

and provide truthful answers (Tourangeau and Smith 1996). In particular, Krysan (1998) found evidence that respondents greatly modified their answers to questions and issues related to views about race, ethnicity, and immigration based on how they felt the interviewer would perceive or judge their responses.

45. Concerns about confidentiality are likely to exacerbate the unwillingness of certain communities to respond to the Census in the current socio-political context created by the July 21 PM. A study of immigrant communities' knowledge and awareness of the Census found that one major concern was confidentiality of personal information (Raines 2001). Beyond the Latino immigrant community, this study reported evidence that immigrants from Laos, Somalia, Iraq, Bosnia, and Haiti expressed concerns over anonymity and confidentiality. The general takeaway is that as additional private, personal, or sensitive questions are added, the degree of concern over anonymity and confidentiality raises considerably. Even if the Census Bureau provides assurances, many may not believe or trust those assurances. In part, this might be due to the current social and political context (laid out above in paragraphs 29-34) or could also be due to prior experiences in their home country with authoritarian regimes and government data collection. Thus, for a population survey to be accurate, it is critical that respondents truly believe their answers to questions will always remain confidential and not used against them. The July 21 PM opens the door to that exact fear because the federal government plans to use administrative data and records to exclude undocumented immigrants from the base population count.

D. The Threat of Non-Response is Real and Immediate

46. The overall national sociopolitical environment has raised awareness and alertness among immigrant communities, but by itself, the national context does not depress immigrant participation. Instead the published literature is clear that immigrants react to specific threats as they develop, and they engage fully when those threats are removed. Indeed, in areas with low levels of immigration enforcement and threat of deportation, or in so-called sanctuary cities, research does not find evidence of a chilling effect or withdrawal (e.g. Garcia 2019). However,

the national context does cause immigrants to take more notice of their surroundings and be aware of the potential for a negative interaction with immigration officials. When immigration enforcement is heightened, the current (2017-2020) national sociopolitical climate can result in a more significant withdrawal. Put simply, President Trump has put the immigrant community on edge. In June of 2019, they had the protection of the U.S. Supreme Court which gave assurances that their citizenship status could not be connected to the 2020 Census. The July 21 PM changed the risk of threat in the minds of many immigrants who hear Trump's words as connecting a federal monitoring program of undocumented immigrants to the 2020 Census. They may not do the full research to realize they can still fill out the Census safely, because they hear the news which is connecting the July 21 PM to Trump's longstanding desire to increase deportation of undocumented immigrants. Further, the July 21 PM sends the signal to undocumented immigrants to avoid the Census because they will not be counted. If the President issues a memorandum saying you will not be counted on the Census base population count, and you have a lingering fear over your citizenship status, there is virtually no reason at all to transmit your entire household's personal information to the federal government. Existing research makes clear that when new threats emerge due to changes in policy, immigrants take note and withdraw.

47. Perhaps the best summary of how the combination of federal policies and political environments interact is found in a new book by Angela Garcia, *Legal Passing: Navigating Undocumented Life and Local Immigration Law* (2019). In this book, Garcia reviews a plethora of data and research on how immigrant communities respond and react to both threatening and accommodating environments, and how a national climate of hostility does not automatically create a chilling effect for immigrants everywhere. Rather, Garcia showed with extensive evidence that specific context and the proximate threat of immigration enforcement versus accommodation is what matters the most. Instances with the highest levels of threat produce the most withdrawal. In her study of more accommodating or welcoming environments, Garcia finds immigrants are able to navigate life effectively, writing "At the same time, this book also argues against the popular depictions of undocumented immigrants being pushed underground, their perception of

threat so strong that they avoid engaging in public life... As compared to restrictive destinations, the integrative outcomes of accommodating locales that I describe in this book are evident in undocumented Mexicans' ease of physical navigation, deeper willingness to interact with local police, and place-based sense of belonging." Of particular importance is the timing of when threats pop up or become visible. Garcia describes "initial reactions immediately after new clampdowns – sweeps, raids, and checkpoints" being the most intense periods of avoidance. However eventually immigrants learn how to navigate their communities, and to avoid locations of particular threat, but otherwise effectively go about their day.

48. Thus, the literature demonstrates that the current era is a particularly anxiety-inducing period in American history for undocumented immigrants, and those concerned about immigration enforcement. However, this just serves to frame the environment, it does not by itself lead to wholesale withdrawal. Rather, the literature points to the importance of specific instances of threat that result from new policies that create fear, anxiety and avoidance.

49. Prior survey research in January 2020³⁰ assessed how Latinos in New York reacted to information about whether or not ICE was present in and around state courthouses. The question there was whether increased threat of immigration enforcement resulted in immigrant withdrawal. ICE was sporadically conducting immigration-related searches in or near state courthouses across New York. In our survey experiment, we randomly assigned one set of respondents to a condition in which we reminded them of ICE presence at state courthouses, while other respondents were randomly assigned to a condition without the information about ICE presence.

50. Across the full sample of Latinos in New York, the survey experiment results demonstrate that being informed about ICE presence at state courthouses has a strong, and statistically significant causal effect on increasing avoidance behavior and withdrawal. This effect is consistent across eight different types of engagement. When confronted with information about

³⁰ Survey conducted as part of the expert declaration by Matthew A. Barreto in NY v. ICE lawsuit.

ICE conducting arrests and detention at courts in New York, Latino participants reduced their intention to attend state court as a witness, as a defendant, to accompany a family member, to protect their rights, or to testify about a housing complaint. In addition, they were less likely to go to the police as witness, or to call the local police if they witness a crime, or to submit a police report as a victim. This suggests that when Latinos and immigrants learn about a new threat, they respond immediately with reduced intention to participate or engage.

51. Because the overall sample size of the survey was large (n=1,001) the New York courthouse research included additional analyses on immigrant segments within the main sample. The results of the subset analysis are consistent with the extant literature and expectations, with much stronger causal effects of avoidance and withdrawal among the foreign-born Latinos, and much stronger effects among non-citizens, and the strongest causal evidence of the chilling effect among Latinos are acquainted with an undocumented immigrant. These analyses provide very strong evidence that is theoretically motivated and consistent with decades of social science research on the immediate chilling effect of immigration enforcement.

52. A newer study conducted during the period of Trump's presidency finds similar results. The Violence Against Women Act (VAWA) allows women who are victims of domestic violence to petition to change their immigration status and was used effectively when women felt safe enough to call immigration officials. However, in February 2017 the Trump administration reactivated the Secure Communities program which coordinated local police databases with ICE. As such, in areas of increased ICE presence, the study found that fewer and fewer women initiate police reports of domestic violence. The authors explain this is due to fears over being reported to, or detained by ICE. As the authors conclude, "intensified immigration enforcement might increase misreporting due to fear of being over scrutinized and, potentially, placed in a position that jeopardizes the possibility of staying in the country." (Amuedo-Dorantes and Arenas-Arroyo 2019). This is yet another example of a before/after study which finds direct and immediate evidence of immigrant withdrawal after a change in policy, in this case, by the Trump administration.

E. Extensive Research Confirms Fears About Immigration Enforcement and The Chilling Effect

53. Additional ethnographic research has revealed that undocumented immigrants and mixed-status households are likely to avoid government contact when they suspect it is not safe to participate (de la Puente 1995). This is especially the case when sensitive topics will be potentially discussed or revealed. Velasco (1992) maintains that undocumented immigrants in his sample area in San Diego, CA avoided contact with government. He argues that this avoidance was one of the important contributing factors to census omission and estimates that over half of the sample area residents were undocumented immigrants. Similar situations were also reported in the Miami, FL sample area (Stepick 1992) and in the 26 rural Marion County, OR sample areas (Montoya 1992). However, the ethnographic research all concludes that participation barriers can be overcome by not including worrisome questions about citizenship status and by working with community based organizations and cultural facilitators to increase trust and confidence in data privacy.

54. Levels of trust in immigrant and minority communities are very low with respect to issues related to citizenship. In a prior national survey about the 2020 Census, when asked about protecting sensitive information, including citizenship of themselves and family members, only 35% of immigrants expressed trust that the Trump administration will protect their information and not share it with other federal agencies. Among Latino respondents overall, just 31% trust the Trump administration to protect their personal information. According to my prior survey research, a very large percent of immigrants and minorities believe the Trump administration will share their personal information with other federal agencies.

55. Research related to the 2020 Census suggests that the Census Bureau was well aware of potential issues related to non-response over immigration fears. A comprehensive study by the Census Bureau's Center for Survey Measurement presented at the National Advisory Committee on Racial, Ethnic, and Other Populations Fall Meeting 2017 (Meyers 2017) reported an increase in respondents expressing concerns to researchers and field staff about confidentiality and data

access related to immigration, legal residency, and citizenship status, and their perception that certain immigrant groups are unwelcome. There was an observation of increased rates of unusual respondent behaviors during pre-testing and production surveys, including item-nonresponse, break-offs, and refusals, especially when the questions involved citizenship status. The most commonly occurring finding was that respondents appeared visibly nervous about disclosing their private information and who would have access to such data. The current political climate was of concern to respondents: in one Spanish interview, a respondent stated, “the possibility that the Census could give my information to internal security and immigration could come and arrest me for not having documents terrifies me.”

56. As this finding makes clear, immigrant communities can be especially vulnerable to the social and political context surrounding the implementation of a survey. A study of immigrants in California and Texas found that respondents’ fear over citizenship status correlated with their non-participation in the health sector (Berk and Schur 2001). This study found strong evidence that a threatening context can lead immigrants to withdraw and limit their access to public services, including access to medical care which they greatly needed. Likewise, anxiety and fear over immigration status has been found to reduce utilization of services related to health care, law enforcement, and education (Pedraza and Osorio 2017). In particular, research has identified the context of heightened “immigration policing” as one that erodes trust in other public institutions and creates an environment in which immigrant communities are very selective as to where, when, and how they engage with government agencies (Cruz Nichols, LeBrón and Pedraza 2018). The finding is not just limited to first-generation immigrants themselves; the research also finds a strong spillover effect to U.S.-born Latinos who have immigrant parents, or feel connected to the immigrant community, and also demonstrates non-participation during times of threatening context.

57. Studies have shown that the political context after 2016 and the election of Donald Trump has significantly diminished Latinos’ trust of the federal government. For instance, Michelson and Monforti (2018) find that Latinos, including those who are undocumented, were

less trusting of government in 2016 than in 2012. In 2012, trust amongst Latinos was strong across all subgroups of Latino immigrants--- – citizens, non-citizens with legal status, and undocumented immigrants. Four years later, Latinos registered lower levels of trust in government, with fewer than 1 in 20 Latinos in any subgroup responding that they trust the government “just about always.” In addition, Sanchez and Gomez-Aguinaga (2017) report that an overwhelming majority of Latinos described Trump and his policies as scary (74%), dangerous (77%), hostile (78%), and unwelcoming (80%) and they conclude that the current context is creating tension, anxiety, and nervousness among Latinos and immigrants. While the June 2019 Supreme Court decision striking the citizenship question allowed community outreach groups to push reset and create a campaign that citizenship would not be associated with the Census at all, the new PM reinjects concerns about citizenship status into the 2020 population count.

58. Beyond the Latino and immigrant communities, there is also reason to expect that increased fears about citizenship could increase non-response rates among Arab and Middle Eastern Americans. Research by Oskooii (2016) and Lajevardi and Oskooii (2018) demonstrates that American Muslims and those of Arab and Middle Eastern ancestry currently perceive a high rate of discrimination and an unwelcoming environment. Oskooii (2016) explains how perceived social exclusion can result in withdrawal and non-participation by these communities and documents this fact empirically in his published research. In research by the Center for Survey Measurement, focus groups conducted in Arabic among immigrants from the Middle East revealed the potential for Census non-response due to questions about citizenship status in light of the current political climate. (Meyers 2017). Some focus group participants referred to the “Muslim Ban” when expressing why they would be nervous about reporting their immigration and citizenship status to the federal government.

59. This context is particularly important as it relates to the issues about citizenship status, because this is the point of tension for many in the immigrant community today. That is, there is grave concern over providing information to the federal government given the perceived high rates of immigrant policing. And now that newfound distrust and fear is directly related to citizenship

status as a result of the July 21 PM, a considerable non-response is the likely outcome.

60. A clear implication identified in the relevant literature on surveys is that when respondents perceive a threatening survey, and if trust is low, non-participation will result in an inaccurate survey. Further, attempts to re-interview or re-contact households will not be successful, and some re-contact may only serve to further erode trust. Survey respondents must believe that there is no potential jeopardy before participating. Once a respondent believes that participation in the survey could bring them harm, and that the survey enumerator is acting on behalf of an official agency, attempts at repeated re-contact typically do not result in a completed survey (Ball 1967). In interviews with the enumerators themselves, there is a sense that the issues related to citizenship status will make their jobs harder, if not impossible (Meyers 2017).

61. Prior experiences with census data collection efforts that overlapped with anti-immigrant contexts provide evidence that non-response follow-up (NRFU) will be much more difficult in 2020 given the political climate and the PM. Terry et al. (2017) describe the connection between a threatening context and Census non-response in Arizona and Texas among immigrant communities: “the wider social context also had an important role in enumeration. Just before the NRFU enumeration program started in 2010, Arizona passed a very strong anti-immigration law that coincided with legal ordinances in two Dallas-area cities. These ordinances were aimed at identifying illegal immigrants through police stops or the reporting of immigration status of applicants wishing to rent apartments. The new law provoked heightened tensions around the country, particularly in the Dallas/Fort Worth-area Hispanic community. As a result, these reports conclude that non-response was high and that NRFU was less successful.

62. Undocumented immigrants may already fear providing their information to the government. They are a hard-to-reach population that is difficult for enumerators to gain access to and follow-up on in the event of non-response. To overcome these difficulties, non-governmental organizations and the Census Bureau have engaged in targeted messaging toward immigrant communities that participation in the Census would help increase access to public resources, federal funding, and political representation (Levine, 2020; Liptak et al., 2020; Smith,

2020). However, the PM, by excluding the count of undocumented immigrants from the apportionment base, completely undercuts this incentive to participate. If the government is going to remove them from the base population count, why bother filling out the 2020 Census at all? Undocumented immigrants are likely to perceive that there is no benefit to participation, as the July 21 PM states they will not count, and there is now an increased risk of their information being linked to immigration records and facing immigration enforcement.

63. It is important to note undocumented immigrants and their social ties are often risk-averse, assume the worst-case scenario, and are highly suspicious about whether their information would be shared with Federal immigration authorities (Yoshikawa, 2011; Dreby, 2015; Torres-Ardila, Bravo, and Ortiz, 2020). For example, even U.S.- citizen Latinos reduced their participation in Medicaid as a result of a punitive immigration enforcement environment (Watson, 2014; Vargas, 2015). It is unlikely Medicaid service providers will use their records to find undocumented friends or family, but the perception of legibility to immigration authorities was sufficient to produce system- avoiding behaviors. In another research paper, U.S.-born children of undocumented immigrants avoided a variety of record-keeping institutions (e.g. banking, formal employment, voter registration) as a result of their social ties with an undocumented parent (Desai, Su, and Adelman, 2019).

64. Undercounting undocumented immigrants will have spillover effects on effectively counting the broader legal non-citizen and citizen population. Mixed-status households are affected by the PM. The PM suggests the government may be using various forms of information to identify undocumented immigrants. If undocumented immigrants are the head of the household or if the head of household is responsible for undocumented immigrant friends and/or family members, they may not respond or allow themselves to be contacted by follow-up enumerators in order to protect the anonymity of their undocumented social ties. This means citizen children, documented spouses of undocumented immigrants, documented partners of undocumented immigrants, and/or documented family of undocumented immigrants will be less likely to be counted in the census.

65. One implication of the fear and unrest in the immigrant community is the increased mobility which could render any attempt at imputation or substitution incomplete and inaccurate. For imputation to work, the missing unit household cannot be vacant, and likewise cannot be a second home or vacation home of someone already counted. The missing unit household should have someone living there as their primary residence. However, as Frost notes that many undocumented immigrants who receive government letters or notices may pick-up and move their entire family, rather than wait around and figure out a way to interact with public officials. Similarly, this is documented by O'Hare (2017) who notes that Latino children are especially susceptible to being undercounted due to mobility. There is evidence that if immigrants are fearful of attempts by the federal government to obtain the personal information, identities, and citizenship statuses of all members of their household, they may vacate their homes and move to avoid being contacted again (Meyers 2017). To the extent this happens, attempts at imputation or substitution will be inaccurate, both on the national level, but especially on state and local levels.

F. When Subsequent Official Action is Taken to Remove Threats Related to Immigration Status, Immigrants Respond with Participation

66. =On January 9, 2018, a federal court in the Northern District of California issued a nationwide preliminary injunction against the Trump administration effort to phase-out DACA. The January 2018 decision allowed existing DACA recipients to apply for renewals. Later, on February 13, 2018 a second federal court in the Eastern District of New York also issued a nationwide preliminary injunction to allow DACA renewals to continue. When the court enjoined the effort by the Trump administration to repeal DACA and allowed undocumented immigrants to begin applying for DACA, there was an immediate rush of applications by undocumented immigrants who held DACA status, but were expired. According to data from the United States Customs and Immigrant Services ("USCIS"), 64,210 immigrants applied for renewal immediately after the January 2018 injunction, and 31,860 were approved by March 31,

2018 and 32,280 were pending, with only 70 having been denied.³¹ Over the course of 2018, USCIS reported 287,709 total requests for DACA renewal were made by undocumented immigrants.³² Despite additional legal challenges, throughout 2019 the injunctions from Northern California and Eastern New York remained in place nationwide and 406,586 persons applied for DACA renewals across 2019.³³ Despite the Trump administration's continued legal challenges to DACA, public statements denigrating immigrants, once the courts issued the injunctions to protect DACA, undocumented immigrants became trusting of this program,.

67. On July 2, 2015, the Priority Enforcement Program (PEP) was implemented by U.S. Immigration and Customs Enforcement (ICE). It was announced by then-DHS Secretary Jeh Johnson in a November 2014 memo, and was meant to replace the then-existing Secure Communities program, which coordinated local police databases with ICE. PEP implemented a series of mandates that immigration enforcement should prioritize individuals who have engaged in serious criminal activity or who pose national security threats. In short, it mandated that ICE cast a smaller net in identifying, detaining, and deporting undocumented immigrants. In addition, PEP made it more difficult for ICE to execute immigration detainers. ICE had to state probable cause (via reference to the priorities) in order to execute a detainer in addition to the local law enforcement agency having to serve a copy of the detainer request on the individual in order for it to take effect. The intent of the new policy was for police to collaborate less with ICE and to only focus their detention efforts on serious criminals. The Dallas County Sheriff, which controls the county jails and oversees the processing of immigrants detained agreed to participate in the PEP program to reduce the local prominence of ICE in Dallas.³⁴ A research paper

³¹ Approximate Count of DACA Receipts: Since January 10, 2018, As of Mar. 31, 2018

https://www.uscis.gov/sites/default/files/document/data/DACA_Receipts_Since_Injunction_Mar_31_2018.pdf

³² Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012-Mar. 31, 2020

https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2020_qtr2.pdf

³³ Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, Status, by Fiscal Year, Quarter, and Case Status: Aug. 15, 2012-Mar. 31, 2020

https://www.uscis.gov/sites/default/files/document/data/DACA_performancedata_fy2020_qtr2.pdf

³⁴ Dallas county jails complied with the PEP. Dallas County Sheriff Lupe Valdez formally agreed to participate in the program after meeting with ICE representatives in July and August 2015. In August 2015, Dallas County

analyzing Dallas Police Department (DPD) police reports finds clear evidence that the implementation of PEP increased crime reporting to DPD by Hispanic and immigrant subjects in Dallas.³⁵ The data shows Hispanic and immigrant engagement with police increased significantly in the immediate quarter after PEP was implemented. And in the six quarters following the change in policy, Hispanics and immigrants voluntarily reported around 6,000 more incidents to the police than they would have been if the enforcement priorities had not changed. Thus, reversals or limitations imposed on executive actions may have measurable consequences on promoting trust among immigrant communities and influencing behavioral interactions with various aspects of government.

68. In prior survey research in 2018 to test the impact of a citizenship question being included or excluded from the 2020 Census, there was a clear finding of increased Census participation after removing any fear of immigration status being exposed.³⁶ Initially, after being told about the citizenship question, a sizable share of respondents said they would not participate in the 2020 Census. Later in the survey, respondents were randomly assigned to a condition in which they were told the government changed their mind and a citizenship question would NOT be included after all. A second set of participants were randomly assigned to a condition in which it was reaffirmed that the government would in fact include a citizenship question.

90. Table 7: Percent of Non-Responders Who Change to Responders at Q7 / Q8

	Total	White	Latino	Black	AAPI	Other
Q8 Yes – with citizenship	45.2	49.5	38.9	62.2	0.2	17.2
Q7 Yes – without citizenship	84.3	89.3	80.1	78.6	53.3	94.9
Difference	-39.1	-39.7	-41.2	-16.5	-53.1	-77.7

officials began reviewing ICE's request prior to honoring them with the vetting guidelines being similar to PEP priorities, ensuring only individuals who posed a threat to public safety were transferred to ICE's custody. This is evidenced in data by Jacome (2018), who finds total detainees dropped by roughly 1,000 by the end of 2015 due to decreases in detainees issued for individuals convicted of misdemeanors and those with no conviction.

³⁵ Jacome, Elisa. "The Effect of Immigration Enforcement on Crime Reporting: Evidence from the Priority Enforcement Program." *Available at SSRN 3263086* (2018).

³⁶ See Tr. 687-89; Trial Ex. 677, *NY v. Dep't Commerce*, 351 F. Supp. 3d 502 (S.D.N.Y. 2019), *aff'd* 139 S. Ct. 2551 (2019). Barreto expert declaration *NY v. Dept Commerce*, September 7, 2018.

Among Latinos who said they would **not** participate in the census with a citizenship question, 80 percent changed their mind and said they **would** participate once they learned that the citizenship question would be removed. The mechanism here is whether or not those in the immigrant community believe their participation creates increased risk of exposing themselves to immigration enforcement. Members of immigrant communities are very concerned about their citizenship status being monitored or revealed. When they believe the threat is real, they will withdraw from the Census, and when that threat has been removed, they reengage. This provides very strong evidence that when fears about citizenship status being revealed are removed, a large share of Latinos will indeed increase their participation in Census 2020.³⁷

69. Across the wide-ranging literature, a key finding is that immigrants are normally eager to engage in public life and with political institutions, but when there is a threat of negative consequences for their immigration status, avoidance behavior is likely. (e.g. Garcia 2019).

G. Non-Response Follow-Up (NRFU) and Imputation of Non-Responding Households

70. The Census Bureau is aware that some households will not respond to the initial request for participation, and as such they have long had a program called Non-Response Follow-Up (NRFU) which provides follow-up contact with any households that do not initially respond. The Census Bureau estimates they conducted follow-up with around 50 million households in 2010 (Rao 2017). NRFU is critical for the Census Bureau to increase participation rates, but it is a costly and difficult undertaking by their own admission. Any increased non-response at initial contact makes NRFU much more difficult, especially if non-responding households come to not trust the survey questions that enumerators are attempting to ask. What's more, NRFU is now profoundly more difficult due to COVID-19 and the time available has been shortened. As discussed in this report, the PM increases the likelihood that Latinos, immigrants, and noncitizens are less likely to self-respond to the 2020 census. These non-responding individuals are also unlikely to respond

³⁷ See *id.*

after household visits by census enumerators because of fear of government interaction. (de la Puente 1995; 2004).

