on Monday that it would finish collecting data for the decennial count next month and work to deliver population tallies to President Donald Trump that meet his constitutionally questionable order to exclude undocumented immigrants for the purpose of congressional apportionment.

The agency, which is part of the Commerce Department, had said this spring that it would require more time to complete its data collection because of the coronavirus pandemic. But amid a renewed push by Trump to remove those in the country without documentation from the count, Census Bureau Director Steven Dillingham now says the data will be sent to the president by the end of the year — and not next spring, when Joe Biden could be in the Oval Office.

In a statement on Monday, Dillingham — who declined to tell Congress last week whether an extension was still necessary — announced measures meant "to accelerate the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce."

In order to meet that deadline, Dillingham said, "field data collection" will conclude by Sept. 30. Professional staff at the bureau has said that finishing the count by the end of next month is not possible after a pandemic-prompted delay in operations earlier this year.

Dillingham also said the bureau "continues its work on meeting the requirements" of two Trump orders: a July 2019 executive order that asked administrative agencies to collect data on undocumented immigrants in order to provide counts that states could use to draw state legislative maps that did not include those people; and a presidential memorandum from last month instructing the Census Bureau to calculate apportionment counts — the number of congressional seats each state will have in the next decade — without undocumented immigrants included.

"A team of experts are examining methodologies and options to be employed for this purpose," Dillingham said.

Excluding these immigrants would likely benefit Republicans in future elections for Congress and the presidency. According to the University of Virginia Center for Politics, a count that did not include undocumented immigrants would mean California would lose two House seats, not the one seat the state is projected to lose in the next decade. Fast-growing Texas, increasingly a competitive state, would gain two seats instead of three. New Jersey would lose a seat.

Alabama and Ohio, meanwhile, would each gain a seat under a count that excluded undocumented immigrants — though they are not currently projected to gain seats under a conventional count.

Democrats and other groups have already moved to challenge Trump's recent order, arguing that the Constitution does not allow the census to count some people in the country for the purposes of House apportionment and not others based on immigration status. The 14th Amendment says the House seats should be divided among the states "according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed."

In his memorandum last month, Trump wrote that the Constitution "has never been understood to include in the apportionment base every individual physically present within a State's boundaries at the time of the census. Instead, the term 'persons in each State' has been interpreted to mean that only the 'inhabitants' of each State should be included. Determining which persons should be considered 'inhabitants' for the purpose of apportionment requires the exercise of judgment."

Eric Holder, a former attorney general under President Barack Obama who leads the National Democratic Redistricting Committee and its affiliated nonprofit, said last month that Trump's order "clearly" violated the Constitution.

"This latest scheme is nothing more than a partisan attempt at manipulating the census to benefit the president's allies, but it plainly violates the U.S. Constitution and federal laws, and cannot stand," said Holder, whose nonprofit group is supporting a lawsuit seeking to halt the administration's move.

Trump has made numerous efforts to exclude undocumented immigrants from the count for the purposes of political representation. After the Supreme Court smacked down a move to add a citizenship question to the census last year, Trump's 2019 order asked other government agencies to provide data on citizenship that could be used to create a count of noncitizens.

At the time, administration officials said citizenship data could be used by the states to draw state legislative districts of equal population of citizens instead of all people — which would likely shift power from more densely populated cities to rural areas.

Like many aspects of public- and private-sector organizations, the coronavirus outbreak has roiled the Census Bureau's operations. In April, the bureau asked Congress to delay the requirement to submit apportionment data until the end of April 2021. But since then — as Trump's poll numbers have faltered — the administration has pushed to meet its original deadlines. At a hearing last week before the Democratic-controlled House Oversight and Government Reform Committee, Dillingham repeatedly declined to say whether the bureau stood by its original request for an extension.

The House has already approved a provision extending the deadline. But the Republican coronavirus relief proposal in the Senate, on which the chamber has not acted, did not include an extension.

According to Dillingham's statement, "nearly 63 percent of all households" have completed the census thus far.

"We will improve the speed of our count without sacrificing completeness," Dillingham said, adding that the bureau would "provide awards" to employees "in recognition of those who maximize hours worked."

[HYPERLINK "https://thehill.com/homenews/administration/510386-census-bureau-confirms-plans-toend-data-collection-early" \h]

The Hill – John Bowden, August 3

The Census Administration said Monday that it would speed up its acquisition of data ahead of the end of September, when it says it will end all collection efforts nationwide.

The Census Administration said Monday that it would speed up its acquisition of data ahead of the end of September, when it says it will end all collection efforts nationwide.

In a statement, the Census Bureau said that it would accelerate efforts to collect data in person and through self-reporting efforts, both of which it said would now end on Sept. 30. Census officials said in the announcement that the administration planned to collect a similar amount of data as has been collected in previous censuses.

"We will end field data collection by September 30, 2020," reads the announcement. "Self-response options will also close on that date to permit the commencement of data processing. Under this plan, the Census Bureau intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities."

The plan marks a two-month extension of the self-reporting period, which was initially intended to end on July 31. Some communities with low levels of internet access complete online census forms at far lower rates than more affluent communities, necessitating in-person data collection efforts as well. Those efforts have been made more difficult by the ongoing coronavirus pandemic.

"We will improve the speed of our count without sacrificing completeness," the agency continued. "As part of our revised plan, we will conduct additional training sessions and provide awards to enumerators in recognition of those who maximize hours worked. We will also keep phone and tablet computer devices for enumeration in use for the maximum time possible."

Some employees of the bureau were skeptical that the plan would allow the agency to collect enough information in interviews with NPR, pointing to the possibility of some communities being

undercounted. The census determines critical information about communities across the nation that is used at the federal level for funding purposes as well as for drawing up congressional maps.

"It's going to be impossible to complete the count in time," one Census Bureau employee told NPR. "I'm very fearful we're going to have a massive undercount."

[HYPERLINK "https://www.washingtontimes.com/news/2020/aug/3/2020-census-offer-bonuses-speedhiring-finish-coun/" \h]

The Washington Times - Stephen Dinan, August 3

The Census Bureau announced Monday that it will hire more employees and offer bonuses to those who put in extra time in order to speed up the count and finish this year.

"We will improve the speed of our count without sacrificing completeness," Director Steven Dillingham said in a statement.

He and his agency have been under fire from Democrats who say they fear the 2020 count is spiraling out of control with the pressures of coronavirus and demands from President Trump.

Mr. Trump last month signed an executive order directing the bureau, in addition to the full count of all persons residing in the U.S., to produce a count without illegal immigrants. The president wants that latter count to be used to dole out seats in the House of Representatives.

Mr. Dillingham said his agency is still trying to figure out how to do that, but vowed "a team of experts" is on the case.

He insisted, though, that the bureau is "committed to a complete and accurate 2020 census."

Nearly 63% of households have responded to initial overtures for the census, leaving nearly two in five that have not self-reported yet. Many of those will require an in-person visit.

Mr. Dillingham said speeding up operations will allow them to complete the field collection by Sept. 30, and to have the final count by Dec. 31.

[HYPERLINK "https://www.huffpost.com/entry/census-count-deadline-movedup_n_5f28b89fc5b6a34284be7c76"] HuffPost – Josephine Harvey, August 3

The Census Bureau will end its counting efforts for the 2020 census on Sept. 30, a month earlier than planned, the bureau's director announced Monday.

The bureau had expected to continue field data collection, which includes door-knocking, phone calls and online responses, until Oct. 31. The date had been pushed back from a July 31 deadline after the coronavirus pandemic complicated field operations.

To help meet the earlier deadline, the bureau will include "enumerator awards and the hiring of more employees to accelerate the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce," Census Bureau Director Steven Dillingham said in a statement.

Ending the data collection earlier might help the bureau meet its legal deadline of providing information to Congress and the White House by the end of the year, but some officials have questioned whether that will be possible now given the setbacks already caused by the pandemic.

"We are past the window of being able to get those counts by those dates at this point," Albert Fontenot, the bureau's associate director for decennial census programs, said in a July press briefing.

To date, about 63% of households have responded to the 2020 census.

Rumblings of the date change first reported by NPR cited three anonymous Census Bureau employees, one of whom expressed fears of a "massive undercount" as a result of the "impossible" task of completing the count by the new deadline.

Democrats and civil rights advocates have questioned whether rushing to meet the December deadline will produce an unfair and incorrect count. Concerns have also been raised about President Donald Trump's order to exclude undocumented immigrants from the count, despite the fact that the census is intended to count every person living in the United States.

In an op-ed published in The Washington Post on Monday, Vanita Gupta, the president and CEO of the Leadership Conference on Civil and Human Rights, called on Congress to intervene. Reducing the time for census takers to get in touch with households that didn't participate in the self-response phase of the count has a disproportionate effect on people living in marginalized communities, she said.

"The Trump administration is doing everything it can to sabotage the 2020 census so that it reflects an inaccurate and less diverse portrait of America. Its latest effort involves quietly compressing the census timeline to all but guarantee a massive undercount," she wrote. "Rushing census operations, as the administration is attempting to do, ensures the bureau won't count millions of people — especially those hit hardest by the pandemic."

[HYPERLINK "https://www.thedailybeast.com/census-bureau-to-wrap-up-count-early-and-will-meettrumps-order-to-exclude-undocumented-migrants" \h] The Daily Beast – Jamie Ross, August 4

The Census Bureau will finish collecting data next month so it can deliver population tallies to President Donald Trump by the end of the year, and will meet his order to exclude undocumented immigrants. In a statement late Monday reported by Politico, Census Bureau Director Steven Dillingham announced measures intended "to accelerate the completion of data collection and apportionment counts" by Dec. 31 and will stop "field data collection" by Sept. 30. Dillingham also said the bureau "continues its work on meeting the requirements" of Trump's order to calculate the number of congressional seats each state will have in the next decade without taking undocumented immigrants into account. Census results are used to calculate federal funding and evaluate the number of seats each state has in the House of Representatives, and the exclusion of undocumented migrants will likely help Republicans in future elections. But it's unclear how they can be excluded, as the Census questionnaires were distributed back in March without a citizenship question.

[HYPERLINK "https://www.newsweek.com/census-bureau-cut-counting-bid-short-sparking-fears-manywill-left-out-1522609"] Newsweek – Chantal Da Silva – August 4

The Census Bureau has announced plans to cut its 2020 counting efforts short by a full month, sparking fears that many, including people of color and immigrants, could be left out this year.

In a statement published on Monday evening, the Census Bureau said it would be ending its field data collection by September 30, a month earlier than had been expected.

Prior to the coronavirus pandemic, counting for the 2020 census had been set to wrap up by the end of July. However, in the midst of the outbreak, the bureau said it would need more time. It pushed the deadline back to October 31, with the public support of President Donald Trump.

The decision to end the extension early, the Census Bureau said, was made to ensure that apportionment, which sees the 435 seats in the House of Representatives divvied up according to population sizes, was completed ahead of the statutory deadline of December 31.

But while the Census Bureau maintained that it still "intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities," many responded to the announcement with skepticism and concerns that the change could see people across the country left out.

"This is a massive scandal," Ari Berman, the author of Give Us the Ballot: The Modern Struggle for Voting Rights, wrote in a tweet.

"If you haven't already, fill out 2020 census NOW. It takes 5 min, you can do online [and the] future of American democracy depends on it."

ProPublica journalist Dara Lind also expressed concerns, telling followers to "make sure you have submitted your census information" and "make sure everyone you know has submitted their census information."

"Participation is important," Lind said. "And you have less time than expected."

As it stands, roughly 4 out of 10 households have yet to be counted in the 2020 Census, according to NPR, which had first reported the possibility of data-collection efforts ending early.

Democratic lawmakers and census advocates have repeatedly expressed fears the White House is pressuring the Census Bureau to curtail counting efforts so Republicans can benefit when House seats are reapportioned and voting districts are redrawn.

Meanwhile, immigration and civil rights advocates have further accused the Trump administration of seeking to rush the census to block immigrants, people of color and other marginalized groups from being counted, with the government already having sought to have undocumented immigrants excluded from the census.

"The Trump administration is doing everything it can to sabotage the 2020 Census so that it reflects an inaccurate and less diverse portrait of America," Vanita Gupta, the president and chief executive officer of the Leadership Conference on Civil and Human Rights, wrote in an opinion piece published on Monday by The Washington Post. "Its latest effort involves quietly compressing the census timeline to all but guarantee a massive undercount."

"Rushing census operations, as the administration is attempting to do, ensures the bureau won't count millions of people—especially those hit hardest by the pandemic," Gupta said. "It will leave the country with inaccurate numbers that deprive communities of resources, political power and the federal assistance necessary to recover from the pandemic for the next 10 years."

"The 2020 Census is the largest, most complex population count in the nation's history—one made more difficult by the emergence of COVID-19 and the Trump administration's ongoing efforts to undermine a decade of careful planning by the Census Bureau," Gupta asserted.

However, she said, "because the census determines funding for resources such as hospitals and health care, public schools, and infrastructure—as well as the number of seats in Congress each state receives and how legislative districts are drawn—it is imperative to get the count right."

Newsweek has contacted the Census Bureau and the White House for comment.

[HYPERLINK "https://www.upi.com/Top_News/US/2020/08/04/Census-Bureau-to-end-counting-amonth-early/3901596513638/" \h]

United Press International – Darryl Coote, August 4

The U.S. Census Bureau announced it will end all data collection efforts on Sept. 30, a month earlier than planned.

In a statement on Monday, U.S. Census Bureau Director Steven Dillingham said door-to-door counting efforts and self-response filings would stop by the end of September instead of Oct. 31 in order to accelerate the completion of the decennial tally of every person residing in the country by the statutory deadline of Dec. 31.

Despite the truncated schedule, Dillingham said through hiring more employees and offering enumerator awards "we will improve the speed or our count without sacrificing completeness."

The bureau, he said, intends to still have a similar level of household responses as previous years.

"The Census Bureau's new plan reflects our continued commitment to conduct a complete count, provide accurate apportionment data and protect the health and safety of the public and our workforce," Dillingham said.

The announcement came as 37% of households have yet to be counted in the tally, according to data from the Census Bureau.

The massive decennial effort is mandated by the Constitution and provides data that determines the number of seats each state is allocated in the U.S. House of Representatives as well as the disbursement of federal funds, according to the bureau's website.

However, this decade's count began on Jan. 21, the same day the United States reported its first case of COVID-19.

The pandemic, which has caused mass shutdowns throughout the country, forced the bureau in April to suspend field data collection and push the deadline from the end of July to Oct. 31.

Last week, the House committee on oversight and reform held an emergency hearing on the 2020 census, partially over reports that the Trump administration was seeking to cut its extended deadline.

Dillingham refused to comment as to the reason why President Donald Trump would want to compress the schedule, stating, "I am not directly involved with the Hill negotiations on extending the schedule."

Kenneth Prewitt, a former census director, expressed concern in the hearing over the reports, saying he was "very much worried" as those numbers are consequential to hospital, school and emergency preparation planning.

The Asian Americans Advancing Justice, a nonprofit in Washington, D.C., advocating for equality, issued a statement late last week following reports of that the Trump administration was to cut the deadline, chastising the move as it would hurt minorities.

"This new deadline allows Trump to cheat hard-to-count communities of color out of the resources needed for everything from healthcare and education to housing and transportation for the next 10 years," John C. Yang of Advancing Justice at the AAJC said in a statement. "The fate of our country's well-being and resources for the next 10 years is in jeopardy if Trump forces the U.S. Census Bureau to provide poor quality data to satisfy his political schemes."

[HYPERLINK "https://www.easttexasmatters.com/news/top-stories/census-bureau-ending-countingeffort-1-month-early/" \h] Nextstar Media Group – Sue Necessary, August 4

The U.S. Census Bureau will end its effort to count every person in this country one month before previously announced.

Counting for the 2020 census will end September 30, according to a statement on the Census Bureau website.

That includes critical door-knocking efforts and collecting responses online, over the phone and by mail.

The earlier deadline and other updates to the bureau's plan are intended "to accelerate the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce," according to the statement.

This means those who have not yet answered the census have a shorter time to do so.

The census is a Constitutionally-mandated "headcount" of every person in the U.S. used to determine the distribution of political representation and federal funding for the next decade.

An under-count could lead populations to lose money and Congressional representatives.

If you have not yet filled out your census packet, you can do so online.

From:Van N Hoad (CENSUS/ADSD FED) [Van.N.Hoad@census.gov]Sent:8/5/2020 3:06:36 PMTo:Danielle Ringstrom (CENSUS/ADSD FED) [danielle.ringstrom@census.gov]Subject:AdRec and SRQA DocumentsAttachments:AdRec_Outline_V1.3a_draft012918-26-49.docx; AR Processing 030617.docx; diagram notes.txt; CAES Person
Matching Flow.pdf



UNITED STATES DEPARTMENT OF COMMERCE Economics and Statistics Administration U.S. Census Bureau Washington, DC 20233-0001 OFFICE OF THE DIRECTOR

January 11, 2021

Mr. Jared Grubow Wilmer Cutler, Pickering, Hale and Dorr, LLP 7 World Trade Center 250 Greenwich Street, 42nd Floor New York, NY 10007 Jared.grubow@wilmerhale.com

Dear Mr. Grubow:

This letter is in further response to your Freedom of Information Act (FOIA), Title 5, United States Code, Section 552, request dated July 1, 2020, and follow-up letter dated July 21, 2020, to the U.S. Census Bureau's FOIA Office. We received your correspondence in this office on July 23, 2020. We have assigned to it tracking number DOC-CEN-001602 and are responding under the FOIA to your request for:

- 1) All records created on or after June 27, 2019, pertaining to how any of the citizenshipstatus data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:
 - calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141 (b) (hereinafter, the "2020 state-population totals");
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau's policy for calculating the 2020 state-population. totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File8;
 - changing the Census Bureau's policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).



3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).

4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

<u>Persons</u>

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau and Former Advisor to the Department of Commerce
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute
- David Dewhirst, Formerly of Department of Commerce
- Eric Deland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch.
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau and Former Advisor to the Department of Commerce
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

<u>Entities</u>

- Allied Educational Foundation
- American Civil Rights Union

- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-:PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation
- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

In searching for records that are responsive to each of the four foregoing requests, please be sure to search the electronic records (including email and text messages) and non-electronic records of each person within your agency who might have any responsive records, and, in addition, please search, in particular, the electronic records and non-electronic records of each of the following persons:

- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau and
- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau

By letter dated October 13, 2020, we informed you that although we have not enacted regulations specifically detailing how to conduct a reconsideration process, we have reconsidered your request for expedited processing and taken into consideration the additional information you provided in your letter. The reconsideration was performed as a *de novo* determination using both the information contained in the FOIA request and in your August 13, 2020 email and your fee waiver was granted. In this same letter, we informed you that we were (partially) granting you expedited processing for your request (items 1-3). However, for part 4 of your FOIA request, we informed you that it was not readily apparent that the request relates to the activity at issue and does not provide any evidence of widespread or exceptional media

interest in records mentioning those entities or an urgency to inform the public about communications mentioning those entities. Therefore, we denied expedited processing for part 4 and requested additional information in order to justify your request. We have not received additional justification.

Furthermore, by letter dated October 13, 2020, we informed you this request is currently in litigation as part of the lawsuit *Brennan Center for Justice at NYU School of Law v. Department of Commerce et al.*, No. 20-cv-2674 (D.D.C.). Pursuant to the October 30, 2020 Court Order and the November 9, 2020 Joint Status Report, for this production the Census Bureau has reviewed all potentially responsive Census Bureau records for parts 1-3 of the request found in the possession of Nathaniel Cogley, Adam Korzeniewski, Benjamin Overholt, and Earl "Trey" Mayfield. 399 records were reviewed in this production cycle, all of which were found to be responsive. All 399 records are being produced in part or in whole with this production, with no documents being withheld in full and no documents still pending interagency consultation. There are no documents for this priority population left to review.