71. In fact, with the new focus on excluding undocumented immigrants directed by the PM, the Census outreach efforts after July 21, 2020 could actually create more fear and anxiety in immigrant communities and further drive down response rate and increase the net undercount. For example, the Census Bureau plans to send enumerators into non-responding communities on behalf of the federal government, and if nobody is home, they will leave a “Notice of Visit” from the federal government which includes a unique household “census identification number.” Further, they inform the household that additional visits will be made back to their house by enumerators on behalf of the federal government. This sends a clear signal of federal government monitoring of the household and will result in increased anxiety and concern over cooperating (e.g. Menjívar 2011; Szkupinski Quiroga et al. 2014). Research by Hagan et al. (2011) documents with clear evidence the extensive chilling effect of increased presence of government officials who appear to be monitoring immigrants and checking on their status. They find immigrants “withdrawing from the community” as well as “avoiding public places” and that they “spend most of their non-working hours in their homes because it is the safest way to avoid detection.” (Hagan et al. 2011.) According to Abrego (2011), undocumented immigrants will go to great lengths to reduce their visibility in society when they perceive a potential threat of deportation. Her research identifies withdrawal from interactions with government agencies as awareness of immigration checks increases. From the perspective of an anxious immigrant, each additional household visit from a government Census worker, following a PM directing the exclusion of undocumented people, is the exact environment that would produce withdrawal. According to Abrego: “In effect, their well-being and stability are perennially threatened because, as they are constantly reminded, there may be an ICE raid. . . at any time” (2011).

72. Research also finds that increased presence and visibility of government officials who appear to be collecting immigration information creates withdrawal and also misreporting on government forms (Rodriguez and Hagan 2004). Increased presence of immigration officials in

the community lead to a decline of student attendance in the nearby school to avoid any contact with the government officials. However, in communities without ICE presence, school attendance is not impacted. The research study observed this trend across three different cities in Texas and attributed increased withdrawal to an increased visibility and presence of government officials asking about immigration status. Further, the same study reported that Hispanics began to change their racial identification to White on government forms at health clinics to avoid any risk of association with immigration officials (Rodriguez and Hagan 2004).

73. Another study specifically examined the willingness of immigrants to participate in surveys and data collection efforts, in particular examining how fear of deportation impacted response rates and general engagement with government services (Arbona et al. 2010). One of the most important findings of this study was that if immigrants fear their participation could somehow lead to their deportation, they will not participate unless they are fully comfortable and trusting of the survey taker. As the research study progressed, Arbona et al. reported, through quantitative data, that fear of deportation was a strong motivating factor for avoidance and that over 80% of immigrants in their sample stated that they avoided activities such as “ask[ing] for help from government agencies, report[ing] an infraction to the police, attend[ing] court if requested to do so,” and other items. The more census enumerators visit immigrant communities to attempt household counts, following the July 21 PM to exclude undocumented immigrants, the more likely they will be to not participate. That is, the outreach itself will produce further non-response as a result of the socio-political climate following the PM.

74. NRFU enumerators may not be able to make contact with adult households. Enumerators may not be sufficiently linguistically or culturally competent in order to persuade undecided households to respond. For example, they may not be able to effectively convince Latinos who may be concerned about immigration issues or enforcement to respond. Many Latinos, in the context of heightened immigration enforcement, are told to not open the door to strangers due to commercial scams and guidance from immigration legal advisors regarding ICE visits (Kissam et al., 2019). Moreover, even if enumerators are able to convince members of

immigrant communities to respond despite the existence of a chilling effect, it may be logistically difficult for enumerators to make contact with adult householders. In many immigrant communities, work hours are long and weekend work is common, increasing the difficulty for NRFU enumerators to conduct a direct interview of the household (Kissam et al., 2019).

75. NRFU also cannot account for households omitted from the Master Address File as a result of “complex households” in low-visibility unconventional and/or hidden housing units (Kissam, 2019). These complex households may be more likely to be made up of immigrants and their direct social ties. Kissam (2019) notes in the San Joaquin Valley, only 95% of the Latino immigrant study population live in housing units included in the Census Bureau’s Master Address File, resulting in a 5% household omission rate. The only way these households can be counted in the Census is if they proactively respond via online non-ID processing operations or by phone. However, these alternative mechanisms may not work if these complex households are concerned about the prospect of providing information to a government seeking to identify their citizenship status or exclude them from the count for specific purposes, such as apportionment, as required by the PM.

76. Even if NRFU results in data production, it may be faulty data. High levels of non-response force the Census Bureau to rely on alternative statistical procedures such as triangulation via administrative records, proxy interviews with neighbors, and, imputation. Some of these alternative efforts might fail in immigrant communities. Proxy interviews may fail to resolve undercounting due to mistrust of Federal authorities and lack of willingness to provide information on neighbors. Indeed, only 17% of respondents in a survey of the San Joaquin Valley immigrant community indicated they were willing to provide an enumerator with information about neighbors in the San Joaquin Valley (Kissam, 2019). It is important to note proxy interview efforts are error-prone, since they are, at best, estimates by neighbors of the number and characteristics of neighboring households. The same survey of immigrant communities in the San Joaquin Valley indicates less than half of potential Census respondents believe they know enough about their

neighbors to provide accurate responses (Kissam, 2019).

77. Moreover, finding administrative records that match households is likely to be more difficult for immigrant households, who may be less prone to providing personal or household information to various aspects of government and may not be eligible for a variety of government programs that keep records (Kissam, 2019; Asad, 2020). While the Trump administration may assume they can rely on administrative records, the reality is that this creates major methodological problems for NRFU and then imputation. The data is fraught with errors and inconsistencies and will lead to lower quality data and undercounts. Research by Bhaskar, Fernandez, and Porter (2018), who are Census Bureau researchers, indicates matching an administrative record to a household requires a Personal Identification Key (PIK). They also find foreign-born households are less likely to have a PIK than U.S.-born households. Lack of having a PIK is associated with more people in a household, living in a Census tract with a high density of foreign-born individuals, Latino/Hispanic race/ethnicity, non-citizen status, limited English or no English proficiency, and being a recent immigrant. IRS administrative records may not serve as effective proxies for enumeration given not all undocumented immigrants file income tax returns on a regular basis (Gee, Gardner, and Wiehe, 2016). Social Security Administration (SSA) records may be incomplete if immigrant workers have only worked in the informal or underground economy. Parents also may never apply for an SSN for foreign-born children without legal status. Foreign-born non-working spouses may have never applied for an SSN (Kissam, 2019). Often, the use of borrowed SSNs is prevalent among immigrant workers, which may result in potential undercounts or discrepancies in the count. Moreover, employer reports of employee's earnings do not provide reliable or exhaustive information on household size.

78. Even if a match to an administrative record is found for a specific address, it may not accurately enumerate household size and composition because the record may be out of date or exclude peripheral household members who are not part of the primary core family living in the housing unit (Kissam, 2019). There may be discrepancies via administrative matching in neighborhoods where low-income renter households move often and administrative records may

not update frequently in immigrant communities such that newly born children will be disproportionately omitted (Kissam, 2019). If information via administrative records or proxy interviews do not bear fruit, the Census Bureau may attempt to use hot-deck imputation to determine the characteristics of households that did not respond. The problem is that non-responding households in immigrant communities may be systematically larger than those that do respond. Thus, each imputation will contribute to a differential undercut given that “donor” households have less inhabitants (Kissam, 2019).

79. In addition to trying to match households to their administrative records, the Census Bureau has indicated that it may employ statistical imputation techniques to address nonresponse. During the collection of any survey, two types of nonresponse can emerge: unit nonresponse and item nonresponse. Unit nonresponse concerns an entire missing case resulting from either non-contact, refusal, or inability to participate. Item nonresponse concerns missing values on certain questions in the survey. Bias, or incorrect and faulty data, can emerge from nonresponse when the causes of the nonresponse are linked to the survey statistics being measured, which is referred to as nonignorable nonresponse (Groves et al 2004). By way of illustration, public health officials designed a survey to measure the prevalence of HIV in the population during the early days of the HIV epidemic. Despite incentives, cooperation rates among those who were HIV-positive were extremely low because of the stigma of the disease. Thus, the key statistic sought – namely, the percentage of HIV-positive people – was causally related to the likelihood of self-response; specifically, in that case, those who were HIV-positive did not want to participate in the study at all. Non-ignorable nonresponse is particularly egregious because even if the causal influence is known “there is no way that the statistic among respondents can be made free of nonresponse bias (without making heroic assumptions about the status of the nonrespondents)” (Groves et al. 2004). What this means is that if a factor influencing the decision to not respond is correlated with an important outcome variable, imputation is impractical because you cannot observe the existence of the precise variable you are trying to count. In the case of the 2020 Census, the key outcome variable is producing an accurate count of total household size; yet, prior research establishes that

larger households are more likely to not respond when the responder's citizenship status may be implicated. Thus, the decision whether to respond is correlated with household size, a key outcome variable of interest.

80. Some statistical tools are available to deal with nonresponse. At one end of the spectrum, if every variable of interest is known for the nonrespondent, except one, then we can use these variables to form an imputation model that will predict a value for the missing value – for example, we may know the existence of the respondent and that person's age, but may not know their income level and can use predictive models to impute income for that respondent. At the other end of the spectrum we have entire missing cases (unit nonresponse), where the existence of the person is unknown. Imputation for unit nonresponse, sometimes called “whole person imputation,” is used almost exclusively in longitudinal surveys where ample data from prior waves exists for a missing respondent. It is extremely rare to impute for unit nonresponse if little is known about the nonrespondent case (Groves and Couper 1998). Unit nonresponse is typically dealt with by some form of post-stratification or response rate weighting adjustment³⁸ (Kalton 1983). While imputation can be useful for missing values in an otherwise completed survey form (item nonresponse), it is particularly problematic for imputing the existence of whole persons, and is especially likely to end up with an undercount in vulnerable communities. This is part of the reason that social scientists and government statisticians want the decennial census to be as non-burdensome and non-sensitive as possible, to ensure an overall accurate count through high rates of participation (Wines 2018).

81. In general, whole-person imputation itself relies on a number of assumptions to work correctly. If data is missing completely at random (MCAR) (Rubin 1976), then non-response generally introduces less bias. Models are of less help with non-ignorable nonresponse, as noted above, where nonresponse depends on the values of a response variable. In this case, models can

³⁸ After the survey data are collected, statisticians can use the known universe of respondent demographics to apply weights and possibly correct for non-response, however this only corrects the dataset for use in a data analysis project or academic research paper, not necessarily population counts, which are supposed to serve as the baseline universe estimate in the first place.

help but never eliminate all nonresponse bias (Lohr 1999). Indeed, recent reviews of cutting edge imputation procedures like “hot deck imputation” argue that “hot deck” methods for situations where nonresponse is non-ignorable have not been well explored (Andridge and Little 2010). Whole person imputation, then, has its dangers. The Census Bureau currently acknowledges that “whole person substitutions and whole person imputations are not very accurate.” (See Abowd 30(b)(6) Deposition 2018)

82. With respect to the U.S. census and counts of Latino and immigrant households, previous research has shown that whole person imputation efforts are seriously error-prone. Because family arrangements, housing styles and total household sizes vary considerably, attempts to impute the population of non-respondent households have been shown to undercount the population (Kissam 2017). First, many non-traditional housing units are simply not included in the imputation, leaving them as vacant when in reality they had tenants or dwellers. Second, the household size of missing units tends to be larger, on average, than of reported units. Reports also document differences by socioeconomic status. The end result is that even with imputation, there can still be a significant undercount of the Latino immigrant population.

83. Beyond the raw count being inaccurate, there is also evidence of misattribution of those imputed, because they rely on higher acculturated units for which there is data to make adjustments (i.e. substituting data on U.S.-born, English-speaking and college educated households when in fact missing cases are more likely to be foreign-born, Spanish-speaker, less educated households), suggesting the imputed data do not accurately describe the true population (Kissam 2017). The U.S. Government Accountability Office has itself admitted this is a problem with respect to getting a complete count of Latinos. In the 2003 report on trying to improve the Latino count, they wrote “even with the Bureau’s guidelines and training, deciding whether a house is unfit for habitation or merely unoccupied and boarded-up can be very difficult. An incorrect decision on the part of the census worker could have caused the dwelling and its occupants to get missed by the census.” U.S GAO Report (2003) (GAO-03-605).

84. By examining data from a prior 2018 survey specifically about the Census, we can

conclude that unit non-response on the 2020 census will not be at random. Households that do not respond and represent missing units, are certain to have very different characteristics and demographics than the households that do respond. In this event, it makes it nearly impossible to impute or infer the population totals or any other demographic information about missing units (e.g. missing households) because we do not have enough reliable information on “matched” or similar units. Further, it is quite likely that unit non-response in 2020 will be clustered geographically, meaning that there will be fewer available adjacent units for imputation, and that analysts will have to rely on dissimilar households for imputation, thus violating the most important assumption needed for accurate imputation. In particular, non-responders were found more likely in dense urban areas and locales with high numbers of renters. These factors are known to be related to census undercounts and make NRFU difficult and result in erroneous imputation (U.S. GAO Report, 2003).

85. It is virtually certain that the reduced self-response caused by the July 21 PM related to citizenship status will lead to a net undercount among those populations with lower rates of self-response. Previous census reports have documented that high rates of non-response to the initial questionnaire result in undercounts, and that NRFU is not always successful in converting those cases into respondents. In addition, matching household to administrative records can be an unreliable method of enumerating the household, particularly for immigrant communities. Prior census reports have also documented that errors are made in imputation and that undercounts persist even after attempted imputation. Ultimately, the worse the initial non-response is, the worse the initial undercount is, making it increasingly more difficult to convert those cases into responding cases, and increasing more difficult to impute missing units (US Census Bureau 2017b; National Research Council 2002; 2004).

86. This problem has been documented to be worse in Latino and immigrant communities where the Census admits the undercount is problematic, and that their efforts at NRFU and imputation have errors (Ericksen and Defonso 1993; O’Hare et al. 2016). One primary reason is that issues related to trust of government officials significantly hampers the NRFU process, and in

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2020 the citizenship question will greatly exacerbate issues of trust in immigrant communities (See section below “Perceptions of Trust and Confidentiality” at paragraph 96). In particular, young children in Latino households have been found to be regularly undercounted by previous census efforts and that imputation methods do not appropriately find or count this population. The best assurance for an accurate count is high response rates on the initial census request for participation, which requires a high degree of trust (O’Hare et al. 2016; Casey Foundation 2018). Previous self-reports by the Census Bureau are clear: immigrant communities are already at-risk of an undercount because of lower levels of trust of government officials, and have particular anxiety over citizenship information being shared. What’s more, these previous census reports have documented that low self-participation on round one of invitations ultimately leads to an undercount that no amount of NRFU, administrative-record matching, or imputation can correct. In 2020, the PM will only create more problems, more anxiety in immigrant communities, and less self-participation on round one. With nearly 17 million people, including 6 million citizen children, living in households with at least one person who is an undocumented immigrant (Casey Foundation 2018), there is enormous potential for a massive non-response with a newly created anxiety over citizenship status as a result of the July PM.

87. After reviewing defendants report(s), I plan to offer rebuttal opinions as requested by plaintiffs.

Executed on August 7, 2020 at Agoura Hills, CA.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, reading "Matt A. Barreto", written over a horizontal line.

Matthew A. Barreto

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August 7, 2020

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Appendix A



MATT A. BARRETO – BARRETOM@UCLA.EDU

UNIVERSITY OF CALIFORNIA, LOS ANGELES, 3345 BUNCHE HALL, LOS ANGELES CA 90095 / 909.489.2955

EMPLOYMENT:

Professor, Political Science, University of California Los Angeles (2015 – present)
Professor, Chicana/o Studies, University of California Los Angeles (2015 – present)
Co-Founder & Faculty Director, Latino Policy & Politics Initiative

Dept. Political Science, University of Washington

Professor (2014 – 2015)

Associate Professor (2009 – 2014)

Assistant Professor (2005 – 2009)

Co-Founder & Director, Washington Institute for the Study of Ethnicity and Race

Founding Director, Center for Democracy and Voting Rights, UW School of Law

Affiliated Research Centers

Latino Policy & Politics Initiative (LPPI), University of California, Los Angeles

Chicano Studies Research Center (CSRC), University of California, Los Angeles

Center for the Study of Los Angeles (CSLA), Loyola Marymount University

PERSONAL:

Born: June 6, 1976

San Juan, Puerto Rico

High School: 1994, Washburn Rural HS, Topeka, KS

EDUCATION:

Ph.D., Political Science, June 2005

University of California – Irvine

Sub Fields: American Politics / Race, Ethnicity and Politics / Methodology

Thesis: Ethnic Cues: The Role of Shared Ethnicity in Latino Political Participation

Thesis Committee: Bernard Grofman (chair), Louis DeSipio, Katherine Tate, Carole Uhlaner

Thesis Awards: *Ford Foundation Dissertation Fellowship for Minorities, 04-05*

University of California President's Dissertation Fellowship, 04-05

University of California Institute for Mexico & the U.S. Dissertation Grant, 04-05

Master of Science, Social Science, March 2003

University of California – Irvine

Bachelor of Science, Political Science, May 1998

Eastern New Mexico University, Portales, NM

Minor: English. Cumulative GPA: 3.9, *Summa Cum Laude*

PUBLICATION RECORD

Google Scholar citation indices: Cites: 3,768 h-index: 28 i10-index: 54 Years post-PhD: 15 Cites/year: 236

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43. Garcia-Castañón, Marcela, Allison Rank and Matt Barreto. 2011 “Plugged in or tuned out? Youth, Race, and Internet Usage in the 2008 Election.” *Journal of Political Marketing*. 10:2 115-138.
42. Barreto, Matt, Victoria DeFrancesco, and Jennifer Merolla. 2011 “Multiple Dimensions of Mobilization: The Impact of Direct Contact and Political Ads on Latino Turnout in the 2000 Presidential Election.” *Journal of Political Marketing*. 10:1
41. Barreto, Matt, Loren Collingwood, and Sylvia Manzano. 2010. “Measuring Latino Political Influence in National Elections” *Political Research Quarterly*. 63:4 (Dec)
40. Barreto, Matt, and Francisco Pedraza. 2009. “The Renewal and Persistence of Group Identification in American Politics.” *Electoral Studies*. 28 (Dec) 595-605
39. Barreto, Matt and Dino Bozonelos. 2009. “Democrat, Republican, or None of the Above? Religiosity and the Partisan Identification of Muslim Americans” *Politics & Religion* 2 (Aug). 1-31
38. Barreto, Matt, Sylvia Manzano, Ricardo Ramírez and Kathy Rim. 2009. “Immigrant Social Movement Participation: Understanding Involvement in the 2006 Immigration Protest Rallies.” *Urban Affairs Review*. 44: (5) 736-764
37. Grofman, Bernard and Matt Barreto. 2009. “A Reply to Zax’s (2002) Critique of Grofman and Migalski (1988): Double Equation Approaches to Ecological Inferences.” *Sociological Methods and Research*. 37 (May)
36. Barreto, Matt, Stephen Nuño and Gabriel Sanchez. 2009. “The Disproportionate Impact of Voter-ID Requirements on the Electorate – New Evidence from Indiana.” *PS: Political Science & Politics*. 42 (Jan)
35. Barreto, Matt, Luis Fraga, Sylvia Manzano, Valerie Martinez-Ebers, and Gary Segura. 2008. “Should they dance with the one who brung ‘em? Latinos and the 2008 Presidential election” *PS: Political Science & Politics*. 41 (Oct).
34. Barreto, Matt, Mara Marks and Nathan Woods. 2008. “Are All Precincts Created Equal? The Prevalence of Low- Quality Precincts in Low-Income and Minority Communities.” *Political Research Quarterly*. 62
33. Barreto, Matt. 2007. “*Si Se Puede!* Latino Candidates and the Mobilization of Latino Voters.” *American Political Science Review*. 101 (August): 425-441.
32. Barreto, Matt and David Leal. 2007. “Latinos, Military Service, and Support for Bush and Kerry in 2004.” *American Politics Research*. 35 (March): 224-251.
31. Barreto, Matt, Mara Marks and Nathan Woods. 2007. “Homeownership: Southern California’s New Political Fault Line?” *Urban Affairs Review*. 42 (January). 315-341.
30. Barreto, Matt, Matt Streb, Fernando Guerra, and Mara Marks. 2006. “Do Absentee Voters Differ From Polling Place Voters? New Evidence From California.” *Public Opinion Quarterly*. 70 (Summer): 224-34.
29. Barreto, Matt, Fernando Guerra, Mara Marks, Stephen Nuño, and Nathan Woods. 2006. “Controversies in Exit Polling: Implementing a racially stratified homogenous precinct approach.” *PS: Political Science & Politics*. 39 (July) 477-83.
28. Barreto, Matt, Ricardo Ramírez, and Nathan Woods. 2005. “Are Naturalized Voters Driving the California Latino Electorate? Measuring the Impact of IRCA Citizens on Latino Voting.” *Social Science Quarterly*. 86 (December): 792-811.
27. Barreto, Matt. 2005. “Latino Immigrants at the Polls: Foreign-born Voter Turnout in the 2002 Election.” *Political Research Quarterly*. 58 (March): 79-86.
26. Barreto, Matt, Mario Villarreal and Nathan Woods. 2005. “Metropolitan Latino Political Behavior: Turnout and Candidate Preference in Los Angeles.” *Journal of Urban Affairs*. 27(February): 71-91.
25. Leal, David, Matt Barreto, Jongho Lee and Rodolfo de la Garza. 2005. “The Latino Vote in the 2004 Election.” *PS: Political Science & Politics*. 38 (January): 41-49.
24. Marks, Mara, Matt Barreto and Nathan Woods. 2004. “Harmony and Bliss in LA? Race and Racial Attitudes a Decade After the 1992 Riots.” *Urban Affairs Review*. 40 (September): 3-18.

23. Barreto, Matt, Gary Segura and Nathan Woods. 2004. "The Effects of Overlapping Majority-Minority Districts on Latino Turnout." *American Political Science Review*. 98 (February): 65-75.
22. Barreto, Matt and Ricardo Ramírez. 2004. "Minority Participation and the California Recall: Latino, Black, and Asian Voting Trends 1990 – 2003." *PS: Political Science & Politics*. 37 (January): 11-14.
21. Barreto, Matt and José Muñoz. 2003. "Reexamining the 'politics of in-between': political participation among Mexican immigrants in the United States." *Hispanic Journal of Behavioral Sciences*. 25 (November): 427-447.
20. Barreto, Matt. 2003. "National Origin (Mis)Identification Among Latinos in the 2000 Census: The Growth of the "Other Hispanic or Latino" Category." *Harvard Journal of Hispanic Policy*. 15 (June): 39-63.

Edited Volume Book Chapters

19. Barreto, Matt and Gary Segura. 2020. "Latino Reaction and Resistance to Trump: Lessons learned from Pete Wilson and 1994." In Raul Hinojosa and Edward Telles (eds.) Equitable Globalization: Expanding Bridges, Overcoming Walls. Oakland: University of California Press.
18. Barreto, Matt, Albert Morales and Gary Segura. 2019. "The Brown Tide and the Blue Wave in 2018" In Larry Sabato, Kyle Kondik, Geoffrey Skelley (eds.) The Blue Wave. New York: Rowman & Littlefield.
17. Gutierrez, Angela, Angela Ocampo and Matt Barreto. 2018. "Obama's Latino Legacy: From Unknown to Never Forgotten" In Andrew Rudalevige and Bert Rockman (eds.) The Obama Legacy. Lawrence, KS: University of Kansas Press.
16. Barreto, Matt, Thomas Schaller and Gary Segura. 2017. "Latinos and the 2016 Election: How Trump Lost Latinos on Day 1" In Larry Sabato, Kyle Kondik, Geoffrey Skelley (eds.) Trumped: The 2016 Election that Broke All the Rules. New York: Rowman & Littlefield.
15. Walker, Hannah, Gabriel Sanchez, Stephen Nuño, Matt Barreto 2017. "Race and the Right to Vote: The Modern Barrier of Voter ID Laws" In Todd Donovan (ed.) Election Rules and Reforms. New York: Rowman & Littlefield.
14. Barreto, Matt and Christopher Parker. 2015. "Public Opinion and Reactionary Movements: From the Klan to the Tea Party" In Adam Berinsky (ed.) New Directions in Public Opinion. 2nd edition. New York: Routledge Press.
13. Barreto, Matt and Gabriel Sanchez. 2014. "A 'Southern Exception' in Black-Latino Attitudes?." In Anthony Affigne, Evelyn Hu-Dehart, Marion Orr (eds.) Latino Politics en Ciencia Política. New York: New York University Press.
12. Barreto, Matt, Ben Gonzalez, and Gabriel Sanchez. 2014. "Rainbow Coalition in the Golden State? Exposing Myths, Uncovering New Realities in Latino Attitudes Towards Blacks." In Josh Kun and Laura Pulido (eds.) Black and Brown in Los Angeles: Beyond Conflict and Coalition. Berkeley, CA: University of California Press.
11. Barreto, Matt, Loren Collingwood, Ben Gonzalez, and Christopher Parker. 2011. "Tea Party Politics in a Blue State: Dino Rossi and the 2010 Washington Senate Election" In William Miller and Jeremy Walling (eds.) Stuck in the Middle to Lose: Tea Party Effects on 2010 U.S. Senate Elections. Rowman & Littlefield Publishing Group.
10. Jason Morin, Gabriel Sanchez and Matt Barreto. 2011. "Perceptions of Competition Between Latinos and Blacks: The Development of a Relative Measure of Inter-Group Competition." In Edward Telles, Gaspar Rivera-Salgado and Mark Sawyer (eds.) Just Neighbors? Research on African American and Latino Relations in the US. New York: Russell Sage Foundation.
9. Grofman, Bernard, Frank Wayman and Matt Barreto. 2009. "Rethinking partisanship: Some thoughts on a unified theory." In John Bartle and Paolo Bellucci (eds.) Political Parties and Partisanship: Social identity and individual attitudes. New York: Routledge Press.
8. Barreto, Matt, Ricardo Ramírez, Luis Fraga and Fernando Guerra. 2009. "Why California Matters: How California Latinos Influence the Presidential Election." In Rodolfo de la Garza, Louis DeSipio and David Leal (eds.) Beyond the Barrio: Latinos in the 2004 Elections. South Bend, ID: University of Notre Dame Press.

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7. Francisco Pedraza and Matt Barreto. 2008. "Exit Polls and Ethnic Diversity: How to Improve Estimates and Reduce Bias Among Minority Voters." In Wendy Alvey and Fritz Scheuren (eds.) Elections and Exit Polling. Hoboken, NJ: Wiley and Sons.
6. Adrian Pantoja, Matt Barreto and Richard Anderson. 2008. "Politics *y la Iglesia*: Attitudes Toward the Role of Religion in Politics Among Latino Catholics" In Michael Genovese, Kristin Hayer and Mark J. Rozell (eds.) Catholics and Politics. Washington, D.C: Georgetown University Press..
5. Barreto, Matt. 2007. "The Role of Latino Candidates in Mobilizing Latino Voters: Revisiting Latino Vote Choice." In Rodolfo Espino, David Leal and Kenneth Meier (eds.) Latino Politics: Identity, Mobilization, and Representation. Charlottesville: University of Virginia Press.
4. Abosch, Yishaiya, Matt Barreto and Nathan Woods. 2007. "An Assessment of Racially Polarized Voting For and Against Latinos Candidates in California." In Ana Henderson (ed.) Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation, and Power. Berkeley, CA: UC Berkeley Public Policy Press.
3. Barreto, Matt and Ricardo Ramirez. 2005. "The Race Card and California Politics: Minority Voters and Racial Cues in the 2003 Recall Election." In Shaun Bowler and Bruce Cain (eds.) Clicker Politics: Essays on the California Recall. Englewood-Cliffs: Prentice-Hall.
2. Barreto, Matt and Nathan Woods. 2005. "The Anti-Latino Political Context and its Impact on GOP Detachment and Increasing Latino Voter Turnout in Los Angeles County." In Gary Segura and Shawn Bowler (eds.) Diversity in Democracy: Minority Representation in the United States. Charlottesville: University of Virginia Press.
1. Pachon, Harry, Matt Barreto and Frances Marquez. 2004. "Latino Politics Comes of Age in the Golden State." In Rodolfo de la Garza and Louis DeSipio (eds.) Muted Voices: Latino Politics in the 2000 Election. New York: Rowman & Littlefield

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RESEARCH AWARDS AND FELLOWSHIPS

Aug 2018	Provost Initiative for Voting Rights Research UCLA Latino Policy & Politics Initiative [With Chad Dunn]	\$90,000 – 24 months
April 2018	Democracy Fund & Wellspring Philanthropic UCLA Latino Policy & Politics Initiative [With Sonja Diaz]	\$200,000 – 18 months
March 2018	AltaMed California UCLA Latino Policy & Politics Initiative [With Sonja Diaz]	\$250,000 – 12 months
Dec 2017	California Community Foundation UCLA Latino Policy & Politics Initiative [With Sonja Diaz]	\$100,000 – 12 months
July 2013	Ford Foundation UW Center for Democracy and Voting Rights	\$200,000 – 12 months
April 2012	American Values Institute [With Ben Gonzalez] Racial Narratives and Public Response to Racialized Moments	\$40,000 – 3 months
Jan 2012	American Civil Liberties Union Foundation [With Gabriel Sanchez] Voter Identification Laws in Wisconsin	\$60,000 – 6 months
June 2011	State of California Citizens Redistricting Commission An Analysis of Racial Bloc Voting in California Elections	\$60,000 – 3 months
Apr 2011	Social Science Research Council (SSRC) [With Karam Dana] Muslim and American? A national conference on the political and social incorporation of American Muslims	\$50,000 – 18 months
Jan 2011	impreMedia [With Gary Segura] Latino public opinion tracking poll of voter attitudes in 2011	\$30,000 – 6 months
Oct 2010	National Council of La Raza (NCLR) [With Gary Segura] Measuring Latino Influence in the 2010 Elections	\$128,000 – 6 months
Oct 2010	We Are America Alliance (WAAA) [With Gary Segura] Latino and Asian American Immigrant Community Voter Study	\$79,000 – 3 months
May 2010	National Council of La Raza (NCLR) [With Gary Segura] A Study of Latino Views Towards Arizona SB1070	\$25,000 – 3 months
Apr 2010	Social Science Research Council (SSRC) [With Karam Dana] Muslim and American? The influence of religiosity in Muslim political incorporation	\$50,000 – 18 months
Oct 2009	American Association of Retired Persons (AARP) [With Gary Segura] Health care reform and Latino public opinion	\$25,000 – 3 months
Nov 2008	impreMedia & National Association of Latino Elected Officials (NALEO) [With Gary Segura] 2008 National Latino Post-Election Survey, Presidential Election	\$46,000 – 3 months
July 2008	National Association of Latino Elected Officials (NALEO) [With Gary Segura] Latino voter outreach survey – an evaluation of Obama and McCain	\$72,000 – 3 months
June 2008	The Pew Charitable Trusts, Make Voting Work Project [with Karin MacDonald and Bonnie Glaser] Evaluating Online Voter Registration (OVR) Systems in Arizona and Washington	\$220,000 – 10 months

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RESEARCH GRANTS AND FELLOWSHIPS CONTINUED...

April 2008	National Association of Latino Elected Officials (NALEO) & National Council of La Raza (NCLR), 2008 Latino voter messaging survey	\$95,000 – 6 months
Dec. 2007	Research Royalty Fund, University of Washington 2008 Latino national post-election survey	\$39,000 – 12 months
Oct. 2007	Brenan Center for Justice, New York University [with Stephen Nuño and Gabriel Sanchez] Indiana Voter Identification Study	\$40,000 – 6 months
June 2007	National Science Foundation, Political Science Division [with Gary Segura] American National Election Study – Spanish translation and Latino oversample	\$750,000 – 24 months
Oct. 2006	University of Washington, Vice Provost for Undergraduate Education Absentee voter study during the November 2006 election in King County, WA	\$12,000 – 6 months
Mar. 2006	Latino Policy Coalition Public Opinion Research Grant [with Gary Segura] Awarded to the Washington Institute for the Study of Ethnicity and Race	\$40,000 – 18 months
2005 – 2006	University of Washington, Institute for Ethnic Studies, Research Grant	\$8,000 – 12 months
Mar. 2005	Thomas and Dorothy Leavey Foundation Grant [with Fernando Guerra] Conduct Exit Poll during Los Angeles Mayoral Election, Mar. 8 & May 17, 2005 Awarded to the Center for the Study of Los Angeles	\$30,000 – 6 months
2004 – 2005	Ford Foundation Dissertation Fellowship for Minorities	\$21,000 – 12 months
2004 – 2005	University of California President's Dissertation Fellowship	\$14,700 – 9 months
2004 – 2005	University of California Mexico-US (UC MEXUS) Dissertation Grant	\$12,000 – 9 months
Apr – 2004	UC Regents pre-dissertation fellowship, University of California, Irvine,	\$4,700 – 3 months
2003 – 2004	Thomas and Dorothy Leavey Foundation Grant [with Fernando Guerra] Awarded to the Center for the Study of Los Angeles	\$20,000 – 12 months
2002 – 2003	Ford Foundation Grant on Institutional Inequality [with Harry Pachon] Conducted longitudinal study of Prop 209 on Latino and Black college admittance Awarded to Tomás Rivera Policy Institute	\$150,000 – 12 months
2002 – 2003	Haynes Foundation Grant on Economic Development [with Louis Tornatzky] Knowledge Economy in the Inland Empire region of Southern California Awarded to Tomás Rivera Policy Institute	\$150,000 – 18 months
2001 – 2002	William F Podlich Graduate Fellowship, Center for the Study of Democracy, University of California, Irvine	\$24,000 – 9 months

RESEARCH UNDER REVIEW/WORKING PAPERS:

Barreto, Matt, and Christopher Parker. The Great White Hope: Donald Trump, Race, and the Crisis of American Politics. Under Contract, University of Chicago Press, *expected 2020*

Barreto, Matt and Christopher Parker. "The Great White Hope: Existential Threat and Demographic Anxiety in the Age of Trump." Revise and Resubmit.

Barreto, Matt, Natalie Masuoka, Gabe Sanchez and Stephen El-Khatib. "Religiosity, Discrimination and Group Identity Among Muslim Americans" Revise and Resubmit

Barreto, Matt, Gabe Sanchez and Barbara Gomez. "Latinos, Blacks, and Black Latinos: Competition, Cooperation, or Indifference?" Revise and Resubmit

Walker, Hannah, Matt Barreto, Stephen Nuño, and Gabriel Sanchez. "A comprehensive review of access to valid photo ID and the right to vote in America" [Under review]

Gutierrez, Angela, Angela Ocampo, Matt Barreto and Gary Segura. "From Proposition 187 to Donald Trump: New Evidence that Anti-Immigrant Threat Mobilizes Latino Voters." [Under Review]

Collins, Jonathan, Matt Barreto, Gregory Leslie and Tye Rush. "Racial Efficacy and Voter Enthusiasm Among African Americans Post-Obama" [Under Review]

Oskooii, Kassra, Matt Barreto, and Karam Dana. "No Sharia, No Mosque: Orientalist Notions of Islam and Intolerance Toward Muslims in the United States" [Under Review]

Barreto, Matt, David Redlawsk and Caroline Tolbert. "Framing Barack Obama: Muslim, Christian or Black?" [Working paper]

CONSULTING EXPERT:

- North Carolina, 2019, Expert for Plaintiffs in North Carolina voter ID lawsuit, NAACP v. Cooper
- New York, 2018, Expert for Plaintiffs in Census Citizenship Lawsuit, New York v. U.S. Dept of Commerce (also an expert related cases: *California v. Ross* and *Kravitz v. Dept of Commerce*)
- East Ramapo CSD, 2018, Expert for Plaintiffs in Section 2 VRA lawsuit, assessed polarized voting
- Dallas County, TX, 2017, Expert for Defense in Section 2 VRA lawsuit, Harding v. Dallas County
- Kansas, 2016, Expert for Plaintiffs in Kansas voter registration lawsuit, Fish v. Kobach 2:16-cv-02105-JAR
- North Dakota, 2015, Expert for Plaintiffs in North Dakota voter ID lawsuit, Brakebill v. Jaeger 1:16-cv-00008-CSM
- Alabama, 2015, Expert for Plaintiffs in Alabama voter ID lawsuit, Birmingham Ministries v. State of Alabama 2:15-cv-02193-LSC
- Texas, 2014, Testifying Expert for Plaintiffs in Texas voter ID lawsuit, Veasey v. Perry 2:13-cv-00193
- Galveston County, TX Redistricting, 2013, Expert report for Dunn & Brazil, LLC, Demographic analysis, vote dilution analysis, and racially polarized voting analysis for Section 2 lawsuit Galveston County JP/Constable districting
- Pasadena, TX Redistricting, 2013, Expert report for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, and racially polarized voting analysis for Section 2 lawsuit within Pasadena School District
- Harris County, TX Redistricting, 2011, Testifying Expert for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, and racially polarized voting analysis for Section 2 lawsuit within Harris County
- Pennsylvania, 2012, Testifying Expert for ACLU Foundation of Pennsylvania in voter ID lawsuit, Applewhite v. Commonwealth of Pennsylvania No. 330 MD 2012
- Milwaukee County, WI, 2012, Testifying Expert for ACLU Foundation of Wisconsin in voter ID lawsuit, Frank v. Walker 2:11-cv-01128(LA)
- Orange County, FL, 2012, Consulting Expert for Latino Justice/PRLDEF, Racially polarized voting analysis in Orange County, Florida
- Anaheim, CA, 2012, Consulting Expert for Goldstein, Demchak & Baller Legal, Racially polarized voting analysis for CVRA redistricting case Anaheim, CA
- Los Angeles County, CA, 2011, Consulting Expert for Goldstein, Demchak & Baller Legal, Racially polarized voting analysis for three redistricting cases in L.A.: Cerritos Community College Board; ABC Unified Schools; City of West Covina
- Harris County, TX Redistricting, 2011, Consulting Expert for Dunn & Brazil, LLC, Demographic analysis, voter registration analysis, for Section 5 objection within Harris County
- Monterey County, CA Redistricting, 2011, Consulting Expert for City of Salinas, Demographic analysis, creation of alternative maps, and racially polarized Voting analysis within Monterey County
- Los Angeles County Redistricting Commission, 2011, Consulting Expert for Supervisor Gloria Molina, Racially Polarized voting analysis within L.A. County
- State of California, Citizens Redistricting Commission, 2011, Consulting Expert, Racially Polarized Voting analysis throughout state of California
- Asian Pacific American Legal Center, 2011, Racially Polarized Voting analysis of Asian American candidates in Los Angeles for APALC redistricting brief
- Lawyers' Committee for Civil Rights and Arnold & Porter, LLP, 2010-12, Racially Polarized Voting analysis of Latino and Asian candidates in San Mateo County, concerning San Mateo County Board of Supervisors
- ACLU of Washington, 2010-11, preliminary analysis of Latino population patterns in Yakima, Washington, to assess ability to draw majority Latino council districts

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- State of Washington, 2010-11, provided expert analysis and research for *State of Washington v. MacLean* in case regarding election misconduct and voting patterns
- Los Angeles County Chicano Employees Association, 2008-10, Racially Polarized Voting analysis of Latino candidates in L.A. County for VRA case, concerning L.A. County Board of Supervisors redistricting (6 reports issued 08-10)
- Brennan Center for Justice and Fried, Frank, Harris, Shriver & Jacobson LLP, 2009-10 Amicus Brief submitted to Indiana Supreme Court, *League of Women Voters v. Rokita*, regarding access to voter identification among minority and lower resource citizens
- State of New Mexico, consulting expert for state in *AAPD v. New Mexico*, 2008,
- District of Columbia Public Schools (DCPS), statistical consultant for survey methodology of opinion survey of parents in DCPS district (for pending suit), 2008,
- Brennan Center for Justice, 2007-08, Amicus Brief submitted to U.S. Supreme Court, and cited in Supreme Court decision, *Crawford v. Marion County*, regarding access to voter identification among minority and lower-resource citizens
- Los Angeles County Chicano Employees Association, 2002-07, Racially Polarized Voting analysis of Latino candidates in L.A. County for VRA case, concerning L.A. County Board of Supervisors redistricting (12 + reports issued during 5 years)
- Monterrey County School Board, 2007, demographic and population analysis for VRA case
- Sweetwater Union School District, 2007-08, Racially Polarized Voting analysis, and demographic and population analysis for VRA case
- Mexican American Legal Defense Fund, 2007-08, Racially Polarized Voting analysis for Latino candidates, for City of Whittier city council races, for VRA case
- ACLU of Washington, 2008, preliminary analysis of voting patterns in Eastern Washington, related to electability of Latino candidates
- Nielsen Media Research, 2005-08, with Willie C. Velasquez Institute, assessed the methodology of Latino household recruitment in Nielsen sample

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**TEACHING
EXPERIENCE:**

UCLA & UW

2005 – Present

- Minority Political Behavior (Grad Seminar)
- Politics of Immigration in the U.S. (Grad Seminar)
- Introduction to Empirical/Regression Analysis (Grad Seminar)
- Advanced Empirical/Regression Analysis (Grad Seminar)
- Qualitative Research Methods (Grad Seminar)
- Political Participation & Elections (Grad Seminar)
- The Voting Rights Act (Law School seminar)
- Research methodology II (Law School Ph.D. program seminar)
- U.S. Latino Politics
- Racial and Ethnic Politics in the U.S.
- Politics of Immigration in the U.S.
- Introduction to American Government
- Public Opinion Research
- Campaigns and Elections in the U.S.
- Presidential Primary Elections

Teaching Assistant

University of California, Irvine

2002 – 2005

- Intro to American Politics (K. Tate)
- Intro to Minority Politics (L. DeSipio)
Recognized as Outstanding Teaching Assistant, Winter 2002
- Statistics and Research Methods (B. Grofman)
Recognized as Outstanding Teaching Assistant, Winter 2003

**BOARD &
RESEARCH
APPOINTMENTS****Founding Partner**

Latino Decisions

2007 – Present**Senior Research Fellow**

Center for the Study of Los Angeles, Loyola Marymount University

2002 – Present**Board of Advisors**

American National Election Study, University of Michigan

2010 – Present**Advisory Board**States of Change: Demographics & Democracy Project
*CAP, AEI, Brookings Collaborative Project*2014 – Present**Research Advisor**

American Values Institute / Perception Institute

2009 – 2014**Expert Consultant**

State of California, Citizens Redistricting Committee

2011 – 2012**Senior Scholar & Advisory Council**

Latino Policy Coalition, San Francisco, CA

2006 – 2008**Board of Directors**

CASA Latina, Seattle, WA

2006 – 2009**Faculty Research Scholar**

Tomás Rivera Policy Institute, University of Southern California

1999 – 2009

PHD STUDENTS

UCLA & UW

Committee Chair or Co-Chair

- Francisco I. Pedraza – University of California, Riverside (UW Ph.D. 2009)
- Loren Collingwood – University of California, Riverside (UW Ph.D. 2012)
- Betsy Cooper – Public Religion Research Institute, Washington DC (UW Ph.D. 2014)
- Sergio I. Garcia-Rios – Cornell University (UW Ph.D. 2015)
- Hannah Walker – Rutgers University (UW Ph.D. 2016)
- Kassra Oskooii – University of Delaware (UW Ph.D. 2016)
- Angela Ocampo – Arizona State University (UCLA Ph.D. 2018)
- Ayobami Lanijonu – University of Toronto (UCLA Ph.D. 2018)
- Adria Tinin – *in progress* (UCLA ABD)
- Bang Quan Zheng – *in progress* (UCLA ABD)
- Bryan Wilcox-Archuleta – *in progress* (UCLA ABD)
- Tyler Reny – *in progress* (UCLA ABD)
- Angie Gutierrez – *in progress* (UCLA)
- Shakari Byerly-Nelson – *in progress* (UCLA)
- Vivien Leung – *in progress* (UCLA)

Committee Member

- Jessica Stewart – Emory University (UCLA Ph.D. 2018)
- Jonathan Collins – Brown University (UCLA Ph.D., 2017)
- Lisa Sanchez – University of Arizona (UNM Ph.D., 2016)
- Nazita Lajevardi – Michigan State University (UC San Diego Ph.D., 2016)
- Kiku Huckle – Pace University (UW Ph.D. 2016)
- Patrick Rock (Social Psychology) – (UCLA Ph.D. 2016)
- Raynee Gutting – Loyola Marymount University (Stony Brook Ph.D. 2015)
- Christopher Towler – Sacramento State University (UW Ph.D. 2014)
- Benjamin F. Gonzalez – San Diego State University (UW Ph.D. 2014)
- Marcela Garcia-Castañon – San Francisco State University (UW Ph.D. 2013)
- Justin Reedy (Communications) – University of Oklahoma (UW Ph.D. 2012)
- Dino Bozonelos – Cal State San Marcos (UC Riverside Ph.D. 2012)
- Brandon Bosch – University of Nebraska (UW Ph.D. 2012)
- Karam Dana (Middle East Studies) – UW Bothell (UW Ph.D. 2010)
- Joy Wilke – *in progress* (UCLA ABD)
- Erik Hanson – *in progress* (UCLA)
- Christine Slaughter – *in progress* (UCLA)
- Lauren Goldstein (Social Psychology) – *in progress* (UCLA)
- Barbara Gomez-Aguinaga – University of Nebraska (UNM Ph.D., *in progress*)



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

MEMORANDUM FOR: Nancy Morales Gonzalez
Acting Deputy Chief of Staff
Social Security Administration

From: Ron S. Jarmin Deputy
Director and Chief Operating Officer
Deputy Director

Subject: Request for Authorized Use as Amendment #1 to September 11,
2019, Agreement No. 2064-20-PAY-02.000, "Memorandum of
Understanding Between the Social Security Administration and the
U.S. Census Bureau"

Thank you for your continuing support to our data acquisition efforts pursuant to the September 11, 2019, Agreement No. 2064-20-PAY-02.000, "Memorandum of Understanding Memorandum of Understanding Between the Social Security Administration and the U.S. Census Bureau: The SSA Master Beneficiary and Supplemental Security Income Record Files." to support our work under Executive Order 13880 to create estimates of citizenship status. I write to request that all Social Security Administration data acquired under Agreement No. 2064-20-PAY-02.000 be added as an approved use for a Census Bureau project responding to the *Presidential Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, dated July 21, 2020. The Census Bureau's project description in response to this Memorandum is attached.

SSA's support to the citizenship project consisted of extracting and transferring to the Census Bureau two deliveries of data drawn from SSA component databases. Both deliveries have been received and we have since been analyzing those data. Based on that analysis, and the later introduction of the July 21, 2020, Presidential Memorandum, we recognized the value of these data to the Presidential Memorandum apportionment project.

Thank you in advance for your assistance with this request. If you have questions or need additional information about this project, please contact Mike Berning, Assistant Division Chief for Data Acquisition and Curation, Economic Reimbursable Surveys Division, at 301-763-2028 or [[HYPERLINK "mailto:michael.a.berning@census.gov"](mailto:michael.a.berning@census.gov)].

If SSA is amenable to authorizing the use of SSA data to support the July 21, 2020 Presidential Memorandum, your signature below will signify concurrence. This will constitute Amendment #1 to the Agreement.

APPROVALS

On behalf of the Census Bureau, the undersigned individual hereby attests that he or she is authorized to enter into this Amendment and agrees to all the terms specified herein.