By letter dated November 30, 2020, we enclosed 399 records (525 pages) responsive to your request, with withholding determinations noted. We withheld portions of the documents pursuant to FOIA Exemption (b)(5) and (b)(6) (5 U.S.C. § 552(b)(5) and (b)(6)). FOIA Exemption (b)(5) exempts from disclosure information that, as here, is pre-decisional and deliberative in nature. FOIA Exemption (b)(6) exempts from disclosure information about individuals, the release of which would constitute a clearly unwarranted invasion of personal privacy.

By letter dated December 21, 2020, we informed you the Census Bureau conducted an additional search and 2,385 documents (over 32,000 pages) were reviewed. 2,300 of them were deemed non-responsive to your request, and 85 of them are pending consultation with other agencies before a final determination can be made on them. In light of this additional search, another 8,541 documents remain to be reviewed. We expect a majority of these documents to be non-responsive, but we wanted to be as thorough as possible in trying to locate records responsive to your request.

By letter dated January 6, 2020, we provided you 61 records (327 pages) responsive to your request, with withholding determinations noted. We withheld portions of the documents pursuant to FOIA Exemption (b)(5) and (b)(6) (5 U.S.C. § 552(b)(5) and (b)(6)). FOIA Exemption (b)(5) exempts from disclosure information that, as here, is pre-decisional and deliberative in nature. FOIA Exemption (b)(6) exempts from disclosure information about individuals, the release of which would constitute a clearly unwarranted invasion of personal privacy.

Enclosed are 19 records (1,165 pages) responsive to your request, with withholding determinations noted. We withheld portions of the documents pursuant to FOIA Exemption (b)(5) and (b)(6) (5 U.S.C. § 552(b)(5) and (b)(6)). FOIA Exemption (b)(5) exempts from disclosure information that, as here, is pre-decisional and deliberative in nature. FOIA Exemption (b)(6) exempts from disclosure information about individuals, the release of which would constitute a clearly unwarranted invasion of personal privacy.

Based on the above information, this constitutes a partial denial of your expedited processing request. Although we are aware this case is in litigation, we are required to inform you that you have the right to appeal this denial. An appeal must be received within 90 calendar days of the date of this response letter. Address your appeal to the following office:

Assistant General Counsel for Employment, Litigation, and Information Room 5896 U.S. Department of Commerce, 14th and Constitution Avenue, N.W. Washington, DC 20230

An appeal may also be sent by e-mail to <u>FOIAAppeals@doc.gov</u>, or by FOIAonline, if you have an account in FOIAonline, at https://foiaonline.regulations.gov/foia/action/public/home#. The appeal should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked **"Freedom of Information Act Appeal**."

The e-mail, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

In addition, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

> Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road-OGIS College Park, Maryland 20740-6001 e-mail at ogis@nara.gov telephone at 202-741-5770; toll free at 1 877-684-6448 facsimile at 202-741-5769

Currently, 3,085 records have been reviewed by the Census FOIA Office for responsiveness. We will continue to process your request and send you additional responsive records on a rolling basis, in accordance with the Court Order and Joint Status Report referenced above. If you have any questions regarding this production, please contact the Department of Justice attorney assigned to this matter, Stephen Elliott, at <u>Stephen.M.Elliott@usdoj.gov</u> or 202-353-0889.

Sincerely,

Vernon Georg

Vernon E. Curry, PMP, CIPP/G Freedom of Information Act/Privacy Act Officer Chief, Freedom of Information Act Office

| 1 | CERTIFICATE OF SERVICE |
|----|--|
| 2 | I hereby certify that on the XX day of September, 2020, I electronically transmitted the |
| 3 | foregoing document to the Clerk of Court using the ECF System for filing. |
| 4 | |
| 5 | /s/ Alexander V. Sverdlov |
| 6 | ALEXANDER V. SVERDLOV |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |
| 16 | |
| 17 | |
| 18 | |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |
| 25 | |
| 26 | |
| 27 | |
| 28 | |
| | |
| | |
| | |
| | |
| | |

| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 | LATHAM & WATKINS LLP Steven M. Bauer (Bar No. 135067) steven.bauer@lw.com Sadik Huseny (Bar No. 224659) sadik.huseny@lw.com Amit Makker (Bar No. 280747) amit.makker@lw.com Shannon D. Lankenau (Bar No. 294263) shannon.lankenau@lw.com 505 Montgomery Street, Suite 2000 San Francisco, CA 94111 Telephone: 415.391.0600 Facsimile: 415.395.8095 LATHAM & WATKINS LLP Richard P. Bress (<i>pro hac vice</i>) rick.bress@lw.com Melissa Arbus Sherry (<i>pro hac vice</i>) melissa.sherry@lw.com Anne W. Robinson (<i>pro hac vice</i>) anne.robinson@lw.com Tyce R. Walters (<i>pro hac vice</i>) tyce.walters@lw.com Genevieve P. Hoffman (<i>pro hac vice</i>) genevieve.hoffman@lw.com Gemma Donofrio (<i>pro hac vice</i>) gemma.donofrio@lw.com 555 Eleventh Street NW, Suite 1000 Washington, D.C. 20004 Telephone: 202.637.2200 Facsimile: 202.637.2201 | LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW Kristen Clarke (<i>pro hac vice</i> forthcoming) kclarke@lawyerscommittee.org Jon M. Greenbaum (Bar No. 166733) jgreenbaum@lawyerscommittee.org Ezra D. Rosenberg (admitted <i>pro hac vice</i>) erosenberg@lawyerscommittee.org Dorian L. Spence (<i>pro hac vice</i> forthcoming dspence@lawyerscommittee.org Ajay P. Saini (admitted <i>pro hac vice</i>) asaini@lawyerscommittee.org Maryum Jordan (Bar No. 325447) mjordan@lawyerscommittee.org Pooja Chaudhuri (Bar No. 314847) pchaudhuri@lawyerscommittee.org 1500 K Street NW, Suite 900 Washington, D.C. 20005 Telephone: 202.662.8600 Facsimile: 202.783.0857 Additional counsel and representation information listed in signature block | | | |
|---|---|---|--|--|--|
| 17 18 | UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION | | | | |
| 19 | NATIONAL URBAN LEAGUE, et al., | CASE NO. 5:20-cv-05799-LHK | | | |
| 20 | Plaintiffs, | PLAINTIFFS' MOTION TO COMPEL | | | |
| 21 | V. | AND FOR SANCTIONS | | | |
| 22 | WILBUR L. ROSS, JR., et al., | Date: TBD Time: TBD | | | |
| 23 | Defendants. | Place: Courtroom 8 | | | |
| 24 | | Judge: Hon. Lucy H. Koh | | | |
| 25 | | | | | |
| 26 | | | | | |
| 27 | | | | | |
| 28 | | | | | |
| LATHAM®WATKINS Attorneys At Law San Francisco | L | CASE NO. 5:20-CV-05799-LHK PLAINTIFFS' MOTION TO COMPEL AND FOR BC-DOC-CEN-2020-001602-0020SANCTIONS | | | |

1 I. INTRODUCTION

Plaintiffs just want Defendants to follow this Court's orders. Plaintiffs and the public are
suffering irreparable injury every day that Defendants follow an accelerated timeline to finish all
data collection and processing by December 31. Implementation of that timeline should have
stopped on September 5 with the Court's TRO. It has not. Defendants should have ensured that
enumerators and census field supervisors had complete, timely, and accurate information about
the need to comply with this Court's orders. They have not.

8 The consequence of those failures is rushed completion of field operations in ways that 9 will irretrievably harm the accuracy of the count. That is because the "target" end date has a 10 direct impact on how non-response follow up (NRFU) is conducted. Critical operations and 11 metrics are tied to that date. Defendants know all this. Yet they still failed to properly and 12 clearly disseminate this Court's orders, admitted that census field supervisors were telling 13 enumerators that data collection would end on September 30, posted on their website the same 14 incorrect September 30 end date for four days after the Court's September 24 PI order (and 15 twenty-three days after the initial TRO ruling), and affirmatively adopted a new "target date" to 16 implement the December 31 deadline. There can be no question that Defendants violated the 17Court's orders several times over.

18 Despite that, Plaintiffs remain focused on ensuring that Defendants follow the letter and 19 the spirit of this Court's preliminary injunction order, and that the 2020 Census does not suffer 20 from actions taken by Defendants in the field to meet the rushed deadlines they have been 21 enjoined from enforcing since September 5. Although this Court has authority to find 22 Defendants in contempt, and to award a broad range of sanctions, Plaintiffs ask for one thing: 23 full compliance. To that end, and given Defendants' prior violations and general course of 24 conduct in this case, the Court should issue an order (i) compelling compliance with the Court's 25 PI Order, ordering field notification, and amending the PI to prevent further violations, and (ii) 26 requiring Defendants to submit a weekly compliance report to this Court as a measured sanction 27 for violating the Court's orders and to remedy the misinformation and misdirection received in 28 the field as a result of their noncompliance.

CASE NO. 5:20-CV-05799-LHK PLAINTIFFS' MOTION TO COMPEL AND FOR SANCTIONS BC-DOC-CEN-2020-001602-002020

1

1 II. BACKGROUND

From the very beginning of this case, Defendants have exhibited a callous disregard for
these proceedings—feigning ignorance, refusing to answer basic questions posed by the Court,
acting in an obstructive manner, and failing to comply with this Court's orders. The Court has
already recounted much of this procedural history in its prior orders. The below is a high-level
summary of certain key issues.

7

Temporary Restraining Order ("TRO"). Plaintiffs filed suit on August 18, 2020.

8 Because data collection was scheduled to continue until September 30 under the Replan, the 9 parties stipulated to an accelerated briefing schedule that would culminate in a preliminary 10 injunction hearing on September 17. Dkt. 43. On August 26, this Court held the first case 11 management conference ("CMC") and, to assess how quickly a ruling was needed on Plaintiffs' 12 preliminary injunction motion, ordered Defendants to provide the date upon which the Bureau 13 planned to wind down field operations. See Dkt. 45 at 2. A full week later, on September 2, 14 Defendants informed the Court they had already begun winding down field operations-nearly a 15 month before September 30 and three weeks after starting non-response follow up ("NRFU") in 16 most of the country. Dkt. 63. This early wind down would have left the Court practically 17 incapable of granting effective relief after the September 17 hearing to which the parties jointly 18 agreed. With no other options, Plaintiffs moved for a TRO. Dkt. 66.