Ron S. Jarmin
Deputy Director and Chief Operating Officer
U.S. Census Bureau

(Date)

On behalf of the Social Security Administration, the undersigned individual hereby attests that he or she is authorized to enter into this Amendment and agrees to all the terms specified herein.

Nancy Morales Gonzalez
Acting Deputy Chief of Staff
Social Security Administration

(Date)

Attachment:

Attachment – Census Bureau Project Description

Census Bureau Project to Support the July 21, 2020 *Presidential Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census*

Under the July 21, 2020, Presidential Memorandum, the Secretary of Commerce will produce a report consistent with the policy stated therein. The Census Bureau will produce a statistical product requested by the Secretary of Commerce, who was the addressee of the Presidential Memorandum, for transmittal of the report to the President. This product will include state-level information about non-citizens who are illegal aliens and enumerated in the 2020 Census.

To complete this task, the Census Bureau will build upon its work supporting Executive Order 13880, “Collecting Information about Citizenship Status in Connection with the Decennial Census”. In support of this Executive Order (E.O.), the Census Bureau is using administrative records from multiple agencies to produce estimates of citizenship.

To support the Secretary’s transmittal of the report under the Presidential Memorandum, the Census Bureau is expanding the E.O. work using selected U. S. Department of Homeland Security administrative records in combination with selected records from other agencies and data from the 2020 Census. These include Enforcement and Removal Operations (ICE), Deferred Action for Childhood Arrival (CIS), Special Immigrant Juveniles (CIS), Lawful Permanent Resident denials (CIS), Arrival and Departure Information Systems (CBP), Incident Management Analysis Reporting System (Department of the Interior), and Law Enforcement Management Information System (Department of the Interior).

Using those records in combination with other data already obtained regarding citizenship status, the Census Bureau will further refine the non-citizen category into legal, illegal, or unknown. The planned output of this project will be state-level tabulations.



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

MEMORANDUM FOR: Katherine N. Bent RN, Ph.D
Associate Commissioner Office of Research Demonstration, and
Employment Support (ORDES)
Associate Commissioner (Acting) Office of Research, Evaluation
and Statistics (ORES)
Social Security Administration

From: Ron S. Jarmin Deputy
Director and Chief Operating Officer
Deputy Director

Subject: Request for Authorized Use as Amendment #2 to September 27,
2019, Agreement No. RASSNV20395 (2064-19-PAY-010.000)
"Reimbursable Memorandum of Understanding Between The
Social Security Administration and the U.S. Census Bureau: The
Social Security Administration 100% Numident File and Quarterly
Updates"

Thank you for your continuing support to our data acquisition efforts pursuant to the September 27, 2019, Agreement No. RASSNV20395 (2064-19-PAY-010.000), "Reimbursable Memorandum of Understanding Between The Social Security Administration (SSA) and The U.S. Census Bureau: The SSA 100% Numident File and Quarterly Updates". That Agreement, and modification 1 to that Agreement (2064-19-PAY-010.001), signed June 19, 2019, supported our work under Executive Order 13880 to create estimates of citizenship status. I write to request that all Social Security Administration data acquired under Agreement No. RASSNV20395 (2064-19-PAY-010.000 and 2064-19-PAY-010.001), be added as an approved use for a Census Bureau project responding to the *Presidential Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, dated July 21, 2020. The Census Bureau's project description in response to this Memorandum is attached.

SSA's support to the citizenship project consisted of extracting and transferring to the Census Bureau two deliveries of data drawn from SSA component databases. Both deliveries have been received and we have since been analyzing those data. Based on that analysis, and the later introduction of the July 21, 2020, Presidential Memorandum, we recognized the value of these data to the Presidential Memorandum apportionment project.

Thank you in advance for your assistance with this request. If you have questions or need additional information about this project, please contact Mike Berning, Assistant Division Chief

for Data Acquisition and Curation, Economic Reimbursable Surveys Division, at 301-763-2028 or [[HYPERLINK "mailto:michael.a.berning@census.gov"](mailto:michael.a.berning@census.gov)].

If SSA is amenable to authorizing the use of SSA data to support the July 21, 2020 Presidential Memorandum, your signature below will signify concurrence. This will constitute Amendment #2 to the Agreement.

APPROVALS

On behalf of the Census Bureau, the undersigned individual hereby attests that he or she is authorized to enter into this Amendment and agrees to all the terms specified herein.

Ron S. Jarmin
Deputy Director and Chief Operating Officer
U.S. Census Bureau

(Date)

On behalf of the Social Security Administration, the undersigned individual hereby attests that he or she is authorized to enter into this Amendment and agrees to all the terms specified herein.

Katherine N. Bent RN, Ph.D
Associate Commissioner Office of Research Demonstration, and
Employment Support (ORDES)
Associate Commissioner (Acting) Office of Research, Evaluation
and Statistics (ORES)
Social Security Administration

(Date)

Attachment:

Attachment – Census Bureau Project Description

Census Bureau Project to Support the July 21, 2020 Presidential Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census

Under the July 21, 2020, Presidential Memorandum, the Secretary of Commerce will produce a report consistent with the policy stated therein. The Census Bureau will produce a statistical product requested by the Secretary of Commerce, who was the addressee of the Presidential Memorandum, for transmittal of the report to the President. This product will include state-level information about non-citizens who are illegal aliens and enumerated in the 2020 Census.

To complete this task, the Census Bureau will build upon its work supporting Executive Order 13880, “Collecting Information about Citizenship Status in Connection with the Decennial Census”. In support of this Executive Order (E.O.), the Census Bureau is using administrative records from multiple agencies to produce estimates of citizenship.

To support the Secretary’s transmittal of the report under the Presidential Memorandum, the Census Bureau is expanding the E.O. work using selected U. S. Department of Homeland Security administrative records in combination with selected records from other agencies and data from the 2020 Census. These include Enforcement and Removal Operations (ICE), Deferred Action for Childhood Arrival (CIS), Special Immigrant Juveniles (CIS), Lawful Permanent Resident denials (CIS), Arrival and Departure Information Systems (CBP), Incident Management Analysis Reporting System (Department of the Interior), and Law Enforcement Management Information System (Department of the Interior).

Using those records in combination with other data already obtained regarding citizenship status, the Census Bureau will further refine the non-citizen category into legal, illegal, or unknown. The planned output of this project will be state-level tabulations.



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

MEMORANDUM FOR: Andrew E. Shatto
Deputy Director
Office of Enterprise Data and Analytics
Centers for Medicare and Medicaid Services

From: Ron S. Jarmin
Deputy Director and Chief Operating Officer
Deputy Director

Subject: Request for Authorized Use as Amendment #1 to January 30, 2020, Agreement No. 2064-20-PAY-03.000, "Interagency Agreement Between the U.S. Department of Commerce, U.S. Census Bureau and the U.S. Department of Health and Human Services, the Centers for Medicare & Medicaid Services"

Thank you for your continuing support to our data acquisition efforts pursuant to the January 30, 2020, Agreement No. 2064-20-PAY-03.000, "Interagency Agreement Between the U.S. Department of Commerce, the U.S. Census Bureau, the U.S. Department of Health and Human Services, and the Centers for Medicare & Medicaid Services (CMS)" to support our work under Executive Order 13880 to create estimates of citizenship status. I write to request that all Centers for Medicare and Medicaid data acquired under Agreement No. 2064-20-PAY-03.000 be added as an approved use for a Census Bureau project responding to the *Presidential Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census*, dated July 21, 2020. The Census Bureau's project description in response to this Memorandum is attached.

CMS's support to the citizenship project consisted of extracting and transferring to the Census Bureau two deliveries of data drawn from CMS component databases. Both deliveries have been received and we have since been analyzing those data. Based on that analysis, and the later introduction of the July 21, 2020, Presidential Memorandum, we recognized the value of these data to the Presidential Memorandum apportionment project.

Thank you in advance for your assistance with this request. If you have questions or need additional information about this project, please contact Mike Berning, Assistant Division Chief for Data Acquisition and Curation, Economic Reimbursable Surveys Division, at 301-763-2028 or [[HYPERLINK "mailto:michael.a.berning@census.gov"](mailto:michael.a.berning@census.gov)].

If CMS is amenable to authorizing the use of CMS data to support the July 21, 2020, Presidential Memorandum, your signature below will signify concurrence. This will constitute Amendment #1 to the Agreement.

APPROVALS

On behalf of the Census Bureau, the undersigned individual hereby attests that he or she is authorized to enter into this Amendment and agrees to all the terms specified herein.

Ron S. Jarmin
Deputy Director and Chief Operating Officer
U.S. Census Bureau

(Date)

On behalf of the Centers for Medicare and Medicaid, the undersigned individual hereby attests that he or she is authorized to enter into this Amendment and agrees to all the terms specified herein.

Andrew E. Shatto
Deputy Director
Office of Enterprise Data and Analytics
Centers for Medicare and Medicaid Services

(Date)

Attachment:

Attachment – Census Bureau Project Description

Census Bureau Project to Support the July 21, 2020 *Presidential Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census*

Under the July 21, 2020, Presidential Memorandum, the Secretary of Commerce will produce a report consistent with the policy stated therein. The Census Bureau will produce a statistical product requested by the Secretary of Commerce, who was the addressee of the Presidential Memorandum, for transmittal of the report to the President. This product will include state-level information about non-citizens who are illegal aliens and enumerated in the 2020 Census.

To complete this task, the Census Bureau will build upon its work supporting Executive Order 13880, “Collecting Information about Citizenship Status in Connection with the Decennial Census”. In support of this Executive Order (E.O.), the Census Bureau is using administrative records from multiple agencies to produce estimates of citizenship.

To support the Secretary’s transmittal of the report under the Presidential Memorandum, the Census Bureau is expanding the E.O. work using selected U.S. Department of Homeland Security administrative records in combination with selected records from other agencies and data from the 2020 Census. These include Enforcement and Removal Operations (ICE), Deferred Action for Childhood Arrival (CIS), Special Immigrant Juveniles (CIS), Lawful Permanent Resident denials (CIS), Arrival and Departure Information Systems (CBP), Incident Management Analysis Reporting System (Department of the Interior), and Law Enforcement Management Information System (Department of the Interior).

Using those records in combination with other data already obtained regarding citizenship status, the Census Bureau will further refine the non-citizen category into legal, illegal, or unknown. The planned output of this project will be state-level tabulations.



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

MEMORANDUM FOR: Jeffrey Anderson

Director

Department of Justice, Bureau of Justice Statistics

From: Ron S. Jarmin
Deputy Director
and Chief Operating Officer

Subject: Request for Authorized Use as Amendment #1 to March 23, 2020,
Agreement No. 2064-FY20-NFE-0341.000, "Memorandum of
Understanding Between the Bureau of Justice Statistics and the U.S. Bureau
of the Census"

Thank you for your continuing support to our data acquisition efforts pursuant to the March 23, 2020, Agreement No. 2064-FY20-NFE-0341.000, "Memorandum of Understanding Between the Bureau of Justice Statistics and the U.S. Bureau of the Census" to support our work under Executive Order 13880 to create estimates of citizenship status. I write to request that all U.S. Department of Justice data acquired under Agreement No. 2064-FY20-NFE-0341.000 be added as an approved use for a Census Bureau project responding to the *Presidential Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, dated July 21, 2020. The Census Bureau's project description in response to this Memorandum is attached.

BJS's support to the citizenship project consisted of extracting and transferring to the Census Bureau data drawn from BJS component databases. The delivery has been received and we have since been analyzing those data. Based on that analysis, and the later introduction of the July 21, 2020, Presidential Memorandum, we recognized the value of these data to the Presidential Memorandum apportionment project.

Thank you in advance for your assistance with this request. If you have questions or need additional information about this project, please contact Mike Berning, Assistant Division Chief for Data Acquisition and Curation, Economic Reimbursable Surveys Division, at 301-763-2028 or [[HYPERLINK "mailto:michael.a.berning@census.gov"](mailto:michael.a.berning@census.gov)].

If BJS is amenable to authorizing the use of BJS data to support the July 2020 Presidential Memorandum, your signature below will signify concurrence. This will constitute Amendment #1 to the Agreement.

APPROVALS

On behalf of the Census Bureau, the undersigned individual hereby attests that he or she is authorized to enter into this Amendment and agrees to all the terms specified herein.

Ron S. Jarmin
Deputy Director and Chief Operating Officer
U.S. Census Bureau

(Date)

On behalf of the Bureau of Justice Statistics the undersigned individual hereby attests that he or she is authorized to enter into this Amendment and agrees to all the terms specified herein.

Jeffrey Anderson
Director
Department of Justice, Bureau of Justice Statistics

(Date)

Attachment

Attachment – Census Bureau Project Description

Census Bureau Project to Support the July 21, 2020 *Presidential Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census*

Under the July 21, 2020, Presidential Memorandum, the Secretary of Commerce will produce a report consistent with the policy stated therein. The U.S. Census Bureau will produce a statistical product requested by the Secretary of Commerce, who was the addressee of the Presidential Memorandum, for transmittal of the report to the President. This product will include state-level information about non-citizens who are illegal aliens and enumerated in the 2020 Census.

To complete this task, the Census Bureau will build upon its work supporting Executive Order 13880, “Collecting Information about Citizenship Status in Connection with the Decennial Census.” In support of this Executive Order (E.O.), the Census Bureau is using administrative records from multiple agencies to produce estimates of citizenship.

To support the Secretary’s transmittal of the report under the Presidential Memorandum, the Census Bureau is expanding the E.O. work using selected Department of Homeland Security administrative records in combination with selected records from other agencies and data from the 2020 Census. These include Enforcement and Removal Operations (ICE), Deferred Action for Childhood Arrival (CIS), Special Immigrant Juveniles (CIS), Lawful Permanent Resident denials (CIS), Arrival and Departure Information Systems (CBP), Incident Management Analysis Reporting System (Department of Interior), and Law Enforcement Management Information System (Department of Interior).

Using those records in combination with other data already obtained regarding citizenship status, the Census Bureau will further refine the non-citizen category into legal, illegal or unknown. The planned output of this project will be state-level tabulations.



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

MEMORANDUM FOR: James W. McCament
Deputy Under Secretary
Office of Strategy, Policy, and Plans
U.S. Department of Homeland Security

From: Ron S. Jarmin
Deputy Director
and Chief Operating Officer
U.S. Census Bureau

Subject: Request for Additional Data and Authorized Use as Amendment #4 to
December 23, 2019, Agreement No. 2064-FY20-NFE-0335, "Memorandum
of Agreement Between the U.S. Department of Commerce, U.S. Census
Bureau, and U.S. Department of Homeland Security Regarding the
Transfer of Immigration and Citizenship-Related Data"

Thank you for your continuing support to our data acquisition efforts pursuant to the December 23, 2019, Agreement No. 2064-FY20-NFE-0335, "Memorandum of Agreement between the U.S. Department of Commerce, U.S. Census Bureau, and U.S. Department of Homeland Security Regarding the Transfer of Immigration and Citizenship-Related Data," in support of our work under Executive Order 13880 to create estimates of citizenship status. I write to request that the delivery of records that the Customs and Border Protection (CBP) provided to the Census Bureau in December of 2019, be appended with the Person Identifier (PID) variable and resubmitted to the Census Bureau. I also ask that all CBP data acquired under Agreement No. 2064-FY20-NFE-0335 be added as an approved use for a Census Bureau project responding to the *Presidential Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census*, dated July 21, 2020. The Census Bureau's project description in response to this Memorandum is attached.

DHS's support to the citizenship project consisted of extracting and transferring to the Census Bureau two deliveries of data drawn from DHS component databases. We received the first delivery in December of 2019, and the second delivery in July of 2020 and have since been analyzing those data. Based on that analysis, and the later introduction of the July 21, 2020, Presidential Memorandum, we recognized the value of these data to the Presidential Memorandum appropriations project.

Thank you in advance for your assistance with this request. If you have questions or need additional information about this project, please contact Mike Berning, Assistant Division Chief for Data Acquisition and Curation, Economic Reimbursable Surveys Division, at 301-763-2028 or michael.a.berning@census.gov.

If DHS is amenable to resubmitting the December 2019 delivery of records to add the PID variable and to authorizing the use of CBP data to support the July 2020 Presidential Memorandum, your signature below will signify concurrence. This will constitute Amendment #4 to the Agreement.

APPROVALS

On behalf of the Census Bureau, the undersigned individual hereby attests that he or she is authorized to enter into this Amendment and agrees to all the terms specified herein.

Ron S. Jarmin
Deputy Director and Chief Operating Officer
U.S. Census Bureau

(Date)

On behalf of the DHS, the undersigned individual hereby attests that he or she is authorized to enter into this Amendment and agrees to all the terms specified herein.

James W. McCament
Deputy Under Secretary for the
Office of Strategy, Policy, and Plans
U.S. Department of Homeland Security

(Date)

Attachment

Attachment – Census Bureau Project Description

Census Bureau Project to Support the July 21, 2020 Presidential *Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census*

Under the July 21, 2020, Presidential Memorandum, the Secretary of Commerce will produce a report consistent with the policy stated therein. The U.S. Census Bureau will produce a statistical product requested by the Secretary of Commerce, who was the addressee of the Presidential Memorandum, for transmittal of the report to the President. This product will include state-level information about non-citizens who are illegal aliens and enumerated in the 2020 Census.

To complete this task, the Census Bureau will build upon its work supporting Executive Order (E.O.) 13880, “Collecting Information about Citizenship Status in Connection with the Decennial Census.” In support of this E.O., the Census Bureau is using administrative records from multiple agencies to produce estimates of citizenship.

To support the Secretary’s transmittal of the report under the Presidential Memorandum, the Census Bureau is expanding the E.O. work using selected U.S. Department of Homeland Security administrative records in combination with selected records from other agencies and data from the 2020 Census. These include Enforcement and Removal Operations (ICE), Deferred Action for Childhood Arrival (CIS), Special Immigrant Juveniles (CIS), Lawful Permanent Resident denials (CIS), Arrival and Departure Information Systems (CBP), Incident Management Analysis Reporting System (Department of Interior), and Law Enforcement Management Information System (Department of Interior).

Using those records in combination with other data already obtained regarding citizenship status, the Census Bureau will further refine the non-citizen category into legal, illegal, or unknown. The planned output of this project will be state-level tabulations.

MEMORANDUM OF AGREEMENT
ESTABLISHING A JOINT STATISTICAL PROJECT
BETWEEN
The U.S. CENSUS BUREAU
AND
UNIVERSITY OF NOTRE DAME
Agreement No.0093-FY20-NFE-0136

1. PARTIES AND PURPOSE

This document constitutes an agreement between the U.S. Census Bureau and University of Notre Dame, Wilson Sheehan Lab for Economic Opportunities (LEO) for the acquisition of Homeless Prevention Call Center (HPCC) data being held for The Catholic Charities of the Archdiocese of Chicago.

This population is known to have experienced housing insecurity. These data will be used in research on how often people in this population appear in survey and administrative sources, the kind of information on them that is available from these sources and how their socioeconomic outcomes change over time.

2. AUTHORITY

The Census Bureau's authority to participate in a joint statistical project with University of Notre Dame, Wilson Sheehan Lab for Economic Opportunities (LEO) is 13 U.S.C. § 8(b), which authorizes the Census Bureau to engage in joint statistical projects with non-profit agencies and organizations on matters of mutual interest, but only if the cost of such projects is equitably apportioned.

13 U.S.C. § 9 provides that census data are confidential and may only be used for statistical purposes and cannot be disclosed or published in any way that permits identification of a particular respondent.

13 U.S.C. § 23(c) authorizes the Census Bureau to grant access to confidential data to individuals who are employed by private or public organizations or agencies and who have expertise or specialized knowledge that will contribute to Census Bureau projects or activities. Such persons, however, must be sworn to observe the limitations of 13 U.S.C. § 9.

3. PURPOSE

Pursuant to this agreement, the parties will agree that the U.S Census Bureau's purpose in entering this agreement is to understand the ability of certain data sources to measure residential and socioeconomic characteristics of people who have experienced housing insecurity. Acquired data files will be processed to facilitate linkage of records to other datasets including Census survey microdata, federal tax and program participation files, state and local program participation and employment files, and other related data as necessary. The acquired data will be made available to qualified researchers conducting approved internal projects, as well as external LEO researchers with Special Sworn Status (SSS) as needed for research purposes.

The Census Bureau has determined that this project cannot be done as effectively without the participation of The Catholic Charities of the Archdiocese of Chicago to authorize permission to allow University of Notre Dame/LEO to share HPCC data with the U.S. Census Bureau. Moreover, Notre Dame/LEO researchers are integral to this project because they have used the HPCC data before in academic studies and are very familiar with the data themselves, the details and structure of the program that generated them, and the conditions faced by the people the data describe. This makes them ideally suited to help with the work facilitated by this agreement.

4. MUTUAL INTEREST OF THE PARTIES

Both the University of Notre Dame and the Census Bureau benefit from this agreement. Under this agreement, the Census Bureau will link HPCC data obtained through the University of Notre Dame with other records at the Census Bureau, including but not limited to the 2010 Decennial Census and the American Community Survey. Certain groups of people, including those experiencing high levels of housing insecurity but not residing in group quarters (a population covered well for the city of Chicago by the HPCC data), are difficult to count in both the decennial census and the American Community Survey, which sample addresses. The research projects that will be conducted with the linked data, in collaboration with Notre Dame researchers, are necessary and essential for the Census Bureau to further its understanding of how often people in this population appear in survey and administrative sources, the kind of information on them that is available from these sources and how their socioeconomic outcomes change over time. This will allow the Census Bureau to improve the quality of demographic censuses and surveys that it conducts. Comparisons between survey and HPCC administrative records will allow for an assessment of how well surveys currently capture the housing insecure population, identification of any other individual or household characteristics associated with (not) appearing in survey data within this population, and development of potential strategies for improving measurement of this population.

The joint research projects will also investigate relationships between use of services provided by the Homelessness Prevention Call Center and subsequent socioeconomic outcomes, including employment and earnings. This will provide the University of Notre Dame and LEO valuable insight into the wellbeing of populations served by their partner organizations, including The Catholic Charities of the Archdiocese of Chicago. This will allow the University of Notre Dame and LEO to more accurately explain outcomes and impacts to partners and stakeholders and determine areas for future research. Subsequent work using the HPCC data linked to survey and administrative records may include analysis of relationships among use of HPCC services, other later-in-life socioeconomic outcomes, and local economic conditions; mediating factors in those relationships; and changes in socioeconomic characteristics of places in which housing insecure populations live.

5. RESPONSIBILITIES OF THE PARTIES

The University of Notre Dame, LEO will:

- Provide the U.S. Census Bureau with microdata from the Homeless Prevention Call Center (HPCC) operated by The Catholic Charities of the Archdiocese of Chicago, Chicago, IL.
- To the extent necessary, the University of Notre Dame, LEO will secure written permission to provide these data from The Catholic Charities with the Census Bureau. Data will be provided using the Census Secure Data Transfer server. Each dataset will be accompanied by a record layout containing variable information including names, labels, width, and format.

- The University of Notre Dame will provide points of contact within the Wilson Sheehan Lab for Economic Opportunities (LEO) for data transfer and security incidents.