19 On September 5, 2020, after full briefing and argument, this Court granted the TRO. 20 TRO Order at 5, Dkt. 84. The TRO was based, in part, on Associate Director Fontenot's sworn 21 testimony that the "Census Bureau begins terminating staff as operations wind down, even prior 22 to closeout," that the Bureau had "already begun terminating" staff, and that it "is difficult to 23 bring back field staff once we have terminated their employment." Fontenot Decl. ¶ 98, Dkt. 81-24 1.. The TRO enjoined Defendants "from implementing the August 3, 2020 Replan or allowing 25 to be implemented any actions as a result of the shortened timelines in the August 3, 2020 26 Replan, including but not limited to winding down or altering any Census field operations, until 27 the Court conducts its September 17, 2020 hearing on Plaintiffs' PI motion." TRO Order at 7.

28

1 Three days later, Defendants voluntarily filed a notice of compliance, describing how 2 they were complying with the Court's order. Specifically, Defendants explained that "[w]ithin 3 two hours" of the TRO, "Defendants transmitted a message to all Regional Directors, Deputy 4 Regional Directors, Assistant Regional Census Managers, Area Mangers, and Area Census 5 Office Managers attaching a copy of the Order" and expressing the need to comply with it. Dkt. 6 86 at 1. Defendants attached that notification. Id. By the next day, Defendants had "transmitted 7 a detailed list of instructions to Regional Directors regarding what steps the field offices must 8 take" to comply—and also attached those documents for the Court's review. *Id.*

9 However, there was no follow-up that Plaintiffs are aware of—and no indication that the
10 message was actually disseminated to all Census employees. Around this time, the Court began
11 to receive first a trickle and then a flood of emails and filings from Census employees
12 complaining that there were not being told about the Court's Orders, and that the Census Bureau
13 was not in compliance.

The Census Bureau, via the declarations of James Christy, directly acknowledges some of
these problems. In particular, after Plaintiffs and the Court addressed some of the complaints
being raised with respect to enumerator terminations, Mr. Christy issued a declaration on
September 15, 2020 acknowledging that the Bureau terminated 520 enumerators for "lack of
work" on September 7, two days after the TRO. 9/15 Second Christy Decl. ¶ 4.

19 Order To Produce The Administrative Record. At the same August 26 hearing, "Defendants repeatedly denied the existence of an administrative record." Nonetheless, the 20 21 Court instructed Defendants that "[i]f there's an administrative record, it should be produced." 22 At the September 4 TRO hearing, Defendants "reiterated their position that no administrative 23 record existed," but for the first time "disclosed that there were documents considered by agency 24 decisionmakers at the time the Replan was adopted." Defendants insisted that the court must 25 rule on their threshold arguments before ordering production of the administrative record. After 26 full briefing, the district court rejected their threshold arguments and ordered a phased initial 27 production. In particular, the court ordered that the most crucial portions of the administrative 28 record be produced on September 13 and 16, before the September 17 hearing.

1 Defendants did not comply. On the date of the first production, Defendants reviewed 2 only 25% of the responsive documents, stopped that review 12 hours short of the deadline, 3 claimed privilege over the vast majority of the documents, and later informed the court they would be unable to meet the second deadline as well. This Court found Defendants' failure to 4 comply with its order "unacceptable," and appropriate grounds for "sanctions." Dkt. 132 at 8. 5 6 But the Court noted that "Plaintiffs do not ask the Court to sanction Defendants at this time." Id. 7 So rather than sanction Defendants and order the record produced immediately, the Court instead 8 allowed them to produce a subset of the record (for purposes of the preliminary injunction) 9 comprising only those documents previously provided to OIG. Id. at 8-10.

10 Order Extending TRO. Because of "Defendants' violation of the Court's Order to Produce the Administrative Record," this Court held that a short extension of the TRO was 11 12 necessary. Dkt. 142 at 17. And, on September 17, the Court extended the TRO until a decision 13 on the preliminary injunction motion or through September 24, whichever came earlier. Id. 14 Defendants chose not to submit any voluntarily notice of compliance. After being 15 ordered to do so, Defendants reported that James Christy, the Assistant Director of Field 16 Operations sent a notification to Regional Directors and "Senior Staff in the Field Directorate" of 17the Court's order, which he attached to the email along with the Guidance previously sent, and 18 had a conference call with "regional data collection managers" to "explain the extension" and 19 "emphasize that the previous guidance remained in effect." And Mr. Christy instructed them to 20 communicate with Area Census Office managers. Dkt. 234-1 ¶¶ 9-10. But again, there was no 21 follow-up that Plaintiffs are aware of, and the flood of emails and filings from Census employees 22 complaining that there were not being told about the Court's Orders, and that the Census Bureau was not in compliance, continued. 23

24

Order Granting Plaintiffs' Motion for Stay and Preliminary Injunction. On September 25 24, the Court issued its order granting Plaintiffs' motion for stay and preliminary injunction ("PI Order"). PI Order, Dkt. 208. The Court ordered that the "August 3, 2020 Replan's September 26 27 30, 2020 deadline for the completion of data collection and December 31, 2020 deadline for

28

1 2

reporting the tabulation of the total population to the President are stayed," and Defendants "are enjoined from implementing these two deadlines." Id. at 78.

3 Again, Defendants chose not to file a voluntary statement of compliance. After being 4 ordered to do so, Mr. Christy provided a declaration that makes no mention of any written 5 notification or guidance being provided to the field. See Dkt. 234-1. Instead, Mr. Christy states that the next morning he "joined a conference call" with "regional data collection managers" to 6 7 "discuss" the order and "confirm that it stayed the Replan's September 30 deadline for the 8 completion of data collection, and to let staff know they should continue working on the NRFU 9 operation." Id. ¶ 11. The agenda from that call that Mr. Christy attaches says nothing about the 10 PI Order. See Dkt. 234-2 at Attach. 4. Mr. Christy also states that, five hours later, he "sent an email to all managers working on field operations at Headquarters and in the regions . . . 11 12 notifying them of our intent to comply with the Court's Preliminary Injunction" and instructing 13 them to "continue to conduct [NRFU] and other field operations as planned." Dkt. 219-1 \P 3; 14 Dkt. 234-1 ¶ 12. Later that day, Mr. Christy "briefed" the "Regional Directors" and "Chief of

Field Division" about the PI, "emphasizing the stay of the Replan's September 30 deadline and 15

16 that [he] was awaiting additional guidance." Id. ¶ 13. And he "directed" them to "continue to

17complete" NRFU and said he would "forward information as soon as it was available." Id.

18 Judging by Mr. Christy's silence, no additional guidance or information was provided.

19 October 5 "Target Date" Tweet. On September 28, just a few minutes before the 20 beginning of the CMC, Defendants tweeted that the Bureau had set October 5 as the "target date" 21 for the conclusion of self-response and all field operations. Defendants did not warn Plaintiffs or 22 the Court that they intended to take this action. Nor did they provide any information as to when they would begin to terminate enumerators, reduce the quality of operations, and close out 23 24 offices in reliance on this new "target date"—or indicate whether they had already done so. 25 In marked contrast to how Defendants chose to disseminate this Court's orders, Defendants widely broadcast this new "target date" with great precision. Just hours after the 26 27 tweet, Mr. Christy "instructed staff to send a text message to all Decennial field staff 28 (Enumerators and CFSs) that read:

5

A federal district court issued a preliminary injunction on 9/24. The Census Bureau is complying with the Court's Order which moves the finishing date for NRFU operations after September 30. The Secretary announced today that NRFU operations will finish on October 5. We will post updated guidance on the content locker.

- ⁴ Dkt. 234-1 (\ ¶ 14).
- ⁵ III. ARGUMENT

A.

Defendants have violated this Court's orders. The Court has inherent authority to compel
compliance, and also has authority to find Defendants in contempt and/or to issue appropriate
sanctions for non-compliance. Plaintiffs ask the Court to compel full compliance, and to order a
weekly compliance report as a sanction for prior noncompliance and to ensure future
compliance, but to reserve the more severe remedial options for now in the hope and expectation
that Defendants will fully comply without the resort to more severe measures.

12

1

2

3

Defendants Have Violated This Court's Orders

13 For the past several weeks, the Court (and Plaintiffs) have been inundated with 14 communications from Census Field Supervisors and enumerators describing how the Defendants 15 are prematurely curtailing enumeration across the country.¹ Defendants' response to these 16 complaints has generally been to explain them away as miscommunications or disgruntled 17 employees. But now, in the light of the evidence of Defendants' continuing to post September 18 30 as the end of enumerations, and their attempt to skirt the Court's PI Order by ending 19 operations five days later, one can see these complaints were well-founded. 20 As an initial matter, Defendants must concede that they violated the PI Order by 21 continuing to implement the September 30 Replan deadline as late as September 28, 2020, 22 stating that the "2020 Census will conclude data collection on September 30, 2020." See Census 23 Housing Unit Enumeration Progress by State, 24 25 26 ¹ The Court has asked the parties to respond to the numerous communications received by the Court from concerned citizens working for the Census Bureau. See Dkts. 100, 215, 220, 27 221, 224, 229, 238, 255, 258. Defendants have provided declarations James Christy, the

1 https://2020census.gov/content/dam/2020census/news/daily-nrfu-rates/nrfu-rates-report-09-

2020 Census Housing Unit Enumeration Progress by State The 2020 Census will conclude data collection operations on September 30, 2020. Use this table to keep track of households in your state enumerated across all collection operations.

As of 9/27/2020, percentage of housing units:

9 This statement is from the Bureau's own website and on a page that has been updated
10 daily. Only after Plaintiffs alerted the Court to this violation did Defendants finally remove the
11 September 30 date. See Dkt. 243 ¶ 5.

12 Defendants must also concede that enumerators and census field supervisors are not and 13 never have been receiving complete, accurate, and timely information about the Court's orders. 14 Defendants' declarations confirm as much. Certainly, there was not an all-employee text 15 announcement clearly telling employees enumeration should continue through October 31 as 16 under the COVID-19 Plan-in contrast to the text announcing the end of field operations on 17 October 5. Since Defendants appear to have been using the posted September 30 end date (or the new October 5 date), Plaintiffs believe that otherwise unauthorized "closeout" procedures 1819 continued to some degree after the TRO and PI. Nothing in Defendants' various declarations 20 state that "closeout" did not continue as it would have under the enjoined deadlines of the 21 Replan.