The Census Bureau will:

- Under the supervision of Kevin Rinz, a researcher, prepare datasets appropriate for use in internal research projects.
- Notify LEO staff when transfer of the data is completed successfully or whether transfer cannot be carried out.
- Ensure data transmission and storage is conducted in accordance with the provisions of OMB Memorandum 06-16.
- Prepare HPCC datasets for use on internal research projects. This preparation will include receipt and documentation of the raw data files from the LEO, replacement of PII with unique identification codes, and creation of datasets.
- Conduct research and produce tables and figures summarizing our findings based on linked HPCC data to be provided to LEO affiliates for use in research publications. We will also collaborate in the writing of research papers with LEO affiliates. The creation will include disclosure review processing of the statistical products.
- Make HPCC data available for selection by researchers proposing to conduct internal research projects under DMS#7505725, "Improving Measurement of the Determinants of Individual Economic Well-being," as well as other similar internal projects, as applicable. Store original and prepared HPCC data files on secure U.S. Census Bureau servers located in the U.S. Census Bureau's Bowie Computing Center.
- Provide access only to data processing staff and to qualified researchers working on approved internal projects. Qualified researchers may include U.S. Census Bureau employees and contractors, or external researchers who have obtained U.S. Census Special Sworn Status and are working on approved internal projects.
- Progress will be monitored by regular conference calls between David Phillips and Kevin Rinz and by the availability of Census-constructed datasets for use on internal research projects.

6. EQUITABLE APPORTIONMENT OF COSTS

The costs associated with this agreement are equitably apportioned.

Under the JSP, the Census Bureau's estimated costs over the life of this agreement are \$37,700.40 (about 67% of the total monetary cost). The University of Notre Dame's estimated costs for this project are \$18,725.40 (about 33% of the total monetary cost).

Attachment A is an estimated budget for this project which shows each partner's contribution to the JSP.

Though these indirect costs are higher for the Census Bureau, it will be gaining access to the HPCC data, the full value of which are not reflected in the University of Notre Dame's costs of transferring them. No transfer of funds between parties is contemplated by the agreement.

7. CONTACTS

The contacts of each party to this agreement are:

Michael A. Berning
Assistant Division Chief, Economic Reimbursable Surveys Division
4600 Silver Hill Road
Washington, D.C. 20233
301-763-2028
Email: michael.a.berninig@census.gov

David Phillips
Associate Research Professor of Economics
3104 Jenkins Nanovic Hall
Notre Dame, IN 46556
574-631-2683
Email: david.phillips.184@nd.edu

LEO POC FOR DATA DELIVERY:

David Phillips
Associate Research Professor of Economics
3104 Jenkins Nanovic Hall
Notre Dame, IN 46556
574-631-2683
Email: david.phillips.184@nd.edu

Census POC FOR DATA DELIVERY:

David W. Sheppard
Chief, Data Quality Branch
Economic Reimbursable Surveys Division (ERD)
4600 Silver Hill Road
Washington, D.C. 20233
301-763-9291
Email: david.w.sheppard@census.gov

The parties agree that if there is a change regarding the information in this section, the party making the change will notify the other party in writing of such change.

8. DURATION OF AGREEMENT, AMENDMENTS AND MODIFICATIONS

This agreement will become effective when signed by all parties. The agreement will terminate on **May 30, 2025**, but may be amended at any time by mutual consent of the parties. The parties will review this agreement at least once every three years to determine whether it should be revised, renewed, or canceled. Any party may terminate this agreement by providing 30 day's written notice to the other party.

9. RESOLUTION OF DISAGREEMENTS

Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

10. CONFIDENTIALITY

"The Census Bureau assumes an obligation to keep all data received from other federal and state agencies and commercial entities in confidence and to use the data for statistical purposes only in accordance with the provisions of Title 13, United States Code. Upon receipt, all data acquired as a result of this interagency agreement will be treated as if they have, at a minimum, protection at the appropriate risk level in accordance with the National Institute of Standards and Technology (NIST) Federal Information Processing Standards (FIPS) 200 and Special Publication 800-60r1.

The Census Bureau complies with all current NIST standards and publications in accordance with Title III of the E-Government Act of 2002 (PL 107-347). All systems are fully assessed against NIST Special Publication 800-53r4 "Recommended Security Controls for Federal Information Systems and Organizations," as well as Special Publication 800-37r1 "Guide for Applying the Risk Management Framework to Federal Information Systems: A Security Life Cycle Approach." The Census Bureau IT Security Program is reviewed annually by the Department of Commerce Office of the CIO as well as the Department of Commerce Office of Inspector General as part of the oversight responsibilities.

All information and information systems are categorized in accordance with NIST FIPS 199 "Standards for Security Categorization of Federal Information and Information Systems" and NIST Special Publication 800-60r1 "Guide for Mapping Types of Information and Information Systems to Security Categories: (2 Volumes) - Volume 1: Guide Volume 2: Appendices." Security controls and subsequent assessments are done based on the final categorization.

Cloud providers must be approved for at least moderate level information through the GSA FedRAMP process prior to acquiring any services. Census Bureau identifies, assesses and authorizes use based on the published FedRAMP results and an assessment of any Census Bureau (customer provided) controls implemented to protect the infrastructure and data. Security reporting on cloud providers is reported to the Department of Commerce on a regular basis under FISMA.

The Census Bureau maintains a policy regarding the reporting of and response to losses of protected data in accordance with OMB Memorandum M-17-12. Known or suspected losses of protected data must be reported within one hour of its discovery to the Bureau of the Census Computer Incident Response Team (BOC CIRT) who will report as required to the United States Computer Emergency Readiness Team (US CERT). "

Once the Census Bureau becomes aware of a known breach of Catholic Charity's data, the Census Bureau will contact the identified NDU/LEO contacts to discuss the actions and potential remedies in regards to the incident. "

Disclosure Avoidance Review of Statistical Products:

Title 13, Section 9 of the United States Code (U.S.C.) requires the Census Bureau to keep confidential and the information collected from the public under the authority of Title 13. Section 214 of Title 13, U.S.C., and Sections 3551, 3559 and 3571 of Title 18, U.S.C.,

provide for the imposition of penalties of up to five years in prison and/or up to \$250,000.00 in fines for wrongful disclosure of confidential census information.

Disclosure avoidance is the process for protecting the confidentiality of data, as required under Title 13 U.S.C. A disclosure of data occurs when someone can use published statistical information to identify an individual who has provided confidential information under a pledge of confidentiality. For data tabulations, the Census Bureau uses disclosure avoidance procedures to modify or remove the characteristics that put confidential information at risk for disclosure. Although a published table may appear to show information about a specific individual, the Census Bureau has taken steps to disguise or suppress the original data, while making sure the results are still useful. The techniques used by the Census Bureau to protect confidentiality in tabulations vary, depending on the type of data.

Noise injection is the Census Bureau's preferred disclosure avoidance technique. By policy, noise injection is to be applied to all data products that are reported with geographies smaller than a state. In cases when it is not feasible to fully implement noise injection within the period of the contract, a transition plan for implementing noise injection or other provable privacy methods must be developed in coordination with the Census Bureau. Noise injection may be required for microdata releases, depending on the characteristics of the microdata and the specific variables that are to be released. Data that cannot be publicly released may still be analyzed within the Federal Statistical Research Data Centers (FSRDCs) by individuals who have Special Sworn Status; the results of such analyses must still go through a disclosure avoidance process prior to being publicly released.

The parties understand that Title 13 confidentiality protection and disclosure avoidance techniques apply to all work described in this agreement. The disclosure avoidance disclosure methods are defined by the Census Bureau who has the responsibility of carrying out that work. Accordingly, upon completion of the tabulation, the data produced must be reviewed by the Census Bureau to ensure that no identifiable Title 13 data are or may be disclosed. Should the Census Bureau's Disclosure Review Board (DRB) determine that the requested statistical product does or reasonably could result in such disclosure, then the data product will be modified prior to approval for release to the party(ies) of this agreement. The DRB must approve before a research product can be released to an individual who does not have Special Sworn Status (SSS) and a need to know, or moved to a computer not approved for controlled data according to Census' existing policies and procedures.

11. SIGNATURES

Steven D. Dillingham
Director
U.S. Census Bureau

Greg Luttrell
Director, Research Contracts
University of Notre Dame

ATTACHMENT A: Estimate Budget for Joint-Statistical Project

Notre Dame Costs

Role	Hourly Rate	(b) (5)		Cost
		(b) (5)		(b) (5)

Total Census Cost: \$37,700.40

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, et al.,

Defendants.

Case No. 20-CV-05799-LHK

**ORDER TO PRODUCE THE
ADMINISTRATIVE RECORD**

Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of Los Angeles, California; City of Salinas, California; City of San Jose, California; Rodney Ellis; Adrian Garcia; National Association for the Advancement of Colored People; City of Chicago, Illinois; County of Los Angeles, California; Navajo Nation; and Gila River Indian Community (collectively, "Plaintiffs") sue Defendants Commerce Secretary Wilbur L. Ross, Jr.; the U.S. Department of Commerce; the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau ("Bureau") (collectively, "Defendants") for violations of the Enumeration Clause and Administrative Procedure Act ("APA").

Plaintiffs seek to preliminarily enjoin Defendants from implementing Defendants' August 3, 2020 Replan. The Replan shortens census data collection and processing timelines from the eight months set forth in the Defendants' April 13, 2020 COVID-19 Plan to four months. Plaintiffs claim that the Replan's shortened timelines will unlawfully harm the accuracy of crucial census

1 data.

2 Before the Court are the parties' submissions regarding production of the administrative
3 record. Having considered the parties' submissions; the parties' oral arguments at the September 8,
4 2020 case management conference; the relevant law; and the record in this case, the Court
5 ORDERS the production of the administrative record.

6 **I. BACKGROUND**

7 **A. Factual Background**

8 Before addressing the merits of the parties' submissions, the Court briefly notes the factual
9 context. Defendants acknowledge that the Bureau's Census data collection and processing
10 responsibilities are "a 15.6 billion dollar operation years in the making." Defendants' Opp. to
11 Plaintiffs' Motion for Stay or Preliminary Injunction at 1 ("PI Opp."). The Bureau spent most of a
12 decade preparing the original operational plan for the 2020 Census, which was called the Final
13 Operational Plan and was issued in December 2018. Albert E. Fontenot, Jr., Associate Director for
14 Decennial Census Programs at the U.S. Census Bureau, describes the extensive work over a period
15 of many years that the Bureau performed to develop the Final Operational Plan, which the Bureau
16 also called Version 4.0. For example, Fontenot discusses eight significant census tests the Bureau
17 performed in 2013, 2014, 2015, 2016, and 2018 to improve their field operations. Fontenot Decl. ¶
18 71. Fontenot describes partnerships with stakeholders such as organizations and tribal and local
19 governments. *E.g.*, Fontenot Decl. ¶¶ 12, 28. The Final Operational Plan reflects the conclusions
20 of subject-matter experts such as statisticians, demographers, geographers, and linguists. *See, e.g.*,
21 ECF No. 37-5 at 79, 144 (2020 Census Operational Plan—Version 4.0).

22 The Final Operational Plan also set timeframes for three operations that especially affect
23 the quality of the count: (1) self-responses to census questionnaires, (2) non-response follow-up
24 ("NRFU"), and (3) post-data collection processing. First, the timeframe for self-responses refers to
25 when people may respond to census questionnaires on their own. Second, NRFU refers to the
26 process of "conduct[ing] in-person contact attempts at each and every housing unit that did not
27 self-respond to the decennial census questionnaire." Fontenot Decl. ¶ 48. "The NRFU Operation is

entirely about hard-to-count populations.” ECF No. 37-5 at 219. NRFU is thus “the most important census operation to ensuring a fair and accurate count.” Thompson Decl. ¶ 15. Lastly, post-collection data processing refers to the Bureau’s “procedures to summarize the individual and household data that [the Bureau] collect[s] into usable, high quality tabulated data products.” Fontenot Decl. ¶ 66.

Under the Final Operational Plan issued in December 2018, self-responses spanned 20.5 weeks from March 12 to July 31, 2020. NRFU spanned 11.5 weeks from May 13 to July 31, 2020. Data processing spanned 22 weeks from August 1 to December 31, 2020. These operational dates would culminate in the Secretary of Commerce reporting (1) by December 31, 2020, “the tabulation of total population by States” to the President for the purpose of Congressional apportionment; and (2) by April 31, 2021, the same tabulation of population to the states for the purpose of redistricting. 13 U.S.C. § 141(b).

On March 18, 2020, however, the Bureau announced that it would suspend all field operations for two weeks because of the COVID-19 pandemic. *See* Press Release, U.S. Census Bureau, *U.S. Census Bureau Director Steven Dillingham on Operational Updates* (Mar. 18, 2020), <https://www.census.gov/newsroom/pressreleases/2020/operational-update.html>. On March 28, 2020, the Bureau announced another two-week suspension. Press Release, *Census Bureau Update on 2020 Census Field Operations* (Mar. 28, 2020), <https://www.census.gov/newsroom/press-releases/2020/update-on-2020-census-field-operations.html>. The Bureau halted all hiring and training of hundreds of thousands of Census field staff known as “enumerators,” who implement NRFU by trying to contact people who do not respond to the Census questionnaire. Fontenot Decl. ¶ 49. The Bureau also experienced staffing shortages at its call centers and the contractor responsible for printing the six mail-in self-response forms. ECF No. 37-7 at 8 (GAO, *COVID-19 Presents Delays and Risks to Census Count* (June 2020)).

As a result, on April 13, 2020, the Bureau issued an adjustment to its Final Operational Plan to account for the impact of COVID-19 (the “COVID-19 Plan”). ECF No. 37-3 (April 13,

2020 statement of Secretary of Commerce Wilbur Ross and Census Bureau Director Steven Dillingham). The COVID-19 Plan extended the operational deadlines.

Specifically, first, the COVID-19 Plan expanded the timeframe for self-responses from 20.5 weeks to 33.5 weeks (March 12 to October 31, 2020) to account for the pandemic's disruptions to Bureau operations and the public's ability to respond to the census. For instance, the Bureau had to adapt to staffing shortages at call centers and the self-response printer. ECF No. 37-7 at 8. The Bureau also had to cope with "delays to the Update Leave operation, in which [census] field staff hand-deliver questionnaires," *id.* at 6, to "areas where the majority of the housing units do not have mail delivery . . . or the mail delivery information for the housing unit cannot be verified." Fontenot Decl. ¶ 46. In sum, as of June 2020, "self-response rates var[ied] widely across states and counties," with "markedly different operational environments and challenges" facing the Bureau "from one locale to another." ECF No. 37-7 at 6 (citing self-response rates "below 3 percent" in counties in Alaska, Texas, Utah, and South Dakota).

Second, NRFU likewise expanded from 11.5 weeks (May 13 to July 31, 2020) to 12 weeks (August 11 to October 31, 2020). The pandemic disrupted NRFU in at least two ways. One, the pandemic made it harder to hire and retain enumerators to contact households. *See, e.g.*, Gurmilan Decl. ¶ 13 ("Monterey County is still advertising for census enumerator job listings because traditional applicant groups like senior citizens have concerns about the risk of catching COVID-19"). Two, "door-to-door visits for NRFU interviewing may be less effective" during a pandemic. ECF No. 37-7 at 18.

Third, given the pandemic's effects on "the quality of the data, especially for groups that are less likely to self-respond (often hard to count populations)," post-data collection quality control was deemed especially important. ECF No. 37-7 at 18. Data processing for Congressional apportionment thus expanded from 22 weeks (August 1 to December 31, 2020) to 26 weeks (November 1, 2020 to April 30, 2021). The processing was to include an independent review of the final address list, analysis by subject-matter experts, and the remediation of software errors. Fontenot Decl. ¶ 89.

1 Lastly, the press release announcing the COVID-19 Plan stated that “the Census Bureau is
2 seeking statutory relief from Congress of 120 additional calendars days to deliver apportionment
3 counts.” ECF No. 37-3 at 3. The COVID-19 Plan would thus “extend the window for field data
4 collection and self-response to October 31, 2020, which will allow for apportionment counts to be
5 delivered to the President by April 30, 2021, and redistricting data to be delivered to the states no
6 later than July 31, 2021.” *Id.*

7 Although these delays would result in the Bureau missing statutory deadlines, Bureau
8 officials publicly stated that meeting the December 31, 2020 deadline would be impossible in any
9 event. For instance, on May 26, 2020, the Bureau’s head of field operations, Tim Olson, stated
10 that “[w]e have passed the point where we could even meet the current legislative requirement of
11 December 31. We can’t do that anymore. We -- we passed that for quite a while now.” Nat’l Conf.
12 of Am. Indians, 2020 Census Webinar: American Indian/Alaska Native at 1:17:30–1:18:30,
13 YouTube (May 26, 2020), <https://www.youtube.com/watch?v=F6IyJMtDDgY>. Similarly, on July
14 8, Associate Director Fontenot confirmed that the Bureau is “past the window of being able to get”
15 accurate counts to the President by December 31, 2020. U.S. Census Bureau, *Operational Press*
16 *Briefing – 2020 Census Update* at 20–21 (July 8, 2020),
17 [https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-](https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf)
18 [transcript-july8.pdf](https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf).

19 On July 21, 2020, President Donald J. Trump issued a memorandum declaring the United
20 States’ policy to exclude unlawful immigrants from the congressional apportionment base.

21 On July 31, 2020, the Bureau removed from its website the October 31, 2020 deadlines for
22 self-responses and NRFU. *Compare* ECF No. 37-8 (July 30 Operational Adjustments Timeline),
23 *with* ECF No. 37-9 (July 31 Operational Adjustments Timeline).

24 On August 3, 2020, the Bureau issued a press release announcing the Replan. ECF No. 37-
25 1. In Fontenot’s declaration, Fontenot avers that the Secretary approved the Replan on the day it
26 was announced. Fontenot Decl. ¶ 85.

27 The Replan accelerated and compressed the Bureau’s data collection and processing
28

timeframes from eight months to four months. Specifically, self-response compressed from 33.5 weeks to 29 weeks, with the deadline advancing from October 31 to September 30. *Id.* ¶ 100. NRFU compressed from 11.5 weeks to 7.5 weeks, with the deadline advancing from October 31 to September 30. Lastly, data processing was halved from 26 weeks to 13 weeks with the deadline advancing from April 30, 2021 to December 31, 2020.

B. Procedural History

On August 18, 2020, Plaintiffs filed suit to challenge the Replan's advancement of the deadlines for self-responses, field operations to attempt to count NRFU, and data processing. To allow Plaintiffs to effectively challenge the Replan, including the September 30, 2020 end of field operations, the parties stipulated to a briefing schedule and hearing date of September 17, 2020 on Plaintiffs' motion for stay and preliminary injunction (hereafter, "motion for preliminary injunction" or "Mot."). ECF No. 35. Pursuant to that schedule, Plaintiffs filed a motion for a preliminary injunction on August 25, 2020 based on their claims under the Enumeration Clause and the APA. ECF No. 36.

On August 26, 2020, the Court held a case management conference. At that conference, the Court asked Defendants whether there was an administrative record for the purposes of APA review. Defendants repeatedly denied the existence of an administrative record. *E.g.*, ECF No. 65 at 9:22–:24 (Q: "Is there an administrative record in this case?" A: "No, Your Honor. On behalf of the Defendants, no, there's not."), 10:17–:18 ("[A]t this point there is no administrative record."). Rather, Defendants suggested that the only document that provided the contemporaneous reasons for the Replan was the Bureau's August 3, 2020 press release. *Id.* at 20:6–:7 ("[A]t this point I'm not aware of any other documents, but I would propose that I check with my client . . ."). Even so, the Court instructed Defendants that "[i]f there's an administrative record, it should be produced. [The Court] will need it to make a decision in this case." *Id.* at 10:13–:14.

To assist the Court in determining by what date a ruling on Plaintiffs' motion for preliminary injunction must be issued, Defendants agreed to file a statement by September 2, 2020 as to when the winding down of field operations would begin relative to the September 30, 2020

1 deadline for ending data collection. Defendants filed the following statement:

2 [T]he Census Bureau has already begun taking steps to conclude field operations. Those
3 operations are scheduled to be wound-down throughout September by geographic regions
4 based on response rates within those regions. As will be described in Defendants'
5 forthcoming filing on Friday, September 4, 2020, any order by the Court to extend field
6 operations, regardless of whether those operations in a particular geographic location are
7 scheduled to be wound-down by September 30 or by a date before then, could not be
8 implemented at this point without significant costs and burdens to the Census Bureau.

9 ECF No. 63. Based on Defendants' statement, Plaintiffs moved on September 3, 2020 for a
10 temporary restraining order to preserve the status quo for 12 days until the September 17, 2020
11 preliminary injunction hearing. ECF No. 66. On September 4, 2020, Defendants opposed the
12 motion, and the Court held a hearing on the motion.

13 At the hearing on the motion for a temporary restraining order, Defendants reiterated their
14 position that no administrative record existed, ECF No. 82 at 33:13–15, but disclosed that there
15 were documents contemporaneously explaining the Replan. Defendants stated:

16 The Census Bureau generates documents as part of its analysis and as part of its decisions
17 and as part of its deliberations. And there are documents that the Replan was not cooked up
18 in a vacuum, it was part of the agency's ongoing deliberations. And so certainly there are
19 going to be documents that reflect those documents.

20 *Id.* at 33:2–7. That said, Defendants said no administrative record technically existed because “the
21 documents that fed into the operational plans and the operational decisions are internal documents
22 that are subject to the deliberative process privilege.” *Id.* at 32:14–16.

23 Only a few minutes later, however, Defendants retracted their assertion of deliberative
24 process privilege. *Id.* at 36:15–17 (“[T]o be clear, we are not asserting the deliberative process
25 privilege because there is no record and there’s nothing to consider.”). Defendants conceded that
26 “[i]f there is final agency action that is reviewable and the APA applies, we would have an
27 obligation to produce the administrative record.” *Id.* at 35:24–36:1. Defendants instead urged the
28 Court to rely solely on a declaration that Defendants would file that night with Defendants’
opposition to the motion for preliminary injunction. *E.g., id.* at 16:21–23 (“We will not be filing
documents in addition to the declaration.”).

Later on September 4, 2020, Defendants filed their opposition to Plaintiffs' motion for preliminary injunction. As Defendants stated at the TRO hearing, Defendants' sole evidence against Plaintiffs' motion for temporary restraining order and motion for preliminary injunction is the declaration of Albert E. Fontenot, Jr., Associate Director for Decennial Census Programs at the U.S. Census Bureau.

On September 5, 2020, the Court granted a temporary restraining order until the September 17, 2020 preliminary injunction hearing. On September 8, 2020, Defendants filed a notice regarding compliance with the TRO. ECF No. 86.

Also on September 8, 2020, the Court held another case management conference. At that conference, Defendants again stated that "there is no administrative record in this case because there is no APA action." ECF No. __ (forthcoming) at 62:15–:16. Even so, Defendants confirmed their statements from the TRO hearing that the Replan is "indeed codified." *Id.* at 21:7. The Replan simply was "not necessarily codified in one particular document." *Id.* at 21:9–:10. Accordingly, Plaintiffs asked the Court to order Defendants to produce the administrative record. *E.g., id.* at 43:16–:17. The parties briefed the issue on September 8 and 9, 2020. *See* ECF Nos. 88–89, 92.

II. DISCUSSION

The Court first addresses threshold issues raised by Defendants. However, the Court notes that the cases that require determinations of those threshold issues before production of the administrative record are distinguishable from the instant case. Thereafter, the Court explains why the administrative record must be produced. Given the September 17, 2020 hearing and the Census Bureau's September 30, 2020 deadline for data collection, the analysis herein is necessarily brief. The Court will provide a more fulsome analysis in its ruling on Plaintiffs' motion for preliminary injunction promptly after the September 17, 2020 hearing. Thus, the Court's conclusions herein are provisional and may be subject to change after production of Defendants' administrative record.

A. The Instant Case is Reviewable.

Defendants argue that the instant case is unreviewable on four grounds: (1) the Replan presents a political question; (2) Plaintiffs lack standing; (3) the Replan is not final agency action, and (4) the Replan is committed to agency discretion by law. The Court addresses each ground in turn.

1. The Replan does not present a political question.

A “political question” is one which is “outside the courts’ competence and therefore beyond the courts’ jurisdiction.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2494 (2019). “Among the political question cases the Court has identified are those that lack ‘judicially discoverable and manageable standards for resolving [them].’” *Id.* at 2494 (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)).

Defendants argue that whether the Replan violates the Administrative Procedure Act is a political question. Their argument is essentially the following syllogism. *First*, Congress has “virtually unlimited discretion in conducting the decennial ‘actual enumeration.’” *Wisconsin*, 517 U.S. at 19. *Second*, Congress has used that discretion to set a statutory deadline of December 31, 2020 for when the Secretary must report a “tabulation of total population” to the President. 13 U.S.C. § 141(b). *Third*, Defendants replaced the COVID-19 Plan with the Replan in order to meet the statutory deadline. *Therefore*, the promulgation of the Replan is under Congress’ virtually unlimited discretion; there “is no evident standard” for review; and the Replan poses a political question. PI Opp. 6.

The Court disagrees. Defendants’ syllogism breaks down at its third step and conclusion. To start, the whole reason why the Court and Plaintiffs need the administrative record is to identify the contemporaneous justifications for the Replan. Only then can those justifications be reviewed under the deferential standard that the APA provides. That deferential APA review, as discussed in Section C below, includes determining if the agency considered—and gave a contemporaneous explanation of—all relevant aspects of a problem before taking action. Here, Congress has set forth more than just the December 31, 2020 statutory deadline as a relevant

1 aspect of the census. The Census Act also “imposes ‘a duty to conduct a census that is accurate
 2 and that fairly accounts for the crucial representational rights that depend on the census and the
 3 apportionment.’” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2569 (2019) (quoting
 4 *Franklin*, 505 U.S. at 819–820 (Stevens, J., concurring in part and concurring in judgment))
 5 (discussing 2 U.S.C. § 2a). Similarly, the text, structure, and history of the Constitution evinces “a
 6 strong constitutional interest in accuracy.” *Utah v. Evans*, 536 U.S. 452, 479 (2002).

7 Thus, in its decision on the census citizenship question last year, the Supreme Court
 8 rejected Defendants’ claim that there is “no meaningful standard against which to judge the
 9 agency’s exercise of discretion.” *Dep’t of Commerce v. New York*, 139 S. Ct. at 2568 (quoting
 10 *Weyerhaeuser Co. v. United States Fish and Wildlife Serv.*, 139 S. Ct. 361, 370 (2018)). The
 11 standard is provided by the Census Act, the Constitution, and APA. Accordingly, it is no surprise
 12 that the overwhelming weight of authority rejects applying the political question doctrine to
 13 census-related decisionmaking. *See, e.g., U.S. Dep’t of Commerce v. Montana*, 503 U.S. 442, 458–
 14 59 (1992) (holding that “political question doctrine presents no bar”); *Franklin v. Massachusetts*,
 15 505 U.S. 788, 801 n.2 (1992) (noting that the Court “recently rejected a similar argument” in
 16 *Montana* that “the courts have no subject-matter jurisdiction over this case because it involves a
 17 ‘political question’”); *Carey v. Klutznick*, 637 F.2d 834, 838 (2d Cir. 1980) (per curiam) (rejecting
 18 the Census Bureau’s argument that “allegations as to mismanagement of the census made in the
 19 complaint involve a political question,” and holding the case reviewable under the Constitution
 20 and APA); *New York v. United States Dep’t of Commerce*, 315 F. Supp. 3d 766, 791 (S.D.N.Y.
 21 2018) (rejecting political question doctrine in citizenship question litigation; and collecting cases);
 22 *Young v. Klutznick*, 497 F. Supp. 1318, 1326 (E.D. Mich. 1980) (rejecting political question
 23 doctrine), *rev’d on other grounds*, 652 F.2d 617 (6th Cir. 1981); *City of Philadelphia v. Klutznick*,
 24 503 F. Supp. 663, 674 (E.D. Pa. 1980) (same); *Texas v. Mosbacher*, 783 F. Supp. 308, 312 (S.D.
 25 Tex. 1992) (same); *District of Columbia v. U.S. Dep’t of Commerce*, 789 F. Supp. 1179, 1185
 26 (D.D.C. 1992) (same); *City of N.Y. v. U.S. Dep’t of Commerce*, 739 F. Supp. 761, 764 (E.D.N.Y.
 27 1990) (same); *U.S. House of Representatives v. U.S. Dep’t of Commerce*, 11 F. Supp. 2d 76, 95

(D.D.C. 1998) (three-judge court) (same; and stating “the court sees no reason to withdraw from litigation concerning the census”), *aff’d*, 525 U.S. 316 (1999); *see also Utah v. Evans*, 536 U.S. 452 (2002) (engaging in review without noting any jurisdictional defect stemming from political question doctrine); *Wisconsin v. City of N.Y.*, 517 U.S. 1 (1996) (same); *Morales v. Daley*, 116 F. Supp. 2d 801 (S.D. Tex. 2000) (same), *aff’d sub nom. Morales v. Evans*, 275 F.3d 45 (5th Cir. 2001) (unpublished); *Prieto v. Stans*, 321 F. Supp. 420, 421 (N.D. Cal. 1970) (finding jurisdiction over a motion to preliminarily enjoin the census’s “mail-out, mail-back procedure” and “community education and follow-up procedures”). In sum, the political question doctrine does not bar the Court from ordering Defendants to produce the administrative record.

2. Plaintiffs have standing to challenge the Replan.

“To have standing, a plaintiff must ‘present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant’s challenged behavior; and likely to be redressed by a favorable ruling.’” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019). Plaintiffs here allege—and support with affidavits—the same injuries that the Supreme Court found supported standing in the citizenship question case: “[1] diminishment of political representation, [2] loss of federal funds, [3] degradation of census data, and [4] diversion of resources.” *Id.* at 2565 (agreeing that “at least some” plaintiffs had standing).

First, Plaintiffs allege that “[t]he undercount resulting from the Rush Plan will likely result in an unfair apportionment that will cause local government Plaintiffs, individual Plaintiffs, and members of multiple organizational Plaintiffs, to lose their fair share of representation.” Mot. at 29. For example, given the historically low census response rates in the City of Los Angeles and City of Salinas in California, and in Harris County, Texas, the Replan creates a substantial risk that their residents will not be counted, and a substantial risk of diminished political representation. *See* M. Garcia Decl. ¶¶ 8–15; Briggs Decl. ¶¶ 7, 15–17; Gurmilan Decl. ¶¶ 6, 8–14. Specifically, 57% of the residents in the City of Los Angeles, which is home to roughly 4 million people, live in census block groups that are hard or very hard to count. M. Garcia Decl. ¶ 7. Similarly, the City of Salinas comprises 38.5% of Monterey County’s hard to count population, and the City’s response

rate is 9.5% below its response rate from the 2010 Census. *Id.* ¶ 6. The Replan’s shortened schedule for data collection imposes a substantial risk that the hard to count populations will be undercounted, and that therefore their political representation will be diminished.

Second, local government Plaintiffs are recipients of multiple sources of federal funding that turn on census data. For example, King County, Washington and the City of Los Angeles receive Community Development Block Grants and other funds in the millions of dollars; and Seattle received over \$108 million in Transit Formula Grants. Dively Decl. ¶ 7; Westall Decl. ¶¶ 34–36. The Replan will likely diminish both localities’ funding because both localities have many hard to count persons who risk being undercounted because of the Replan’s shortened schedule for data collection. M. Garcia Decl. ¶¶ 7–8; Dively Decl. ¶ 5; Hillygus Decl. ¶¶ 12, 19, 39. As another example, “approximately \$90,529,359 of the grants expended by Harris County in FY2019 depended on accurate census data.” Wilden Decl. ¶ 5. In fact, as the Supreme Court found last year, undercounting even a subset of the hard to count population can result in the loss of federal funding. *See Dep’t of Commerce v. New York*, 139 S. Ct. at 2565 (finding standing, in the context of state-wide undercounting, because “if noncitizen households are undercounted by as little as 2% . . . [states] will lose out on federal funds”).

Third, the local government Plaintiffs allege that the Replan will degrade granular census data that they rely on to deploy services and allocate capital. For instance, King County, Washington uses census data to place public health clinics, plan transportation routes, and mitigate hazards. Dively Decl. ¶ 6. The City of Los Angeles uses “reliable, precise, and accurate population count data” to deploy the fire department, schedule trash-pickups, and acquire or improve park properties. Westall Decl. ¶ 32.

Lastly, Plaintiffs will divert resources to mitigate the undercounting that will likely result from the Replan. For instance, the City of Salinas already promoted the October 31 deadline “on social media and in thousands of paper flyers.” Gurmilan Decl. ¶¶ 11–12. Thus, “some residents who received the City’s messaging will fail to respond before the R[eplan] deadline because the City has limited remaining resources to correct what is now misinformation.” *Id.* ¶ 12. Moreover,

the City “is still advertising for census enumerator job listings because traditional applicant groups like senior citizens have concerns about the risk of catching COVID-19. With fewer enumerators working, every extra day the City has to use the existing staff to support the count.” *Id.* ¶ 13.

As more examples, Harris County “participated in over 150 events,” including “food distribution events,” during which it “announced the October 31, 2020 deadline for the 2020 Census.” Briggs Decl. ¶ 12. “Harris County will be forced to expend additional resources to clear confusion about the last date for self-response during the Census, to ensure that people who have not responded are counted in time.” *Id.* ¶ 16. The Black Alliance for Just Immigration already “publicized the October 31 deadline for self-response during digital events between April and July” and is diverting resources to publicize the new September 30 deadline. Gyamfi Decl. ¶¶ 13–14. The League of Women Voters “has already had to spend time and financial resources” developing and distributing public education materials on the Replan timeline. Stewart Decl. ¶ 12. The National Urban League has similarly had “to divert resources from other programs and projects” to “alleviate the confusion” about the change in deadlines. Green Decl. ¶ 15. Indeed, even now, the Census Bureau boasts of how its communications program was “more integrated than ever before” with Plaintiffs such as National Urban League. Fontenot Decl. ¶ 40. Mitigating those now-counterproductive education campaigns and a likely undercount will only be harder in the midst of a pandemic. *E.g.*, M. Garcia Decl. ¶¶ 14–14; Gurmilan Decl. ¶¶ 11–14; Briggs Decl. ¶¶ 11–12, 15–17.

The above harms are “concrete, particularized, and actual or imminent.” *Dep’t of Commerce v. New York*, 139 S. Ct. at 2565 (quoting *Davis*, 554 U.S. at 733). They are also “fairly traceable to the defendant’s challenged behavior; and likely to be redressed by a favorable ruling.” *Id.* (quoting *Davis*, 554 U.S. at 733). As the Supreme Court stressed last year, “Article III ‘requires no more than de facto causality.’” *Id.* at 2566 (quoting *Block v. Meese*, 793 F.2d 1303, 1309 (D.C. Cir. 1986) (Scalia, J.)). Here, Plaintiffs’ theory of standing rests “on the predictable effect of Government action on the decisions of third parties”—specifically, the predictable harms of accelerating census deadlines, without warning, after months of publicly operating under a plan

1 tailored to COVID-19. *Id.* Accordingly, enjoining the Replan’s last-minute change in deadlines
 2 would redress those harms. *See, e.g., Dep’t of Commerce v. U.S. House of Representatives*, 525
 3 U.S. 316, 328–34 (1999) (affirming injunction against the planned use of statistical sampling to
 4 prevent apportionment harms, among others); *New York v. United States Dep’t of Commerce*, 351
 5 F. Supp. 3d 502, 675 (S.D.N.Y.) (issuing injunction to prevent “the loss of political representation
 6 and the degradation of information”), *aff’d in part, rev’d in part and remanded sub nom. Dep’t of*
 7 *Commerce v. New York*, 139 S. Ct. 2551.

8 **3. The Replan constitutes final agency action.**

9 The Replan constitutes final agency action. “To maintain a cause of action under the APA,
 10 a plaintiff must challenge ‘agency action’ that is ‘final.’” *Wild Fish Conservancy v. Jewell*, 730
 11 F.3d 791, 800 (9th Cir. 2013) (citing *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 61–62
 12 (2004)).

13 Courts should take a “‘pragmatic’ approach” to finality. *U.S. Army Corps of Engineers v.*
 14 *Hawkes Co., Inc.*, 136 S. Ct. 1807, 1815 (2016) (quoting *Abbott Laboratories v. Gardner*, 387
 15 U.S. 136, 149 (1967)). For an agency’s action to be final, two conditions must be met. First, the
 16 action “must mark the consummation of the agency’s decisionmaking process —it must not be of
 17 a merely tentative or interlocutory nature.” *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).
 18 Second, the action “must be one by which rights or obligations have been determined, or from
 19 which legal consequences will flow.” *Id.* Five years earlier, the Supreme Court found that the
 20 same two requirements applied in a census case. *Franklin*, 505 U.S. at 797 (the central question
 21 “is [1] whether the agency has completed its decisionmaking process, and [2] whether the result of
 22 that process is one that will directly affect the parties.”).

23 The Replan meets both criteria. First, the Replan marks the consummation of the agency’s
 24 decisionmaking process. *Id.* An agency action marks the consummation of the agency’s
 25 decisionmaking process when the decision is “not subject to further agency review.” *Sackett v.*
 26 *E.P.A.*, 566 U.S. 120, 127 (2012); *see also Hawkes*, 136 S. Ct. at 1813–14 (holding that an agency
 27 action was final because the determination was “typically not revisited”); *Fairbanks North Star*

Borough v. U.S. Army Corps of Engineers, 543 F.3d 586, 593 (9th Cir. 2008) (holding that an agency’s action was final where “[n]o further agency decisionmaking on the issue can be expected”). According to Fontenot’s declaration, the Secretary approved the Replan. Fontenot Decl. ¶ 85. No further agency decisionmaking will be conducted on the Replan. These facts support the conclusion that the agency has reached a definite position that the census will be conducted according to the schedule set forth in the Replan. *Fairbanks*, 543 F.3d at 593.

Second, the Replan is a decision by which rights or obligations have been determined. The Replan determines the rights and obligations of the Census Bureau because it determines the dates on which the Census Bureau will end its data collection and processing. The Replan also determines the rights and obligations of people who seek to participate in the census by preventing them from participating in the census after September 30, 2020. *See Sackett*, 566 U.S. at 126 (holding that an agency action determined rights and obligations of property owners where it “severely limit[ed] [the owners’] ability to obtain a permit . . . from [the agency]”); *Alaska, Dep’t of Environmental Conservation v. E.P.A.*, 244 F.3d 748, 750 (9th Cir. 2001) (holding that an agency action determined rights and obligations where its effect was to halt construction at a mine facility). These people will be unable to participate despite the Census Bureau’s previous representations that they could participate until October 31, 2020. Because the Replan determines rights and obligations, the Replan constitutes final agency action.

Disputing this conclusion, Defendants rely on the Supreme Court’s decision in *Franklin v. Massachusetts*, 505 U.S. 788 (1992). That case concerned the Secretary of Commerce’s transmission of the census report to the President. *Franklin*, 505 U.S. at 797–98. The data presented to the President was still subject to correction by the Secretary. *Id.* In addition, the President could instruct the Secretary to reform the census. *Id.* at 798. Accordingly, the report was a “moving [target]” or a “tentative recommendation,” rather than a “final and binding determination,” so it carried “no direct consequences for the reapportionment.” *Id.* Based on these characteristics, the Supreme Court held that the transmission of the census report was not final agency action. *Id.* at 798.

Defendants argue that the Replan also does not constitute final agency action. However, *Franklin* underscores why the Replan constitutes final agency action. The Replan is not a tentative recommendation that will be revisited by the agency, or reviewed by a higher official. Rather, no further review of the Replan will be conducted. Moreover, the Replan does have direct consequences for the reapportionment. The Replan determines the date on which data collection will end, past which people can no longer participate in the census. Thus, the Replan constitutes final agency action.

Defendants also argue that the Replan does not constitute agency action at all. Agency action includes “the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13). To satisfy this requirement, the matter must be a “circumscribed, discrete agency action[.]” *S. Utah Wilderness All.*, 542 U.S. at 62–63. This requirement “precludes [a] broad programmatic attack” on an agency’s operations. *Id.* at 64.

Defendants analogize this case to *NAACP v. Bureau of the Census*, 945 F.3d 183 (4th Cir. 2019). In *NAACP*, the plaintiffs brought a challenge in 2018 to the census “methods and means,” which the Fourth Circuit repeatedly referred to as “design choices.” *NAACP*, 945 F.3d at 186. The plaintiffs’ complaint alleged insufficient numbers of enumerators, insufficient networks of area census offices, the insufficiency of the Bureau’s plan to rely on administrative records, and insufficient partnership program staffing. *Id.* at 190. Each of these factors was “expressly . . . tied to one another.” *Id.* at 191. As a result of these relationships, “[s]etting aside’ one or more of these ‘choices’ necessarily would impact the efficacy of the others, and inevitably would lead to court involvement in ‘hands-on’ management of the Census Bureau’s operations.” *Id.* (citing *S. Utah Wilderness All.*, 542 U.S. at 66–67). The Fourth Circuit further held that the cancellation of a specific field test in 2016 did not give rise to legal consequences, rights or obligations. *Id.* In concluding that there was not final agency action, the Fourth Circuit emphasized that its holding was “based on the broad, sweeping nature of the allegations that the plaintiffs have elected to assert under the APA.” *Id.* at 192.

1 NAACP is inapposite. The instant case does not challenge the census “methods and means”
 2 or “design choices.” The instant case does not challenge multiple aspects of the census that are
 3 expressly tied to one another such that the Court must engage in “hands-on” management of the
 4 Census Bureau’s operations. The Replan itself concerns only one aspect of the Bureau’s
 5 operations—the census schedule. The Replan does give rise to legal consequences, rights, and
 6 obligations. In addition, the Replan was announced in a single press release. *See* ECF No. 37-1.
 7 These facts support the conclusion that the Replan is a circumscribed, discrete agency action.

8 **4. The Replan is not committed to agency discretion by law.**

9 The Replan is not committed to agency discretion. The APA creates a “strong presumption
 10 favoring judicial review of administrative action.” *Weyerhaeuser*, 139 S. Ct. at 370 (quoting *Mach*
 11 *Mining, LLC v. EEOC*, 575 U.S. 480, 489 (2015)). However, the APA precludes courts from
 12 reviewing actions that are committed to agency discretion by law. 5 U.S.C. § 701(a)(2). Courts
 13 have read this exception “quite narrowly, restricting it to ‘those rare circumstances where the
 14 relevant statute is drawn so that a court would have no meaningful standard against which to judge
 15 the agency’s exercise of discretion.’” *Weyerhaeuser*, 139 S. Ct. at 370 (quoting *Lincoln v. Vigil*,
 16 508 U.S. 182, 191 (1993)).

17 The Replan does not fit into this narrow exception. In *Department of Commerce v. New*
 18 *York*, the Supreme Court explained that “[t]he taking of the census is not one of those areas
 19 traditionally committed to agency discretion,” acknowledging that “courts have entertained both
 20 constitutional and statutory challenges to census-related decisionmaking.” 139 S. Ct. at 2568. The
 21 Supreme Court explained that there were meaningful standards against which to judge the
 22 agency’s action, including the Census Act, which requires that the agency “conduct a census that
 23 is accurate and that fairly accounts for the crucial representational rights that depend on the census
 24 and the apportionment.” *Id.* at 2568–69 (citing *Franklin*, 505 U.S. at 819–20 (Stevens, J.,
 25 concurring in part and concurring in judgment)). Therefore, there are meaningful standards against
 26 which to judge the Replan, and the Replan is not committed to agency discretion.

B. Although Defendants rely on cases holding that reviewability must be decided before production of the record, those cases are distinguishable.

Defendants argue that the Court cannot order production of the administrative record before deciding whether the case is reviewable. For the reasons stated below, the Court disagrees. The cases cited by Defendants are readily distinguishable. Furthermore, several district courts have ordered production of the administrative record prior to deciding reviewability.

Defendants rely on *In re United States*, a mandamus action stemming from challenges to the termination of the Deferred Action for Childhood Arrivals (DACA) program. 138 S. Ct. 443 (2017). In that case, the Supreme Court reversed a district court order requiring the government to complete the administrative record and concluded that the district court should have first decided whether the case was reviewable. *Id.* at 445.

However, *In re United States* is easily distinguishable from this case for at least three reasons. First, the government had already produced an administrative record. *Id.* at 444. Accordingly, *In re United States* addressed completion of the administrative record, and not whether an administrative record must be produced in the first instance. *Id.* As explained below, the government is always required to produce an administrative record for the purposes of APA review. Second, *In re United States* concerned the government's assertions of the deliberative process privilege. *Id.* By contrast, in the instant case, the government initially asserted deliberative process privilege, but then immediately withdrew such assertion and has not asserted any other privilege. ECF No. 82 at 32:14–16; 36:15–17. Finally, *In re United States* concerned an overly broad district court order, which compelled the production of “all DACA-related materials considered by persons (anywhere in the government) who thereafter provided [the Secretary] with written advice or input . . . [or] verbal input” on the decision. *In re United States*, 138 S. Ct. at 444. Such an overly broad order is not at issue here. In light of the Supreme Court's instruction that *In re United States* be cabined to “the specific facts of [the] case,” we cannot apply its ruling here. *Id.* at 145.

Defendants additionally rely on *NAACP v. Bureau of the Census*, --- F. Supp. 3d ---, 2020 WL 1890531 (D. Md. Apr. 16, 2020). In that case, the Fourth Circuit resolved threshold issues

before an administrative record was produced and concluded that there was not final agency action. *NAACP v. Bureau of the Census*, 945 F.3d 183, 190 (4th Cir. 2019). However, *NAACP* is distinguishable from this case in at least two respects. First, in *NAACP*, the plaintiffs initially brought only an Enumeration Clause claim, not APA claims. *Id.* at 187–88. Second, in *NAACP*, the plaintiffs had access to information outside of the administrative record, including discovery that had already been ordered on the Enumeration Clause claim and a public record. *See NAACP v. Bureau of the Census*, 382 F. Supp. 3d 349, 356 (D. Md. 2019) (ordering discovery on the plaintiffs’ constitutional claims). In the instant case, Defendants have produced only a single declaration drafted for this litigation, which attempts to give contemporaneous reasons for the agency action.

Moreover, while the Fourth Circuit ruled on reviewability before the production of the administrative record, other courts have demanded the production of the administrative record before deciding reviewability. *See Ctr. for Popular Democracy Action v. Bureau of the Census*, No. 1:19-cv-10917-AKH (S.D.N.Y. Jan. 9, 2020) (granting motion to expedite production of administrative record before deciding reviewability); *see also Doe # 1 v. Trump*, 423 F. Supp. 3d 1040, 1046 (D. Ore. 2019) (holding that production of administrative record was appropriate because the court required the administrative record to determine whether the agency action is final); *Friends of the River v. U.S. Army Corps of Engineers*, 870 F. Supp. 2d 966, 976 (E.D. Cal. 2012) (“Determining whether [the challenged actions] are final agency actions in the instant case requires a review of the full administrative record, because . . . ‘the question of jurisdiction is dependent on the resolution of factual issues going to the merits’ of [the] action.”).

C. Defendants must produce the administrative record.

Defendants’ position that they need not produce the administrative record must be evaluated in the context of the APA. Under the APA, “judicial review of agency action is limited to ‘the grounds that the agency invoked when it took the action.’” *Dep’t of Homeland Security v. Regents of the Univ. of Ca.*, 140 S. Ct. 1891, 1907 (2020). The agency cannot provide new reasons after the action is taken because such reasons would be “post hoc rationalization[s]” that do not

1 represent the agency's reasons for acting. *Id.* at 1908 (quoting *Overton Park, Inc. v. Volpe*, 401
2 U.S. 402, 420 (1972)).