The communications sent to the Court include numerous Census employee complaints that now make sense. For example, a supervisor in Texas instructed enumerators that counting would cease by September 30 even *after* the PI Order was issued on September 24, stating that "[e]ven though the courts have made a decision; nothing has changed. Our deadline to count everyone is still September 30, 2020. . . . The facts are, we are still moving forward with original plan to finish by September 30, 2020. . . . The facts are no longer be explained away as an errant, confirmed this occurred. *See* Dkt. 219-1 ¶ 6. This can no longer be explained away as an errant,

2

3

4

5

6

7

8

28.pdf.:

Sec.

1 one-off event, since the Bureau continued to advertise a September 30 end date and was

2

preparing to evade the Court's order with a five-day extension.

- Similarly, complaints of employees being prematurely terminated after the injunction are
 borne out by Defendants' declaration showing that the Bureau terminated 520 enumerators on
 September 7—two days after the Court's TRO Order—due to "Lack of Work." Dkt. 133-1 ¶¶ 4,
 It appears that it was not until September 16 that Defendants specifically told the field that
 "lack of work" terminations were enjoined. Dkt 234-2, att. 1.
- 8 Census employees also reported directly to the Court about their concerns over accuracy. 9 These, too, appear well-founded. See AR DOC 0008779. Indeed, it is passing strange how 10 Defendants have never explained how they can claim 99% completion in areas where there has been far less time in the field than the COVID-19 Plan and where there are significantly fewer 11 12 enumerators than planned. Indeed, the bulk of the employee complaints are from employees in 13 the field who clearly do not believe their areas have been 99% counted already. Whether each of 14 these employee communications to the Court or to Plaintiffs reveals a direct violation of this 15 Court's orders is something Plaintiffs have not been in a position to fully investigate. But the 16 examples above confirm a pattern of continuing violations. See Dkts. 127, 133, 219, 234, 244. 17 All of this, of course, leads to the most flagrant violation, and the impetus for this 18 Motion: the Bureau's September 28 "tweet" that October 5 is the new "target date" to end self-19 response and field operations in order to implement the December 31 deadline. That 20 announcement was posted on the Bureau's website and texted to all census field staff (including 21 enumerators and census field supervisors), who were each told that "NRFU operations will finish 22 on October 5." And to Plaintiffs' knowledge, Defendants still have not rescinded that directive. 23 This is a highly damaging, deliberate, and continuous violation of the Court's preliminary injunction order. 24
- Indeed, the Court itself stated at the September 29 hearing that it believed, based on the
 evidence before it at that time, that Defendants are currently in violation of the Court's PI Order:
 From what I can see of what I've looked at, the Defendants are implementing that December 31st deadline by creating this target date of October 5th, and I

1

think that's been enjoined. And I think a target date for data collection that is predicated on an enjoined date is a violation of my order.

2 9/29 Tr. at 31:7-12. 3 The PI Order plainly states that Defendants are "enjoined from implementing" both the 4 September 30 deadline for data collection and the December 31 deadline for reporting the 5 tabulation of total population to the President. PI Order at 78. Yet that is precisely what the 6 Bureau's September 28 announcement does. As the record produced by Defendants makes clear, 7 the October 5 "target date" was selected in order to meet the Replan's December 31 end date this 8 Court enjoined. This is now readily apparent, from materials Defendants previously redacted. 9 See, e.g., Dkt. 256-1 at 1-2 (email exchange between Secretary Ross and Mr. Jarmin); Dkt. No. 10 233 at 139 (stating that October 5 date was intended to meet an "apportionment delivery date of 11 December 31, 2020"). 12 Yesterday evening, Defendants submitted an unredacted document that shows that Plaintiffs 13 were very right to worry that Defendants' 1-sentence tweet and press release meant a 14 continuation of the truncated timelines enjoined by the Court. As the Court knows, Defendants 15 mentioned nothing about the enjoined December 31, 2020 deadline when sending out their 16 message about the new end of field operations. And as highlighted above, the Court flagged that 17 its review of materials before it indicated that Defendants were "implementing that December 18 31st deadline by creating this target date of October 5th, and I think that's been enjoined." 9/29 19 Tr. at 31:8-10. The redacted and now unredacted email exchange with the Secretary of 20 Commerce is stark on this issue: 21 22 23 24 25 26 27 28



| 1 | Court's order is stayed or vacated on appeal, Defendants are bound by it. ² What Defendants | | | |
|----|--|--|--|--|
| 2 | have done is not contingency planning; it is lawlessness. | | | |
| 3 | Nor does Defendants' myopic focus on the September 30 date help them. This case is and | | | |
| 4 | has always been about the Replan's accelerated timelines for conducting the 2020 Census. ³ This | | | |
| 5 | Court's decision granting the stay and preliminary injunction was also all about the Replan's | | | |
| 6 | accelerated timelines. As the Court explained, the Replan's timelines shortened the 2020 Census | | | |
| 7 | from 71.5 weeks to 49.5 weeks; self-response from 33.5 weeks to 29 weeks; NRFU from 11.5 | | | |
| 8 | weeks to 7.5 weeks; and data processing from 26 weeks to 13 weeks. Order Granting Plaintiffs' | | | |
| 9 | Motion for Stay and Preliminary Injunction ("PI Order") (Dkt. 208) at 9, 11. The Court found that | | | |
| 10 | this "significant compression" of the timelines is what constituted final agency action. Id. at | | | |
| 11 | 38. And the Court held that Defendants violated the APA by adopting this compressed timeline- | | | |
| 12 | for five independently sufficient reasons. Id. at 46-74. The Court's stay and preliminary | | | |
| 13 | injunction was intended to remedy those violations. | | | |
| 14 | Defendants could not possibly have thought that moving the end date for field operations | | | |
| 15 | by five days would be consistent with this Court's order. The overall accelerated timeline | | | |
| 16 | remained exactly the same. And as Defendants' counsel explained previously, shifting the internal | | | |
| 17 | | | | |
| 18 | ² See Maness v. Meyers, 419 U.S. 449, 458–60 (1975) ("We begin with the basic proposition that all orders and judgments of courts must be complied with promptly. If a person to whom a court | | | |
| 19 | directs an order believes that the order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal."); <i>Pasadena City Bd. of Ed. v. Spangler</i> , | | | |
| 20 | 427 U.S. 424, 439 (1976) ("It is for the court of first instance to determine the question of the | | | |
| 21 | validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is | | | |
| 22 | contempt of its lawful authority, to be punished." (citation omitted)); <i>United States v. Grant</i> , 17 F.3d 397, at *1 (9th Cir. 1994) (unpublished) ("Absent a stay, district courts have the authority to | | | |
| 23 | enforce their orders while an appeal of the underlying enforcement order is pending."). | | | |
| 24 | ³ See Compl. (Dkt. 1) ¶ 1 ("This lawsuit challenges the unconstitutional and illegal decision by | | | |
| 25 | Secretary of Commerce Wilbur Ross, and Census Bureau (the 'Bureau') Director Steven Dillingham, to sacrifice the accuracy of the 2020 Census by forcing the Census Bureau to | | | |
| 26 | compress eight and a half months of vital data-collection and data-processing into four and a half months, against the judgment of the Bureau's staff and in the midst of a once-in-a-century | | | |
| 27 | pandemic."); [Proposed] Order 1 ("The U.S. Census Bureau's August 3, 2020 Plan and shortened timeline for accomplishing the 2020 United States Census ("Rush Plan"), is stayed, | | | |
| 28 | pursuant to 5 U.S.C. § 705); 9/22/20 Tr. 23:21-24:5 (Dkt. 207) ("So I want to be clear about this. Our APA action challenges the timelines in the Replan."). | | | |

dates merely takes from one hand and gives to the other. 9/14 Tr. at 70:23. The intimation that
Defendants were entirely free to stop data collection on October 1 is particularly specious in light
of Defendants' repeated and recent statements, in court and under oath, that they *could not* meet
the statutory deadline if field operations continue even a day beyond September 30. *E.g.*, Appeal
No. 20-16868, Dkt. 4-1, Stay Mot. 20; Appeal No. 20-16868, Dkt. 4-2, Add.149-50 ¶ 24; Add. 113
¶ 100. In the words of government counsel, it would be "impossible." 9/8/20 Tr. 9:6-10, Dkt. 98.⁴

7

B. This Court Has Inherent Authority To Compel Compliance With Its Orders

8 The Court has inherent authority to enforce compliance with its orders. See Goodyear Tire 9 & Rubber Co. v. Haeger, 137 S. Ct. 1178, 1186 (2017) ("Federal courts possess certain 'inherent 10 powers,' not conferred by rule or statute, to manage their own affairs so as to achieve the orderly 11 and expeditious disposition of cases.") (internal citations and quotation marks omitted); Fraihat v. 12 U.S. Immigration & Customs Enf't, No. EDCV191546JGBSHKX, 2020 WL 2758553, at *3 (C.D. 13 Cal. May 15, 2020) ("Courts have inherent authority to monitor and enforce their prior orders." 14 (citing Shillitani v. United States, 384 U.S. 364, 370 (1966)). For instance, in Laflamme v. New Horizons, Inc., 605 F. Supp. 2d 378 (D. Conn. 2009), a plaintiff who had previously obtained a 15 16 preliminary injunction argued that the defendant had only slightly changed its behavior and moved 17 for an order to compel compliance. The district court, noting that it was "apparent that [the 18 parties] continue to disagree," explained that nonetheless the "Court already ruled on that 19 [preliminary injunction] request," and Defendants had made only minor adjustments. Id. at 398. 20 Thus, "[]lest there be any doubt about the effect of this previous ruling," the district court granted the motion "and order[ed] Defendants to comply with the terms" of the injunction. Id. at 399; see 21 22 also Bd. of Trustees of Bay Area Roofers Health & Welfare Tr. Fund v. Westech Roofing, No. C-23 06-04819, 2011 WL 5403453, at *2-5 (N.D. Cal. Nov. 8, 2011) (granting motion to compel

24

25

 ⁴ And Defendants have affirmatively disavowed the notion that the October 5 "target date" tweet is new agency action subject to judicial review. Which—together with the clear evidence in the documents produced that meeting the enjoined December 31 deadline was the impetus for the October 5 "target date"—makes the case law governing the agency's ability to issue new rules in compliance with the APA inapposite. *See Monsanto v. Geertson Seed Farms*, 561 U.S. 139, 159-65 (2010).

- compliance, where party had repeatedly failed to make timely payments of monthly contributions 1 2 to a trust fund, as required by injunction).

3 Courts have also not hesitated to order the government to comply with existing orders in similar circumstances. In International Ladies' Garment Workers' Union v. Donovan, the D.C. 4 5 Circuit vacated a rule by the Secretary of Labor, which the Secretary—after unsuccessfully 6 moving for a stay—sought to evade by issuing an "emergency" rule temporarily reinstating the 7 terms of the vacated rule. 733 F.2d 920, 921 (D.C. Cir. 1984). The plaintiffs "then returned to the 8 District Court, and filed a motion to compel compliance" with the prior decision, and "issue relief 9 enforcing the mandate." Id. Although the district court believed it lacked authority to do so, the 10 D.C. Circuit disagreed, explaining that the "request for enforcement of the court's mandate" implicates "the interest of the judicial branch in seeing that an unambiguous mandate is not 11 12 blatantly disregarded by parties to a court proceeding"-an interest "that the District Court 13 certainly was empowered to protect." Id. And the court emphasized that invocation of this 14 authority "is particularly appropriate in a case such as this where an administrative agency plainly neglects the terms of a mandate." Id.; see id. at 923 (noting that "the Secretary has now, in effect, 15 16 implemented the stay on his own" and "reimplemented precisely the same rule that this court 17 vacated as 'arbitrary and capricious' in its first decision").

18 This Court should similarly compel Defendants to comply with its preliminary injunction 19 motion. At its most basic, the Court should repeat the scope of its preliminary injunction and order 20 Defendants to follow it. But given Defendants' prior non-compliance, as well as resulting 21 confusion in the field, the Court should take two additional steps.

22 First, the Court should order Defendants to fully, clearly, and immediately communicate 23 the scope of the preliminary injunction order to *all* Decennial field staff (Enumerators and CFSs) 24 by text message. That is precisely how Defendants chose to alert them of the Secretary's decision 25 to end field operations early, on October 5. This Court's orders deserve the same expedient and 26 effective response. See Calvillo Manriquez v. Devos, 411 F. Supp. 3d 535, 540-41 (N.D. Cal. 27 2019) (requiring Department of Education to notify class members of noncompliance with 28 injunction); Al-Adahi v. Obama, 672 F. Supp. 2d 114, 118 (D.D.C. 2009) (ordering, after

1 government inadvertently failed to tape-record a Guantanamo Bay hearing in violation of 2 injunction, that government must post a transcript of the hearing for public to more easily access). 3 Second, the Court should amend the preliminary injunction going forward to prevent further attempts at circumvention during the limited time remaining to conduct the 2020 Census. 4 5 In New York v. United States Department of Commerce, 351 F. Supp. 3d 502 (S.D.N.Y. 2019), the court vacated Secretary Ross's decision to add a citizenship question to the 2020 Census and 6 7 granted an injunction. The court explained that vacatur alone was insufficient to redress the 8 plaintiffs' injuries for two reasons. First, "Secretary Ross could theoretically reinstate his decision 9 by simply reissuing his memorandum under a new date or by changing the memorandum in some 10 immaterial way." Id. at 676. An injunction was needed to make the "vacatur effective, as it prevents Secretary Ross from arriving at the same decision without curing the problems identified" 11 12 in the court's decision. Id. Second, an injunction would "make it easier for Plaintiffs to seek immediate recourse," which was "critical" given the expedited timing. Id. The court accordingly 13 14 enjoined the defendants "from adding a citizenship question to the 2020 census questionnaire based on Secretary Ross's" existing "memorandum or based on any reasoning that is substantially 15 16 similar to the reasoning contained in that memorandum." Id. at 676-77. And the court enjoined 17 the defendants from "adding a citizenship question to the 2020 census questionnaire unless the 18 Secretary" remedied the violations found—which the court specifically listed. Id. at 677; see also 19 State v. Ross, 358 F. Supp. 3d 965, 1050 (N.D. Cal. 2019) (endorsing and adopting the same 20 reasoning). The same relief is warranted here. See Hoffman ex rel NLRB v. Beer Drivers & Salesmen's Local Union No. 888, 536 F.2d 1268, 1275-76 (9th Cir. 1976) (permitting modification 21 22 of injunction in light of party's failure to comply with terms of injunction prohibiting unfair labor practices). 23

24

C. This Court Has Authority To Award Sanctions

The "power to punish for contempts is inherent in all courts" and is available for the violation of court orders. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). Indeed, the "underlying concern that gave rise to the contempt power . . . was disobedience to the orders of the Judiciary." *Id.* (brackets and citations omitted). When civil contempt is at issue, the party

1 moving for a contempt finding bears the burden of showing by clear and convincing evidence 2 that contemnors violated a specific and definite order of the court. *Calvillo Manriquez v. Devos*, 3 411 F. Supp. 3d 535, 540 (N.D. Cal. 2019) (citing F.T.C. v. Affordable Media, 179 F.3d 1228, 4 1239 (9th Cir. 1999)). "The burden then shifts to the contemnors to demonstrate why they were 5 unable to comply." *Id.* The standard "is generally an objective one. We have explained before 6 that a party's subjective belief that she was complying with an order ordinarily will not insulate 7 her from civil contempt if that belief was objectively unreasonable." Taggart v. Lorenzen, 139 8 S. Ct. 1795, 1802 (2019). Instead, good faith (or the absence thereof) "may help to determine an 9 appropriate sanction." Taggart v. Lorenzen, 139 S. Ct. 1795, 1802 (2019).

10 For all the reasons set forth above, the Court could hold Defendants in contempt for violating "specific" and "definite" orders of the Court. In fact, this case thus bears an 11 12 unfortunate resemblance to a recent civil contempt decision in this District. There the 13 Department of Education, facing an order enjoining it from engaging in certain loan collection 14 efforts, admitted that the Department had erroneously done just that. See Calvillo Manriquez v. Devos, 411 F. Supp. 3d 535, 538-39 (N.D. Cal. 2019). The court found that the Department's 15 16 "efforts to comply with the preliminary injunction were limited to sending electronic mail 17messages to their third-party companies that service the loans," many of which did "not even 18 mention the existence of the preliminary injunction." Id. at 539. The Department "sent no 19 follow-up emails and took no further action." Id. Indeed, the Department's compliance report 20 was "silent as to the normal actions one would expect from an entity facing a binding court 21 order: multiple in-person meetings or telephone calls to explain the preliminary injunction and to 22 confirm that the contractors were complying with the preliminary injunction." Id. Faced with 23 these egregious failures, the court held the Department in contempt.

That said, Plaintiffs are not asking the Court to hold Defendants in contempt at this time.
Nor is contempt the only sanction available for Defendants' misconduct. As the Court
recognized previously, Defendants' violation of the Court's order to produce the administrative
record could have been the basis for sanctions. Dkt. 132, at 8. The same is true of Defendants'
latest violations of the Court's PI Order. The Court has inherent authority to impose appropriate

sanctions for violation of a court order. Chambers, 501 U.S. at 44-46 (citations and internal 1 2 quotation marks omitted); see also Primus Automotive Financial Services, Inc. v. Batarse, 115 3 F.3d 644, 649 (9th Cir. 1997) ("[t]he district court has 'broad fact-finding powers' with respect to sanctions, and its findings warrant 'great deference'" (internal citation omitted)); Penthouse 4 5 Int'l, Ltd. v. Playboy Enters., 663 F.2d 371, 386 (2d Cir. 1981) (federal courts "possess[] broad inherent power to protect the administration of justice by levying sanctions in response to 6 7 abusive litigation practices."); Griffin v. County School Board, 363 F.2d 206, 210 (4th Cir. 1966) 8 (school board in civil contempt for authorizing distribution of tuition grants, even though grants 9 were distributed before court could act to issue injunction against appropriation, where school 10 board knew that injunction had been sought and acted "to thwart the impact of any adverse decree which might ultimately be forthcoming"); Merrimack River Savings Bank v. City of Clay 11 12 Center, 219 U.S. 527, 535-36 (1911) ("irrespective of any such injunction actually issued the 13 willful removal beyond the reach of the court of the subject-matter of the litigation ... is, in and 14 of itself, a contempt of the appellate jurisdiction of this court"). To grant such relief, the Court 15 need only find "bad faith or conduct tantamount to bad faith," such as where "recklessness [is] 16 combined with an additional factor such as frivolousness, harassment, or an improper purpose." 17 Fink v. Gomez, 239 F.3d 989, 994 (9th Cir. 2001). For all the reasons set forth above, 18 Defendants' string of reckless and deliberate violations designed to evade and circumvent this 19 Court's orders warrant such a finding.