3 To permit the Court to review the agency's reasons for acting, the agency must produce an
4 administrative record, which consists of "all documents and materials directly or indirectly
5 considered by agency decision-makers" at the time of the decision. *Thompson v. U.S. Dep't of*
6 *Labor*, 885 F.2d 551, 555 (9th Cir. 1989). The Court must then use the administrative record to
7 evaluate Plaintiffs' APA claims. *See Camp v. Pitts*, 411 U.S. 138, 142 (1973) (explaining that
8 "[t]he focal point for judicial review [of APA claims] should be the administrative record"),
9 *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977); *Overton Park*, 401 U.S.
10 at 420 (holding that "[APA] review is to be based on the full administrative record that was before
11 the Secretary at the time he made his decision").

12 Defendants argue that this Court should instead decide the APA claims based on
13 Fontenot's declaration. However, this Court cannot engage in APA review based on "[a] new
14 record made initially in the reviewing court," especially a declaration drafted for litigation,
15 because the declaration would be an impermissible post hoc rationalization that does not reveal the
16 agency's reasons for acting at the time of the action. *Camp*, 411 U.S. at 142. Accordingly, the
17 Supreme Court has held that a district court erred in relying on litigation affidavits, which were
18 impermissible "post hoc rationalizations." *Overton Park*, 401 U.S. at 419; *see also Cmty. for*
19 *Creative Non-Violence v. Lujan*, 908 F.2d 992, 998 (D.C. Cir. 1990) (R. Ginsburg, Thomas,
20 Sentelle, JJ.) (concluding that relying on litigation affidavits is "manifestly inappropriate"). In
21 *Overton Park*, the Supreme Court remanded in order for the district court to conduct its review
22 based on the administrative record. *Overton Park*, 401 U.S. at 419–20; *see also Am. Bioscience,*
23 *Inc. v. Thompson*, 243 F.3d 579, 580 (D.C. Cir. 2001) (vacating and remanding because the
24 district court should have required the FDA to file the administrative record and the circuit court
25 could not "tell on what basis the Food and Drug Administration took the agency action the
26 plaintiff seeks to enjoin"). In accordance with this case law, the Court must require the agency to
27 file an administrative record on which it can review Plaintiffs' APA claims.

If the agency claims that some parts of the administrative record are privileged, the Defendants shall produce a privilege log according to the same production deadlines. *See Ctr. for Food Safety v. Vilsack*, No. 15-cv-01590, 2017 WL 1709318, at *5 (N.D. Cal. May 3, 2017) (requiring the production of a privilege log when the agency asserted privilege); *Inst. For Fisheries Res. v. Burwell*, No. 16-cv-01574-VC, 2017 WL 89003, at *1 (N.D. Cal. Jan. 10, 2017) (same).

III. CONCLUSION

For the foregoing reasons, the Court orders Defendants to produce an administrative record. For the purposes of the immediate production of the administrative record for the preliminary injunction motion, the administrative record shall be limited by subject matter, date range, and custodians in the following ways:

By September 13, 2020, Defendants Bureau Director Steven Dillingham and Secretary of Commerce Wilbur Ross and all of their direct reports/subordinates shall file the following, and a privilege log for any privileged documents: All documents comprising the Replan and its various components for conducting the 2020 Census in a shortened time period, including guidance, directives, and communications regarding same. The date range of the documents is April 13, 2020 to August 3, 2020. These custodians can limit their review to documents and materials directly or indirectly considered during these four months.

By September 16, 2020, Associate Director Fontenot, his subordinates, and the individuals engaged with Fontenot to consider and prepare the Replan shall file the following, and a privilege log for any privileged documents: All documents and materials directly or indirectly considered when making the decision to replace the COVID-19 Plan with the Replan. The date range of the documents is April 13, 2020 to August 3, 2020. These custodians can limit their review to documents and materials directly or indirectly considered during these four months.

Plaintiffs' reply in support of their motion for preliminary injunction shall be filed on September 15, 2020.

The administrative record cannot be artificially constrained in time. If the Replan was

1 informed by the Bureau's prior planning, then such documents must be included. Thus, the Court
2 will consult with the parties on a schedule for the production of the complete administrative record
3 after the Court's ruling on Plaintiffs' motion for preliminary injunction.

4 **IT IS SO ORDERED.**

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6 Dated: September 10, 2020

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8 LUCY H. KOH
9 United States District Judge
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United States District Court
Northern District of California

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*, et al.,

Defendants.

20-CV-5770 (JMF)

NEW YORK IMMIGRATION
COALITION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*, et al.,

Defendants.

20-CV-5781 (JMF)

DECLARATION OF ELENA GOLDSTEIN

Elena Goldstein, pursuant to penalty of perjury under 28 U.S.C. § 1746, does hereby state the following:

I am an attorney in the Office of the New York State Attorney General and counsel to Plaintiffs in this action. I submit this Declaration in support of Plaintiffs' motion for summary judgment and a preliminary injunction.

Attached to this Declaration are true and correct copies of the following numbered exhibits:

60. Declaration of Murad Awawdeh, Executive Vice President of Advocacy and Strategy for the New York Immigration Coalition (August 25, 2020).
61. Declaration of Jennifer Mendelsohn (August 24, 2020).
62. Supplemental Declaration of Cesar Espinosa, Executive Director of FIEL Houston, Inc. (August 23, 2020).
63. Supplemental Declaration of Theo Oshiro, Deputy Director of Make the Road New York (August 24, 2020).
64. Supplemental Declaration of Jenny Seon, Legal Service Director of Ahri for Justice (August 24, 2020).
65. Reply Declaration of Dr. Matthew A. Barreto, Ph.D. (August 25, 2020).
66. Reply Declaration of John Thompson (August 24, 2020).

Dated: August 25, 2020

/s/ Elena Goldstein

Elena Goldstein

Office of the New York State Attorney General

28 Liberty Street

New York, NY 10005

Phone: (212) 416-6201

elena.goldstein@ag.ny.gov

Attorney for the Plaintiffs

Exhibit 60

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.

Defendants.

20-CV-5770 (JMF)

NEW YORK IMMIGRATION
COALITION, et al.

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.

Defendants.

20-CV-5781 (JMF)

DECLARATION OF MURAD AWAWDEH

MURAD AWAWDEH, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am the Executive Vice President of Advocacy and Strategy for the New York Immigration Coalition (“NYIC”) where I have worked for over six years. I have been the Executive Vice President of NYIC for the past 1 year and two months. Prior to this promotion, I served as NYIC’s Vice President of Advocacy for two years. As of September 14, 2020, I will be serving as a one of two co-Interim Executive Directors of NYIC. In these capacities, I have been and continue to be responsible in part for NYIC’s member engagement, as well as its education

and outreach efforts around the 2020 Decennial Census. I am also one of the NYIC executives responsible for the organization's budgeting, fundraising, and policy priorities. I am over 18 years old. I have personal knowledge of the facts set forth in this declaration.

2. As Executive Vice President of Advocacy, I have been and continue to be responsible for member engagement and have developed extensive familiarity with NYIC's membership. I spend significant time meeting with the executives and staff of our member organizations and the immigrant communities that we all serve. I have been personally involved in the research, development, and implementation of NYIC's 2020 Census education and outreach programs and engaging with our member organizations about the efficacy of their Census education and outreach efforts. As part of this process, I have gained personal knowledge about the prevailing feeling of fear among immigrant communities in New York State concerning the Trump Administration and, specifically, the July 21, 2020 Presidential Memorandum excluding undocumented immigrants from the apportionment ("Presidential Memorandum"). The Presidential Memorandum is making our efforts and the efforts of our member organizations to encourage Census participation more difficult. The Presidential Memorandum is sowing confusion and fear about the Census among the communities we serve. The Administration's decision to exclude some non-citizens from the apportionment base undermines our Census education and outreach materials and programming by contradicting its core messages and discouraging Census response.

3. NYIC has since received further information from its member and partner organizations—including the Sikh Coalition, Academy of Medical and Public Health Services, Neighbors Link, and MinKwon Center for Community Action—that the Presidential Memorandum has hindered their Census outreach efforts to immigrant communities by

contradicting their core messages, i.e., responding to the Census is important for Congressional apportionment, and undermining the fundamental message that immigrants count. Community members those organizations have contacted to fill out the Census have expressed reluctance to do so, in spite of efforts by outreach workers to assure that them that there will be no citizenship or immigration status information collected. Our member organizations have also reported that some people who have already filled out the Census have re-contacted them to ask whether the Presidential Memorandum means that they were wrong to fill out the Census in the first place. Our member organizations have reported to NYIC Census team that they are encountering confusion within immigrant communities about the meaning of the Memorandum and taking the time to address their questions and concerns is slowing down their ability to reach more individuals to encourage response rates. Some of our member organizations have expressed confusion among their own staff about the effect of the memorandum on the Census and whether they should continue their Census outreach at their current levels even though the Memorandum indicates that undocumented immigrants will not be counted for Congressional apportionment purposes.

4. As NYIC Executive Director Steven K. Choi discussed in his August 6, 2020 Declaration, the Presidential Memorandum has required NYIC to make additional investments to achieve Census participation rates comparable to what we what would have achieved absent the decision to exclude undocumented immigrants from the apportionment base. To address the concerns about the effect of the Presidential Memorandum raised by NYIC staff, our member organizations, and the communities we serve, NYIC has diverted the time of its Census 2020 Senior Fellow, Meeta Anand, from coordinating direct outreach to encourage self-response, educational campaigns concerning the Census Bureau's Non-Response Follow-Up activities, and

efforts to improve the count of homeless individuals, to conducting webinars and outreach to our member groups to discuss the Presidential Memorandum and how to address questions about it.

5. In addition, Anu Joshi, NYIC's Vice-President of Policy, who is responsible in part for directing NYIC's work on employment, education, health care, and pandemic response issues, has diverted substantial amounts of her time from those other mission critical priorities to our Census work. If the Presidential Memorandum were enjoined or declared unlawful by a federal court, NYIC could re-direct some of Ms. Joshi's time back towards overseeing work dedicated to ensuring that our member organizations and the communities we serve are able to cope with the ongoing and urgent education, public health, and employment issues arising out of the pandemic.

6. NYIC has been a community partner of the United States Census Bureau. The Census Bureau relies upon NYIC and many of its member organizations, as well as our staff, to be trusted voices to encourage immigrant communities in New York to respond to the Census. Our staff members, including Ms. Anand, have appeared in materials produced by the Census Bureau as a "trusted messenger" for Census outreach to immigrant communities. She has also participated in at least four webinars and a press conference with the Census Bureau since mid-July and is scheduled to participate in another webinar related to census outreach this week.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 25, 2020

New York, New York

A handwritten signature in black ink, appearing to be 'M. Awaweh', written over a horizontal line.

Murad Awaweh

Exhibit 61

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.

Plaintiffs,

v.

20-CV-5770 (JMF)

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.

Defendants.

NEW YORK IMMIGRATION
COALITION, et al.

Plaintiffs,

v.

20-CV-5781 (JMF)

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.

Defendants.

DECLARATION OF JENNIFER MENDELSON

JENNIFER MENDELSON, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I work as a journalist and genealogist. My past work experience includes serving as a People magazine special correspondent and Slate columnist. My work has appeared in numerous local and national publications including The New York Times, The Washington Post, USA Today, Politico, Time and the Los Angeles Times.

2. I am a member of the board of the Jewish Genealogy Society of Maryland and a member of the Association of Professional Genealogists.

3. Esther Kaplan of the Supreme Court case *Kaplan v. Tod*, 267 U.S. 228 (1925), was enumerated in the 1920 census. I located a copy of the relevant page from the 1920 census records online; it is attached as Attachment A. Esther Kaplan is listed on line 95. The rest of her family is listed on the adjacent lines, including her father, Schaje Kaplan aka Sam or Samuel Kaplan, on line 92. This document is available via the website FamilySearch.org at the following link: <https://www.familysearch.org/ark:/61903/3:1:33SQ-GRFC-995S?i=17&cc=1488411&personaUrl=%2Fark%3A%2F61903%2F1%3A1%3AMJYH-TNC> (membership required).

4. I also located a passenger manifest from July, 1914, including Esther Kaplan's name as a passenger. It is attached to this declaration as Attachment B. Ms. Kaplan is listed on line 12. This document is available at the following link: <https://www.familysearch.org/ark:/61903/3:1:3Q9M-C9TX-79KC-X?cc=1368704&personaUrl=%2Fark%3A%2F61903%2F1%3A1%3AJJQR-529>.

5. I also located a record of the Kaplan family's detention at Ellis Island, which lists her as having arrived on July 20, 1914. It is attached to this declaration as Attachment C. Ms. Kaplan is listed on the last line. This document is available at the following link: <https://www.familysearch.org/ark:/61903/3:1:3Q9M-C9TX-79RZ-H?i=614&cc=1368704>. The arrival date of July 20, 1914 on this document matches the Supreme Court's description that "[o]n July 20, 1914, being then about thirteen years old, she was brought to this country." *Kaplan*, 267 U.S. at 229

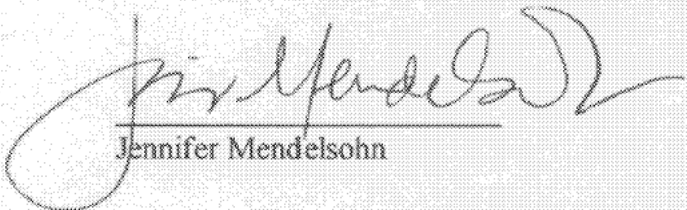
6. I also located a record of Ms. Kaplan's father's naturalization. It is attached to this declaration as Attachment D. This document is available at the following link: <https://www.familysearch.org/ark:/61903/3:1:3QS7-89M8-LTRG?i=88&wc=MDSY->

[YP8%3A326209701%2C329928701&cc=1999177](#), starting at pg. 89. The date of naturalization, which is listed on the second page of the document, is December 14, 1920. This matches the Supreme Court's description that, "[o]n December 14, 1920, [Esther Kaplan's] father was naturalized." *Kaplan*, 267 U.S. at 229. The naturalization documents lists Esther as among Sam Kaplan's children, and that she was born in the year 1900, which would have made her 13 or 14 years old in 1914. This matches the Supreme Court's description that Esther Kaplan was "about thirteen years old" at the time that she entered the country on July 20, 1914. The two other children listed, Abraham and Samuel, as well as the household address, 249 Monroe Street, match the census record in Attachment A.

I declare under penalty of perjury that the foregoing is true and correct.

Dated. August 24, 2020

Baltimore, Maryland



Jennifer Mendelsohn

Attachment A

STATE NY COUNTY NY TOWNSHIP OR OTHER DIVISION OF COUNTY borough of Manhattan NAME OF INCORPORATED PLACE NYC ENUMERATED BY ME ON THE 17th DAY OF Jan 1920. Samuel Silverman ENUMERATOR.

DEPARTMENT OF COMMERCE—BUREAU OF THE CENSUS
FOURTEENTH CENSUS OF THE UNITED STATES: 1920—POPULATION

SUPERVISOR'S DISTRICT No. 318 SHEET No. 9 B
WARD OF CITY 11-1-20

NAME OF INSTITUTION _____

PLACE OF BIRTH	NAME	RELATION	SEX	AGE	MARRIAGE	CITIZENSHIP	EDUCATION	NATIVITY AND MOTHER TONGUE				OCCUPATION	
								PERSON	FATHER	MOTHER	OTHER	PERSON	OTHER
16172	Smith, Lelia	Head	F	30	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16173	Smith, Lelia	Head	F	30	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16174	Goldman, Max	Head	M	27	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	Operator	Block
16175	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16176	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16177	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16178	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16179	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16180	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16181	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16182	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16183	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16184	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16185	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16186	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16187	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16188	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16189	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16190	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16191	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16192	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16193	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16194	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16195	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16196	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16197	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16198	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16199	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	
16200	John, Jacob	Head	M	34	Mar	U.S.	High School	Russian	Yiddish	Russian	Yiddish	None	

Attachment B

LIST OR MANIFEST OF ALIEN PASSENGERS FOR THE UNITED STATES

ALL ALIENS, in whatever class they travel, MUST be fully listed and the master or commanding officer of each vessel carrying such passengers

S. S. S. KURSK

sailing from Libau

7 JUL. 1914

1. (For passengers see by Bureau No. 100-10000)		2. NAME IN FULL		3. Age	4. Sex	5. Calling or Occupation	6. Address	7. Nationality	8. Place of Birth	9. Last Permanent Residence	10. The exact and complete address of nearest relative or friend in country where alien was born
No.	HEAD TAX EXEMPTIONS	HEAD TAX DEPOSITS	Family Name	Given Name	Yes	No	Residence	Country	City or Town		
1			Quistberg	Anna	46		Libau	Russia	Russia	Russia	Libau
2			Kaher	Agnes	11		Libau	Russia	Russia	Russia	Libau
3			Andersson	Agnes	18		Libau	Russia	Russia	Russia	Libau
4			Michalys	Agnes	18		Libau	Russia	Russia	Russia	Libau
5			Steching	Agnes	18		Libau	Russia	Russia	Russia	Libau
6			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau
7			Anna	Agnes	18		Libau	Russia	Russia	Russia	Libau
8			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau
9			Anna	Agnes	18		Libau	Russia	Russia	Russia	Libau
10			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau
11			Anna	Agnes	18		Libau	Russia	Russia	Russia	Libau
12			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau
13			Anna	Agnes	18		Libau	Russia	Russia	Russia	Libau
14			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau
15			Anna	Agnes	18		Libau	Russia	Russia	Russia	Libau
16			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau
17			Anna	Agnes	18		Libau	Russia	Russia	Russia	Libau
18			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau
19			Anna	Agnes	18		Libau	Russia	Russia	Russia	Libau
20			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau
21			Anna	Agnes	18		Libau	Russia	Russia	Russia	Libau
22			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau
23			Anna	Agnes	18		Libau	Russia	Russia	Russia	Libau
24			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau
25			Anna	Agnes	18		Libau	Russia	Russia	Russia	Libau
26			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau
27			Anna	Agnes	18		Libau	Russia	Russia	Russia	Libau
28			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau
29			Anna	Agnes	18		Libau	Russia	Russia	Russia	Libau
30			Janitsch	Agnes	11		Libau	Russia	Russia	Russia	Libau

Attachment C

No. _____

S. S. <http://www.scribd.com/doc/14924424>

arrived at 10, 1914.

191

M.

from ^{your} _____

BC-DOC-CEN-2020-001602-002450

Attachment D

[illegible]

Exhibit 62

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*, et al.,

Defendants.

20-CV-5770 (JMF)

NEW YORK IMMIGRATION
COALITION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*, et al.,

Defendants.

20-CV-5781 (JMF)

SUPPLEMENTAL DECLARATION OF CESAR ESPINOSA

Cesar Espinosa, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am the Executive Director of FIEL Houston, Inc. ("FIEL"). I am over 18 years of age. I have personal knowledge of the facts stated in this declaration.
2. This declaration supplements my declaration dated August 6, 2020 in this case.
3. Obtaining court relief to clarify that every person, including undocumented immigrants, will count in the census to determine congressional apportionment will allow FIEL to do

meaningful outreach to our constituents. Every single day available for FIEL to spread this message to the community will help to our outreach efforts. Specifically, a court order that stops the exclusion of undocumented immigrants from the census would make FIEL's efforts to encourage census participation easier by allowing us to clarify the current confusion and help ease the fear caused by the Presidential Memorandum, and it would take FIEL less time and fewer resources to convince members of the communities we serve to participate in the census.

4. As stated in my prior declaration, the Presidential Memorandum is deterring Census participation in the communities FIEL serves and burdening our outreach efforts. This is evident when we provide services to our community at our physical office. Since approximately mid-June of this year, FIEL started opening our physical office to provide services by appointment three days a week, while taking extra health and safety precautions. We had previously closed our physical office temporarily and operated remotely due to the ongoing pandemic in Houston. While providing our normal range of immigration legal services during client appointments, we also inform our clients about other services and programs we offer to make our engagement with our clients more impactful, given the limited amount of time available. For example, in the limited time we have per appointment, we also inform our clients about our census outreach and Get Out The Vote (GOTV) efforts. Recently, we have begun organizing people around COVID relief efforts, because the COVID pandemic has hit the communities we serve severely and disproportionately. In addition to our advocacy for greater assistance from state and local authorities, we use the limited time in our client appointments to also promote COVID-related safety protocols and provide free masks if needed and share information on rent assistance programs during the pandemic.

5. Further, in the course of providing legal services, we inform our clients about other legal work we are involved in, including serving as plaintiffs in the present case. As noted above, during appointments we educate our clients about the census and encourage them to participate. As a result of the recent Memorandum, I have witnessed that about half of the individuals we serve express apathy or fear about engaging in the census, understanding that the President wants to exclude undocumented immigrants. Some individuals simply ask, "what's the point?" Others say they would rather not participate because they come from mixed-status families and fear that one or more family members could be subjected to negative consequences if the government determines their status. This complicates and extends the time we engage in census education.

6. The fear and apathy we witness about participating in the census is not limited to clients to whom we provide direct services. On August 8, 2020, FIEL participated in a car parade in the Greenspoint community of northern Houston organized by local agents of the Census Bureau. Greenspoint is comprised of a large and growing Latino population, with a significant African American population. More affordable rent in Greenspoint compared to other Houston communities has allowed for growing numbers of immigrants to move into the area, including many mixed-status families. The Census Bureau had reached out to FIEL last year to ask if we could be part of their community outreach efforts. We also had meetings about doing joint outreach efforts with the Census Bureau this year prior to the pandemic and they posted official Census Bureau signs at our offices. As part of that relationship, the Census Bureau invited FIEL and various grassroots organizations, in partnership with local pastors and community leaders, to participate in the car parade to encourage census participation in the midst of a pandemic. FIEL was the only Spanish-speaking organization participating in the parade. FIEL members, including myself, took part in the parade and drove through Greenspoint neighborhoods raising

awareness about the census through vocal outreach to residents in Spanish and English. We talked to a gathering of community members and various individuals from our vehicles. During the course of the hour and a half long parade, I estimated based on my experience in organizing that FIEL members spoke to about 200 individuals, encouraging them to participate in the census and reach out to us for questions about the process. While some individuals were receptive to our messages, about half of the people we engaged with were apathetic. Unfortunately, of all the individuals we personally engaged with, only one person said to us they already filled out census. By my estimation, about 85% of the individuals who expressed apathy about the census were Latino. Based on my knowledge of and experience working with the Greenspoint community, many Latinos in Greenspoint come from mixed-status families who are afraid to engage in the census due to their perception that undocumented individuals could be targeted by the government through the census.

7. If FIEL did not have to expend extra efforts to encourage, reiterate or persuade people about the importance of census participation, especially individuals who genuinely fear or have apathy about it due to their perception that undocumented individuals will not be counted and could be targeted for immigration purposes by the census, it would free up a significant amount of time and resources for FIEL. As noted previously, many of the individuals we serve, as well as many of our members, come from mixed-status families where one or more family members may be undocumented. Although it normally takes a few minutes to educate and inform each individual about census participation, the amount of time and personnel resources collectively used by our organization to overcome the confusion and fear caused by the Presidential Memorandum is significant for a nonprofit organization like FIEL. We could otherwise use that time to promote our other services, like our COVID relief and GOTV efforts. For example, we

would be able to provide other services and information to our clients during our time-limited appointments at our physical office, or we would be able to serve more people during our office hours. We would be more productive in our mission.

8. Even with only a limited amount of time left before the end of the count, having a legal mandate to reassure people they will be counted for the purpose of determining Texas' congressional seats and electoral votes would help us encourage census responses among the community we serve through our public communications. Every additional day to engage in census outreach without having to fight the misinformation of the Presidential Memorandum would allow FIEL to engage in more efficient and effective outreach, if not in person, through our communication streams. FIEL would be able to employ conventional media, such as press releases, press conferences, and press statements, given our relationships with TV and radio media within both Spanish language and English language networks. We would also be able to employ our large social media network through platforms such as Facebook, Twitter, and Instagram. All of these avenues of communication would be available to us, even for last minute pushes to amplify our census outreach and encourage our community and constituents to fill out the census.