20 But here too, Plaintiffs are not asking the Court to impose severe sanctions. This Court 21 has broad discretion in how best to shape sanctions. See 1 Sanc. Fed. Law of Lit. Abuse § 28 22 (2019) ("The court is vested with broad discretion to fashion an appropriate inherent power sanction to redress abusive litigation practices."); Shepherd v. Am. Broad. Companies, Inc., 62 23 24 F.3d 1469, 1475 (D.C. Cir. 1995) ("[I]nherent power sanctions available to courts include fines, 25 awards of attorneys' fees and expenses, contempt citations, disqualifications or suspensions of 26 counsel, and drawing adverse evidentiary inferences or precluding the admission of evidence."). 27 Plaintiffs seek a measured and tailored sanction for the sole purpose remedying the

28

1

misinformation and misdirection received in the field as a result of Defendants' noncompliance and to ensure future compliance. To that end, Plaintiffs request the following:

3

2

First, Defendants should be required to submit a weekly compliance report to this Court 4 providing "a detailed explanation of all steps [they] ha[ve] taken to ensure that" the violations 5 found "shall not occur in the future" and that this Court's order is being complied with. Al-Adahi 6 v. Obama, 672 F. Supp. 2d 114, 118 (D.D.C. 2009). The reports should track the three 7 categories of issues enumerators and other field employees have been complaining about: (1) any 8 communications made to field staff regarding the end date for self-response, field operations, or 9 data collection more generally; (2) any termination of census employees (enumerators, CFSs, 10 partnership specialists) for reasons other than cause; and (3) any changes to the operations or metrics for marking a household unit "complete," including reduction in the number of visits and 11 12 earlier use of administrative records. All three are tied directly to the accelerated timeline and 13 made necessary by Defendants' repeated attempts to rush enumeration to an early and 14 incomplete end in violation of the letter and spirit of this Court's orders. And there is ample support in the case law for such targeted relief. See, e.g., Calvillo Manriquez, 411 F. Supp. 3d at 15 16 538-39 (similar relief in contempt context); Gayle v. Meade, --F. Supp. 3d--, 2020 WL 304132, 17at *24 (S.D. Fla. June 6, 2020) (requiring that "ICE shall perform an internal review" each week 18 and "shall submit weekly reports" on compliance with injunction); Fraihat v. U.S. Immigr. & 19 Customs Enf't, No. 19-1546, 2020 WL 2758553, at *6-7 (C.D. Cal. May 15, 2020) (requiring 20 government to produce "[r]ecords showing the extent of compliance with the [court's 21 preliminary injunction] order to issue a new Performance Standard" for handling ICE detainees 22 with COVID risk factors and "[r]ecords regarding monitoring and enforcement of facility-wide compliance" with various COVID plans). 23 Second, given the history of vague assertions, failures to communicate this Court's

24

25 orders, and shifting stories as to what is being done to comply, the reports should be

26 accompanied by a declaration from Census Bureau Director Steven Dillingham unequivocally

- 27 confirming ongoing compliance with the Court's order.
- 28

| ATKINS ^{LLP} AT LAW | CASE NO. 5:20-CV-05799-LHK 18 PLAINTIFES MOTION TO COMPEL AND FOR |
|---------------------------------|---|
| 28 | |
| 27 | |
| 26 | |
| 25 | |
| 24 | |
| 23 | |
| 22 | |
| 21 | |
| 20 | |
| 19 | |
| 18 | |
| 17 | |
| 16 | |
| 15 | |
| 14 | |
| 13 | |
| 12 | |
| 11 | |
| 10 | |
| 9 | |
| 8 | |
| 7 | household. |
| 6 | based on the October 5 "target date," they must reopen and attempt to accurately enumerate that |
| 5 | would not have closed out a household on September 28 under the COVID-19 Plan, but did so |
| 4 | return to the <i>status quo ante</i> . And it parallels this Court's earlier TRO. That is, if Defendants |
| 3 | deadline or the October 5 "target" date. This relief is an appropriate sanction that is needed to |
| 1 | <i>Third</i> , Defendants should be required to reopen any cases closed based on reduced operations or metrics (such as reduced contact attempts) tied to the September 30 Replan |
| 1 | Third Defendents should be required to reason any appear aloged based on reduced |

| 1 | Dated: September 30, 2020 | LATHAM & WATKINS LLP |
|----|---------------------------|--|
| 2 | | By:/s/ Sadik Huseny |
| 3 | | Sadik Huseny |
| 4 | | Steven M. Bauer (Bar No. 135067) steven.bauer@lw.com |
| 5 | | Sadik Huseny (Bar No. 224659) |
| 6 | | sadik.huseny@lw.com Amit Makker (Bar No. 280747) |
| 7 | | amit.makker@lw.com Shannon D. Lankenau (Bar. No. 294263) |
| | | shannon.lankenau@lw.com LATHAM & WATKINS LLP |
| 8 | | 505 Montgomery Street, Suite 2000 San Francisco, CA 94111 |
| 9 | | Telephone: 415.391.0600 Facsimile: 415.395.8095 |
| 10 | | |
| 11 | | Richard P. Bress (admitted <i>pro hac vice</i>) rick.bress@lw.com |
| 12 | | Melissa Arbus Sherry (admitted <i>pro hac vice</i>) melissa.sherry@lw.com |
| 13 | | Anne W. Robinson (admitted <i>pro hac vice</i>) anne.robinson@lw.com |
| 14 | | Tyce R. Walters (admitted <i>pro hac vice</i>) tyce.walters@lw.com |
| 15 | | Genevieve P. Hoffman (admitted <i>pro hac vice</i>) genevieve.hoffman@lw.com |
| 16 | | Gemma Donofrio (admitted <i>pro hac vice</i>) gemma.donofrio@lw.com |
| 17 | | LATHAM & WATKINS LLP |
| 18 | | 555 Eleventh Street NW, Suite 1000 Washington, D.C. 20004 |
| 19 | | Telephone: 202.637.2200 Facsimile: 202.637.2201 |
| | | Attorneys for Plaintiffs National Urban League; |
| 20 | | League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King |
| 21 | | County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; and |
| 22 | | the NAACP |
| 23 | Dated: September 30, 2020 | By: <u>/s/ Jon M. Greenbaum</u> |
| 24 | | Kristen Clarke (<i>pro hac vice</i> forthcoming) kclarke@lawyerscommittee.org |
| 25 | | Jon M. Greenbaum (Bar No. 166733) jgreenbaum@lawyerscommittee.org |
| 26 | | Ezra D. Rosenberg (admitted pro hac vice) |
| 27 | | erosenberg@lawyerscommittee.org Dorian L. Spence (<i>pro hac vice</i> forthcoming) |
| 28 | | dspence@lawyerscommittee.org Maryum Jordan (<i>pro hac vice</i> forthcoming) |
| | | |

| 1 | mjordan@lawyerscommittee.org |
|-----------|---|
| 2 | Ajay Saini (admitted <i>pro hac vice</i>) asaini@lawyerscommitee.org |
| 3 | Pooja Chaudhuri (Bar No. 314847) pchaudhuri@lawyerscommittee.org |
| 4 | LAWYERS' COMMITTEE FOR CIVIL |
| 5 | RIGHTS UNDER LAW 1500 K Street NW, Suite 900 |
| 6 | Washington, DC 20005 Telephone: 202.662.8600 |
| 7 | Facsimile: 202.783.0857 |
| | Attorneys for Plaintiffs National Urban League; |
| 8 | City of San Jose, California; Harris County, Texas; League of Women Voters; King County, |
| 9 | Washington; Black Alliance for Just Immigration; Rodney Ellis; Adrian Garcia; the |
| 10 | NAACP; and Navajo Nation |
| 11 | Wendy R. Weiser (admitted pro hac vice) |
| 12 | weiserw@brennan.law.nyu.edu Thomas P. Wolf (admitted <i>pro hac vice</i>) |
| 13 | wolf@brennan.law.nyu.edu |
| 14 | Kelly M. Percival (admitted <i>pro hac vice</i>) percivalk@brennan.law.nyu.edu |
| 15 | BRENNAN CENTER FOR JUSTICE 120 Broadway, Suite 1750 |
| 16 | New York, NY 10271 |
| 17 | Telephone: 646.292.8310 Facsimile: 212.463.7308 |
| 18 | Attorneys for Plaintiffs National Urban League; |
| | City of San Jose, California; Harris County, Texas; League of Women Voters; King County, |
| 19 | Washington; Black Alliance for Just |
| 20 | Immigration; Rodney Ellis; Adrian Garcia; the NAACP; and Navajo Nation |
| 21 | Mark Rosenbaum (Bar No. 59940) |
| 22 | mrosenbaum@publiccounsel.org |
| 23 | PUBLIC COUNSEL 610 South Ardmore Avenue |
| 24 | Los Angeles, California 90005 Telephone: 213.385.2977 |
| 25 | Facsimile: 213.385.9089 |
| 26 | Attorneys for Plaintiff City of San Jose |
| 27 | |
| 28 | |
| <u>~0</u> | |
| KINS | CASE NO 5:20-CV-05799-LH |

| 1 | | Doreen McPaul, Attorney General |
|------|---------------------------|--|
| 2 | | dmcpaul@nndoj.org |
| | | Jason Searle (<i>pro hac vice</i> forthcoming) jasearle@nndoj.org |
| 3 | | NAVAJO NATION DEPARTMENT OF JUSTICE |
| 4 | | P.O. Box 2010 |
| 5 | | Window Rock, AZ 86515 |
| 6 | | Telephone: (928) 871-6345 |
| 7 | | Attorneys for Navajo Nation |
| 8 | Dated: September 30, 2020 | By: <u>/s/ Danielle Goldstein</u> Michael N. Feuer (Bar No. 111529) |
| | | mike.feuer@lacity.org |
| 9 | | Kathleen Kenealy (Bar No. 212289) |
| 10 | | kathleen.kenealy@lacity.org Danielle Goldstein (Bar No. 257486) |
| 11 | | danielle.goldstein@lacity.org |
| 11 | | Michael Dundas (Bar No. 226930) |
| 12 | | mike.dundas@lacity.org CITY ATTORNEY FOR THE CITY OF |
| 13 | | LOS ANGELES |
| 1 4 | | 200 N. Main Street, 8th Floor |
| 14 | | Los Angeles, CA 90012 Telephone: 213.473.3231 |
| 15 | | Facsimile: 213.978.8312 |
| 16 | | Attorneys for Plaintiff City of Los Angeles |
| 17 | Dated: September 30, 2020 | By: <u>/s/ Michael Mutalipassi</u> |
| 18 | 1 / | Christopher A. Callihan (Bar No. 203010) |
| | | legalwebmail@ci.salinas.ca.us Michael Mutalipassi (Bar No. 274858) |
| 19 | | michaelmu@ci.salinas.ca.us |
| 20 | | CITY OF SALINAS |
| 21 | | 200 Lincoln Avenue Salinas, CA 93901 |
| | | Telephone: 831.758.7256 |
| 22 | | Facsimile: 831.758.7257 |
| 23 | | Attorneys for Plaintiff City of Salinas |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 28 | | |
| KINS | | CASE NO. 5:20-CV-05799-LH |

| 1 | Dated: September 30, 2020 | By: <u>/s/ Rafey S. Balabanian</u> Bofay S. Balabanian (Bar No. 215062) |
|------------|---------------------------|---|
| 2 | | Rafey S. Balabanian (Bar No. 315962) rbalabanian@edelson.com |
| 3 | | Lily E. Hough (Bar No. 315277) lhough@edelson.com |
| 4 | | EDELSON P.C. |
| 5 | | 123 Townsend Street, Suite 100 San Francisco, CA 94107 |
| 5 | | Telephone: 415.212.9300 |
| 6 | | Facsimile: 415.373.9435 |
| 7 | | Rebecca Hirsch (admitted <i>pro hac vice</i>) rebecca.hirsch2@cityofchicago.org |
| 8 | | CORPORATION COUNSEL FOR THE |
| 9 | | CITY OF CHICAGO Mark A. Flessner |
| 10 | | Stephen J. Kane |
| 10 | | 121 N. LaSalle Street, Room 600 |
| 11 | | Chicago, IL 60602 |
| | | Telephone: (312) 744-8143 Facsimile: (312) 744-5185 |
| 12 | | |
| 13 | | Attorneys for Plaintiff City of Chicago |
| 14 | Datadi Santambar 20, 2020 | Du /g/ Donald D. Dongugoo |
| 15 | Dated: September 30, 2020 | By: <u>/s/ Donald R. Pongrace</u> Donald R. Pongrace (admitted <i>pro hac vice</i>) |
| 16 | | dpongrace@akingump.com AKIN GUMP STRAUSS HAUER & FELD |
| 17 | | LLP |
| | | 2001 K St., N.W. Washington, D.C. 20006 |
| 18 | | Telephone: (202) 887-4000 |
| 19 | | Facsimile: 202-887-4288 |
| 20 | | Dario J. Frommer (Bar No. 161248) |
| 21 | | dfrommer@akingump.com AKIN GUMP STRAUSS HAUER & FELD |
| | | LLP |
| 22 | | 1999 Avenue of the Stars, Suite 600 Los Angeles, CA 90067-6022 |
| 23 | | Phone: 213.254.1270 |
| 24 | | Fax: 310.229.1001 |
| 25 | | <i>Attorneys for Plaintiff Gila River Indian</i> <i>Community</i> |
| 26 | | Commanuty |
| 27 | | |
| 28 | | |
| <u>4</u> 0 | | |
| KINS | | CASE NO. 5:20-CV-05799-L |

| | Case 5:20-cv-05799-LHK | Document 265 | Filed 09/30/20 Page 24 of 24 | |
|----------|--|--------------|---|--|
| 1 | Dated: September 30, 2020 | | By: /s/ David I. Holtzman | |
| 2 | 1 / | | David I. Holtzman (Bar No. 299287) David.Holtzman@hklaw.com | |
| 3 4 | | | HOLLAND & KNIGHT LLP Daniel P. Kappes | |
| 5 | | | Jacqueline N. Harvey 50 California Street, 28th Floor | |
| 6 | | | San Francisco, CA 94111 Telephone: (415) 743-6970 Fax: (415) 743-6910 | |
| 7 | | | Attorneys for Plaintiff County of Los Angeles | |
| 8 | | | morneys for Training County of Los migeres | |
| 9 | ATTESTATION | | | |
| 10 11 | I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L B 5-1(i)(3) Lattest that all signatories to this document have concurred | | | |
| 12 | | | | |
| 13 | in this filing. | | | |
| 14 | Dated: September 30, 2020 | | LATHAM & WATKINS LLP | |
| 15 | | | By: <u>/s/ Sadik Huseny</u> | |
| 16 | | | Sadik Huseny | |
| 17 | | | | |
| 18 19 | | | | |
| 20 | | | | |
| 21 | | | | |
| 22 | | | | |
| 23 | | | | |
| 24 | | | | |
| 25 26 | | | | |
| 26 27 | | | | |
| 28 | | | | |
| TKINS | | | CASE NO. 5:20-CV-05799-LHK | |

 From:
 Melissa L Creech (CENSUS/PCO FED) [Melissa.L.Creech@census.gov]

 Sent:
 9/28/2020 2:44:30 PM

 To:
 Byron Crenshaw (CENSUS/PCO FED) [Byron.Crenshaw@census.gov]; Mary Catherine Potter (CENSUS/PCO FED) [Mary.Catherine.Potter@census.gov]

 Subject:
 Ew: MOLL Appendix # 1 DRAFT for expedited dispatch and approvals (CLU. Draft. Deliberative)

Subject: Fw: MOU Appendix # 1 DRAFT for expedited dispatch and approvals (CUI, Draft, Deliberative)

b) (6), (b) (5)

Thanks, Melissa

Melissa L. Creech Deputy Chief Counsel Office of the Chief Counsel for Economic Affairs U.S. Department of Commerce Telephone (301) 763-9844 Facsimile (301) 763-6238

Confidentiality Notice: This e-mail message is intended only for the named recipients. The information contained in this e-mail and any attachments may be confidential, privileged, attorney-work product, or otherwise exempt from disclosure. If you have received this message in error, are not the named recipient, or are not an employee or agent responsible for delivering this message to the named recipient, then be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message, its contents, or attachments is strictly prohibited. If you have received this e-mail in error, then please notify the sender and permanently delete the e-mail and any attachments immediately. Thank you.

From: Leing, George (Federal) <GLeing@doc.gov>
Sent: Monday, September 28, 2020 10:36 AM
To: Melissa L Creech (CENSUS/PCO FED) <Melissa.L.Creech@census.gov>
Cc: Kourkoumelis, Aristidis (Federal) <AKourkoumelis@doc.gov>
Subject: RE: MOU Appendix # 1 DRAFT for expedited dispatch and approvals (CUI, Draft, Deliberative)



Thanks, George

George Leing | Senior Counsel Office of the General Counsel U.S. Department of Commerce Direct: 202-482-5981 Mobile: (b) (6)

From: Melissa L Creech (CENSUS/PCO FED) <Melissa.L.Creech@census.gov>
Sent: Thursday, September 24, 2020 2:08 PM
To: Leing, George (Federal) <GLeing@doc.gov>
Cc: Kourkoumelis, Aristidis (Federal) <AKourkoumelis@doc.gov>
Subject: Re: MOU Appendix # 1 DRAFT for expedited dispatch and approvals (CUI, Draft, Deliberative)

(b) (5)

Thanks, Melissa

Melissa L. Creech Deputy Chief Counsel Office of the Chief Counsel for Economic Affairs U.S. Department of Commerce Telephone (301) 763-9844 Facsimile (301) 763-6238

Confidentiality Notice: This e-mail message is intended only for the named recipients. The information contained in this e-mail and any attachments may be confidential, privileged, attorney-work product, or otherwise exempt from disclosure. If you have received this message in error, are not the named recipient, or are not an employee or agent responsible for delivering this message to the named recipient, then be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message, its contents, or attachments is strictly prohibited. If you have received this e-mail in error, then please notify the sender and permanently delete the e-mail and any attachments immediately. Thank you.

From: Leing, George (Federal) <<u>GLeing@doc.gov</u>>
Sent: Thursday, September 24, 2020 2:04 PM
To: Melissa L Creech (CENSUS/PCO FED) <<u>Melissa.L.Creech@census.gov</u>>
Cc: Kourkoumelis, Aristidis (Federal) <<u>AKourkoumelis@doc.gov</u>>
Subject: RE: MOU Appendix # 1 DRAFT for expedited dispatch and approvals (CUI, Draft, Deliberative)

(b) (5)

Thanks, George

George Leing | Senior Counsel

Office of the General Counsel U.S. Department of Commerce Direct: 202-482-5981 Mobile: (b) (6)

From: Melissa L Creech (CENSUS/PCO FED) <<u>Melissa.L.Creech@census.gov</u>>
Sent: Thursday, September 24, 2020 1:52 PM
To: Leing, George (Federal) <<u>GLeing@doc.gov</u>>
Cc: Kourkoumelis, Aristidis (Federal) <<u>AKourkoumelis@doc.gov</u>>
Subject: Re: MOU Appendix # 1 DRAFT for expedited dispatch and approvals (CUI, Draft, Deliberative)

(b) (5)

Melissa L. Creech Deputy Chief Counsel Office of the Chief Counsel for Economic Affairs U.S. Department of Commerce Telephone (301) 763-9844 Facsimile (301) 763-6238

Confidentiality Notice: This e-mail message is intended only for the named recipients. The information contained in this e-mail and any attachments may be confidential, privileged, attorney-work product, or otherwise exempt from disclosure. If you have received this message in error, are not the named recipient, or are not an employee or agent responsible for delivering this message to the named recipient, then be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message, its contents, or attachments is strictly prohibited. If you have received this e-mail in error, then please notify the sender and permanently delete the e-mail and any attachments immediately. Thank you.

From: Leing, George (Federal) <<u>GLeing@doc.gov</u>>
Sent: Thursday, September 24, 2020 1:48 PM
To: Melissa L Creech (CENSUS/PCO FED) <<u>Melissa.L.Creech@census.gov</u>>
Cc: Kourkoumelis, Aristidis (Federal) <<u>AKourkoumelis@doc.gov</u>>
Subject: RE: MOU Appendix # 1 DRAFT for expedited dispatch and approvals (CUI, Draft, Deliberative)

From: Melissa L Creech (CENSUS/PCO FED) <<u>Melissa.L.Creech@census.gov</u>>
Sent: Wednesday, September 23, 2020 5:08 PM
To: Leing, George (Federal) <<u>GLeing@doc.gov</u>>
Cc: Kourkoumelis, Aristidis (Federal) <<u>AKourkoumelis@doc.gov</u>>
Subject: Re: MOU Appendix # 1 DRAFT for expedited dispatch and approvals (CUI, Draft, Deliberative)

| (h) | (5) | |
|-----|-----|--|
| (2) | (J) | |

| _ |
|-------|
| |
| |
| |
| |
| |
| |
| |
| |
| _ |
| |
| |
| |
| |
| |
| |
| |

Thanks, Melissa

Melissa L. Creech Deputy Chief Counsel Office of the Chief Counsel for Economic Affairs U.S. Department of Commerce Telephone (301) 763-9844 Facsimile (301) 763-6238