I, Cesar Espinosa, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Dated: Houston, Texas
August 23, 2020

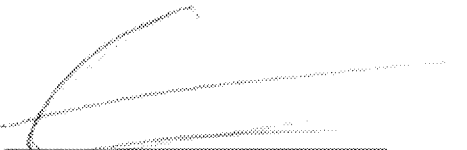

Cesar Espinosa

Exhibit 63

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.

Defendants.

20-CV-5770 (JMF)

NEW YORK IMMIGRATION
COALITION, et al.

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.

Defendants.

20-CV-5781 (JMF)

SUPPLEMENTAL DECLARATION OF THEO OSHIRO

THEO OSHIRO, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. As explained in my August 6, 2020 Declaration, I am the Deputy Director at Make the Road New York (“MRNY”) and in my capacity as Deputy Director, I am responsible for overseeing our census work and our services teams, which include our legal, health, and adult education departments. I am also part of the Executive Leadership Team of MRNY and am responsible for fundraising and shaping many of MRNY’s organizational priorities. Throughout my tenure with MRNY, I have been in regular contact with MRNY members and I frequently meet with members in the communities in which they reside where I learn about their neighborhoods,

their needs, and their concerns to inform communications, organizing, and civic engagement programs for MRNY. During my 15 years at MRNY, I have also familiarized myself with MRNY's internal records and processes; our staff and their responsibilities; our programs and program areas; and our members, and their needs.

2. As discussed in my August 6, 2020 Declaration, the Presidential Memorandum has required MRNY to make additional investments to achieve Census participation rates comparable to what we what would have achieved absent the decision to exclude undocumented immigrants from the apportionment base.

3. Since executing my August 6 declaration, I have received further information from the staff conducting our outreach to the Spanish-speaking immigrant community concerning the impact of the Presidential Memorandum on census response rates. One staff member reported that a Spanish-speaking community member asked her about the President's memo and said that the announcement of a plan to exclude undocumented immigrants from apportionment made them afraid to fill out the census. Another staff member reported that she had spoken to three Spanish-speaking people who said they were afraid to fill out the census because of the President's announcement about excluding undocumented immigrants from apportionment. The same staff member reported that during her follow-up census outreach calls since early August, she had noticed an appreciable decline in the number of Spanish-speaking individuals answering their phones, which she attributed to a desire not to talk about the census. A third staff member reported that during census outreach, she encountered a Spanish-speaking family who told her that they were convinced by the President's statements that undocumented people should not be included in the Census and therefore decided not to participate in it. This staff member tried to explain that

undocumented people should still be counted in the Census; however, the call was upsetting for her and took up time that could have been spent encouraging other households to fill out the census.

4. Overall, MRNY is continuing to divert resources to combat the misinformation, confusion, and feelings of exclusion that have resulted from the Presidential Memorandum.

5. If the court were to issue an injunction against the policy in the Presidential Memorandum or to declare it unlawful, it would help MRNY conduct more efficient and effective census outreach to our members and the community we serve, and allow us to reach more people and to divert some resources back to other mission critical priorities during the pandemic, including ensuring that there is adequate employment, education, housing and health support for our members and their families

I, Theo Oshiro, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Dated: August 24, 2020
Croton-on-Hudson, N.Y.

A handwritten signature in cursive script, appearing to read 'Theo Oshiro', written in black ink.

Theo Oshiro

Exhibit 64

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*, et al.,

Defendants.

20-CV-5770 (JMF)

NEW YORK IMMIGRATION
COALITION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*, et al.,

Defendants.

20-CV-5781 (JMF)

SUPPLEMENTAL DECLARATION OF JENNY SEON

Jenny Seon, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am the Legal Service Director for Plaintiff Ahri for Justice (“Ahri”). I am a founding member of Ahri and have been on staff since December 2019. I am over 18 years of age. I have personal knowledge of the facts stated in this declaration.
2. This declaration supplements my declaration dated August 5, 2020 in this case.

3. Ahri provides legal services, has a hotline to address community concerns, and conducts civic engagement work, including census-related outreach. As part of our census outreach, we have a goal to contact at least 10,000 individual households to encourage them to fill out the census. We also provide information about the census to our legal services clients and to individuals who call our hotline. After news of the July 21, 2020, Presidential Memorandum to the Secretary of Commerce (“Presidential Memorandum”), we began to hear concerns from the community concerning the impact of the Presidential Memorandum on the census. Households that already responded to the census are concerned that they improperly responded, while households that have not yet responded to the census are hesitant to respond because they either believe they are not permitted to respond, or because they fear identifying their household to the federal government.

4. Although our team has continued to encourage households to respond to the census by highlighting its importance to funding and redistricting, the Presidential Memorandum makes messaging difficult. We have informed our clients and constituents that we are now involved in a lawsuit to challenge the Presidential Memorandum, but the fact remains that the Memorandum is still in effect. For this reason, we are spending a longer amount of time trying to convince households to respond to the census, time that could be spent contacting additional households and on our other program areas. With the September 30 deadline quickly approaching, a court order invalidating the Presidential Memorandum would make our census outreach efforts more efficient and effective. Our messaging to our community would change from “we are trying to stop the Presidential Memorandum but are not there yet,” to “a federal court has halted the Presidential Memorandum.” Every single day that we can tell our constituents that they will count for apportionment purposes and that the federal government is not permitted to identify the

immigration status of individuals or households to exclude them from apportionment is valuable and will help with outreach.

5. We know this kind of messaging works. We often get questions like, “Do I have to reveal my status on the census?” We immediately quell this concern by pointing to the citizenship question injunctions. We believe that similar messaging that the Court has enjoined the Presidential Memorandum will help to immediately quell community concerns about the Memorandum, making conversations shorter to allow Ahri to reach a larger number of households.

6. Getting relief from the Presidential Memorandum as soon as possible is also key to ensuring that census door knockers have success. With relief from the Memorandum, we can publicize the Court’s order to encourage our community to open their doors to census outreach workers, rather than hiding out of confusion or fear and avoiding the census completely.

7. Ahri is already preparing to shift our messaging as soon as the Court grants relief. Since our communications team first learned that Plaintiffs had filed a motion for a preliminary injunction, they have continued to follow-up for updates so that so we can start doing outreach. If the Court issues an order granting Plaintiffs relief, we plan to immediately contact Korean news media, issue press releases, and do social media to let our community know about the order and encourage the community to respond to the census.

I, Jenny Seon, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Dated: August 24, 2020 in Los Angeles, California

A handwritten signature in black ink, consisting of a stylized 'J' and 'S' intertwined, followed by a horizontal line.

Jenny Seon

Exhibit 65

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*, et al.,

Defendants.

20-CV-5770 (JMF)

NEW YORK IMMIGRATION
COALITION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*, et al.,

Defendants.

20-CV-5781 (JMF)

Expert Reply Declaration of Matthew A. Barreto, Ph.D.

I. Overview

1. I submitted a declaration in this case on August 7, 2020 (“Declaration”). I have read the expert disclosures by Dr. John M. Abowd, dated August 19, 2020 (“Abowd Decl.”) and Albert E. Fontenot, Jr., dated August 19, 2020 (“Fontenot Decl.”) as well as the Memorandum of Law in Support of Defendants’ Motion to Dismiss and in Opposition to Plaintiffs’ Motion for Partial Summary Judgment or Preliminary Injunction, dated August 19, 2020 (“Defendants’ Brief”) and am prepared to offer rebuttal points on behalf of the Plaintiffs.

2. Below, I address comments directed at, or related to my report from the Abowd Decl., Fontenot Decl., and Defendants' Brief. Where there is overlap, I have made clear which document I am referring to and attempted to use paragraph and page numbers where appropriate.

II. Abowd Declaration

3. Dr. Abowd begins his expert opinion in paragraph 12 by noting that the 2020 Census data collection has been hampered by COVID-19. There is no doubt that COVID-19 has presented many challenges to American life and for 2020 Census outreach. However, these challenges are completely distinct from the effect the Presidential Memorandum ("PM") is having and will continue to have on efforts by the Census Bureau and its partners to encourage immigrant communities to respond to the 2020 Census. Indeed, while COVID-19 has contributed to a challenging environment for the enumeration, the PM adds new, significant challenges to an accurate and high-quality count because it sends a signal of exclusion and threat to the immigrant community which discourages them from responding to the Census. The PM's negative signal is an added and unnecessary one to send to the immigrant community while the Census Bureau is in a critical stage of the enumeration.

4. At any moment, a survey instrument such as the Census may face a variety of challenges to response rates; however, the existence of a greater or more broadly applicable threat to the response rate, such as COVID-19, does not negate the independent effect that a more targeted threat, such as the PM, may have a particular subgroup of respondents. Dr. Abowd does not account for this distinction. The Decennial Census is a singularly large survey instrument and, according to Mr. Fontenot (Fontenot Decl. ¶ 7), as of August 18, approximately 36% of U.S. households, amounting to over 50 million households, have yet to respond. The impact that any specific threat may have on response rates remains significant. For example, a potential respondent, such as a grocery store employee or farmworker who has reported to work in-person every day of the pandemic, may be undeterred from responding to the Census due to COVID-19; however, they may be deterred by the PM's signal of threat and exclusion based on their own immigration status or the status of other household members. Although COVID-19 may have

significant negative effects on outreach efforts and response rates, response rates can still suffer additional reductions as a result of new threats against immigrant communities that create more fear and confusion over their participation in the Census.

5. In paragraph 13 of his declaration, Dr. Abowd opines that the Census Bureau's own pilot study of the citizenship question in June-August 2019 ("2019 Census Test") did not return statistically significant evidence of reduced response rates due to the inclusion of a citizenship question on the questionnaire. However, this opinion is not entirely accurate. Dr. Abowd's opinion focuses solely on the overall response rate and fails to mention that the Census Bureau's 2019 Census Test did show statistically significant decreases in response rates in areas with significant non-citizen, Hispanic, and Asian populations. In an article summarizing the results of the 2019 Census Test published on the Census Bureau's web site, Dr. Victoria A. Velkoff, the Census Bureau's Associate Director for Demographic Programs, wrote "there was a statistically significant difference in the proportion of respondents who identified as Hispanic between the forms"¹ with the form including a citizenship question reducing Hispanic participation. Thus, even in the preliminary analysis of the 2019 Census Test, the Census Bureau found that there were significantly disparate response rates by different communities when the Census implicated citizenship status. The full report issued by Census Bureau in January 2020, revealed further, and more significant differences. The Census Bureau wrote: "in some areas and for some subgroups, there were statistically significant lower self-response rates for the test questionnaire with the citizenship question than for the test questionnaire without the citizenship question."² In particular, the 2019 Census Test report found lower response rates due to the citizenship questions in areas designated bilingual, high numbers of noncitizens, high density Hispanic and

¹ Victoria A. Velkoff, *2019 Census Test Preliminary Results*, U.S. Census Bureau, Oct. 31, 2019, https://www.census.gov/newsroom/blogs/random-samplings/2019/10/2019_census_testpre.html.

² Poehler, Elizabeth A., Dorothy A. Barth., Lindsay Longsine, Sarah K Heimel, *2019 Census Test Report*, U.S. Census Bureau, at ix-x, Jan. 3, 2020, <https://www2.census.gov/programs-surveys/decennial/2020/program-management/census-tests/2019/2019-census-test-report.pdf> (*2019 Census Test Report*).

higher density Asian. Additionally, the Census study found statistically higher rates of disconnect, and discontinuing responses in the Internet sample for the version containing the citizenship question, noting that “breakoffs occurred during the collection of person demographics at a higher rate for the treatment with the citizenship question.” Thus, it is clear that the 2019 Census Test indicates that increasing threat over immigration status leads to withdrawal and declining participation for immigrant communities.

6. Further, the 2019 Census Test only examined self-response rate—it did not investigate how inquiring into citizenship status affects the success of NRFU nor did the Test examine imputation. These are both items the Test could have studied if the Census Bureau wanted to fully understand the impact of linking the Census to citizenship issues, but it did not. As the 2019 Census Test report readily admits, the study was designed to understand staffing needs for the 2020 Census, not to scientifically evaluate the full and total response and non-response rates by race, ethnicity and immigration status.

7. The 2019 Census Test cited by Dr. Abowd cannot account for the more direct targeting of undocumented immigrants by the PM. The study Dr. Abowd cites cannot provide a complete picture of the immigrant response rate in the presence of an official Presidential policy statement targeting the removal of undocumented persons from the census count. While the citizenship status question would have been threatening (as reflected in the reduced participation reported in the 2019 Census Test), the PM is more explicit in calling for “excluding these illegal aliens.” To this point, the Census Bureau wrote that “the environment in which [the 2019 Census Test] was conducted will differ from the 2020 Census environment in terms of advertising and media attention.”³ Indeed, they are correct, there has been widespread media attention to the PM which will reduce participation in immigrant communities.

8. Finally, the 2019 Census Test was conducted to analyze participation during the self-response period of the census, not during the NRFU period. The PM was issued during the

³ *2019 Census Test Report*, at 12.

NRFU period of the 2020 Census, in which the deterrent effects of the PM are likely to be magnified compared to the self-response period. The result is that the conclusions about response rates during the initial self-response period that Dr. Abowd relies upon are less relevant in understanding the effect of the PM at this juncture of the enumeration during NRFU. The Census Bureau writes of its 2019 Census Test: “The focus of this analysis is to understand how the citizenship question affects self-response rates *prior to* the NRFU operation. As such, the results of this test are *limited* to the self-response timeframe prior to the start of NRFU. The self-response rates discussed in this analysis do not try to mimic the final overall self-response of a census, which includes self-response received during NRFU and other field operations.”⁴

9. However, the single most important takeaway from the 2019 Census Test is what Dr. Abowd neglected to mention, i.e., the 2019 Census Test found that the citizenship question did result in statistically lower response rates for Latinos, Asians, non-English speakers and non-citizens. The largest gap reported was in high-density Hispanic areas where the 2019 Census Test reported a drop-off of 1.1 percent which would reduce the Hispanic count by over 670,000 according to the Census Bureau’s data.

⁴ 2019 *Census Test Report*, at 12.

10. Original Table 12 from 2019 Census Test Report⁵**Table 12. Total Self-Response Rates for Areas with Different Proportions of Hispanic Residents**

Proportion of Hispanic Residents	Experiment (no Citizenship)	Control (with Citizenship)	Difference	P-Value
Areas with more than 49.1 percent Hispanic residents	36.6 (0.3)	35.5 (0.3)	1.1 (0.5)	0.02*
Areas with between 10.6-49.1 percent Hispanic residents	48.3 (0.2)	47.9 (0.2)	0.4 (0.3)	0.15
Areas with less than 10.6 percent Hispanic residents	55.9 (0.3)	55.4 (0.3)	0.4 (0.5)	0.41

Source: U.S. Census Bureau, 2019 Census Test; DRB Approval Number: CBDRB- FY20-ACSO002-B0002

Note: Minor additive discrepancies are due to rounding. Standard errors are in parentheses. An asterisk (*) indicates a statistically significant result. Significance was tested based on a two-tailed t-test at the $\alpha=0.1$ level.

11. Original Table 9 from 2019 Census Test Report

Table 9. Total Self-Response Rates for Areas with Different Proportions of Noncitizens

Noncitizen Proportions	Experiment (no Citizenship)	Control (with Citizenship)	Difference	P-Value
High: Areas with more than 11.1 percent noncitizens	41.4 (0.2)	40.5 (0.2)	0.9 (0.3)	<0.01*
Medium: Areas with between 4.9-11.1 percent noncitizens	51.2 (0.2)	50.7 (0.2)	0.5 (0.2)	0.06*
Low: Areas with less than 4.9 percent noncitizens	55.7 (0.3)	55.4 (0.3)	0.3 (0.6)	0.58

Source: U.S. Census Bureau, 2019 Census Test; DRB Approval Number: CBDRB- FY20-ACSO002-B0002

Note: Minor additive discrepancies are due to rounding. Standard errors are in parentheses. An asterisk (*) indicates a statistically significant result. Significance was tested based on a two-tailed t-test at the $\alpha=0.1$ level.

12. Original Table 8 from 2019 Census Test Report

Table 8. Total Self-Response Rates by Contact and Language Strategy Areas

Contact and Language Strategy	Experiment (no Citizenship)	Control (with Citizenship)	Difference	P-Value
Internet First English	56.1 (0.2)	55.7 (0.2)	0.4 (0.3)	0.21
Internet First Bilingual	37.9 (0.3)	36.9 (0.4)	1.0 (0.5)	0.06*
Internet Choice English	42.6 (0.4)	42.3 (0.4)	0.3 (0.8)	0.68
Internet Choice Bilingual	33.2 (0.4)	32.0 (0.4)	1.3 (0.5)	0.02*

Source: U.S. Census Bureau, 2019 Census Test; DRB Approval Number: CBDRB- FY20-ACSO002-B0002

Note: Minor additive discrepancies are due to rounding. Standard errors are in parentheses. An asterisk (*) indicates a statistically significant result. Significance was tested based on a two-tailed t-test at the $\alpha=0.1$ level.

⁵ Tables 12, 9, 8 all from: <https://www2.census.gov/programs-surveys/decennial/2020/program-management/census-tests/2019/2019-census-test-report.pdf>

13. Moreover, because the 2019 Census Test only examined self-response rate, it did not investigate the success of NRFU, nor did it examine imputation.⁶ As the Census Bureau report readily admits, the pilot study was designed to understand staffing needs for the Census, not to scientifically evaluate the full and total response and non-response rate by race, ethnicity and immigration status.⁷

14. The PM is potentially even more disruptive than a citizenship question because of its timing. When taking a survey, the researcher generally wants to avoid introducing any unnecessary, extraneous conditions during the response period that may bias respondents or harm response rates. The Census Bureau began its promotion of the 2020 Census in July 2019, inviting most U.S. households to respond to the Census starting on March 12, 2020 and, as of the date the PM was published on July 21, 2020, the Census Bureau planned to continue the response period until October 31. That means that the PM was introduced 131 days from the start of the count and 102 days from the end of the count—and only days before the start of critical Non-Response Follow-Up (“NRFU”) operations. The PM remains in effect while Census enumerators are in the field, visiting households for in-person interviews as well as on-going NRFU. Given the PM’s explicit connection to the 2020 Census and its direct contradiction of the core messaging of the outreach efforts conducted by the Census Bureau itself and the non-governmental organizations, particularly in immigrant communities and communities of color, it would be anathema to sound survey research to publish such a document during the response period. Notwithstanding that the PM only purports to affect the count after the close of the enumeration period, the timing of the PM’s release will likely lead to significant declines in Census response rates because households in immigrant communities will be deterred from responding now, and will not wait to find out whether they are actually excluded from the apportionment count later on.

⁶ According to the report, at p. x, “Note that this test did not include the Nonresponse Followup operation, so we are not able to measure the impact of a citizenship question for the completeness and accuracy of 2020 Census overall.”

⁷ See 2019 Census Test Report, at x, 30-31.

15. As I note in my Declaration at page 4, paragraph 15 “there was widespread coverage, particularly within Spanish-language news media,” of the July 21 PM, which is to be expected given such a major announcement by the President.⁸ Despite extensive news coverage, the Census has no plans to change its field outreach to reassure immigrants of their participation. According to Mr. Fontenot, at paragraph 12 of his declaration, the PM has had “no impact on the design of field operations for decennial census, or on the Census Bureau’s commitment to count each person in their usual place of residence.”

16. In paragraph 15 of his report, Dr. Abowd states that the Census Bureau was not currently prepared to assess how the PM would be implemented and coordinated with data teams at the Census Bureau. Dr. Abowd’s statement is consistent with testimony from the Director of the Census Bureau that he was entirely unaware of the PM prior to its release.⁹ The failure to notify the Census Bureau or test the effect of the PM on Census response rates, notwithstanding the PM’s relationship to the 2020 Census, shows that the announcement of the PM on July 21, 2020, in the heart of the enumeration period, was not done in accordance with the Census Bureau’s practices and may have been timed to contravene those practices. Dr. Abowd opines that it is impossible to predict the effects of the PM on apportionment at this time; however, he does not dispute that the PM will have a chilling-effect on Latino and immigrant participation right now, during the response period and during NRFU.

⁸ Telemundo. “Trump Ordena Al Censo Que No Incluya a Los Indocumentados En El Recuento Que Determina El Reparto De Escaños Del Congreso,” July 21, 2020.

<https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-tmna3823616>.

⁹ Tara Bahrapour, House Democrats grill Census director on Trump order to exclude undocumented immigrants from apportionment, Wash. Post, July 29, 2020, https://www.washingtonpost.com/local/social-issues/house-democrats-grill-census-director-on-trump-order-to-exclude-undocumented-immigrants-from-apportionment/2020/07/29/9c7da852-d1e1-11ea-8c55-61e7fa5e82ab_story.html (“Bureau Director Steven Dillingham told the House Oversight Committee that he had no advance notice of President Trump’s memorandum, which directs the Commerce Department to exclude undocumented immigrants from being counted next year when Congress reapportions a decade’s division of House seats.”).

17. With respect to whether media coverage related to the Census can impact response rates, the Census Bureau agrees that media coverage of Census news can and does impact the general public—including coverage of court decisions related to the Census. The 2019 Census Test was conducted between June 13 and August 15. The U.S. Supreme Court decision concerning the validity of the citizenship question was issued on June 27 and there was media coverage of the issue both before and after the decision. In the full report on the 2019 Census Test, the Census Bureau wrote that “media coverage related to the Supreme Court decision on whether or not to include a citizenship question on the 2020 Census questionnaire *may have affected respondent behavior during this test*. There was media coverage on the citizenship question both before and after the Supreme Court decision was made public on June 27, 2019. *Public opinion on the topic may have influenced response behavior for this test*. The degree to which public awareness and public opinion is different between this test and the 2020 Census may influence how applicable the results of this test are to the 2020 Census. The impact of media coverage may have also affected the treatments differently.”¹⁰

18. In paragraph 16 of his declaration, Dr. Abowd reiterates his concerns about the impact of COVID-19. I have responded to this above, however, it bears reiterating that there is no evidence that the significant challenge of conducting the Census during the pandemic subsumes entirely the negative effect on response rates of the PM or any other phenomena. Dr. Abowd does not address decades of published research, including Census Bureau studies, that find reduced participation by immigrant communities in the face of new threats, which the PM represents.

19. In paragraph 17 of his declaration, Dr. Abowd opines that a randomized trial would be the best way to assess the effects of removing threats to immigration status on response rates. First, in our 2018 study – for which Dr. Abowd does not dispute the substantive results – we did rely on randomization and experimental survey research to assess the effect of including or

¹⁰ 2019 Census Test Report, at 12 (emphasis added).

excluding a citizenship question.¹¹ Survey respondents were randomized and one-half were given a condition in which they were told a citizenship question would in fact be included on the census; while the second-half of respondents was randomly assigned to a condition in which they were told the citizenship question would not be included. This follows the exact same principle of randomized control trials that Dr. Abowd recommends. In that 2018 study, as described in paragraph 68 on page 11 of my Declaration, we observed a large and statistically significant increase in response rate in the condition without the citizenship question. In particular, Latino respondents who had previously indicated a desire to not respond, registered a 41.2 point increase in response rate once the citizenship question was removed. While the sample size of our 2018 study is not as large as the 2019 Census Test, the results of our 2018 study are significant and the patterns are consistent with the Census Bureau's own research from their 2019 pilot study.

20. Dr. Abowd has offered no such randomized trial study to demonstrate that the PM will *not* cause response rates to decline. Instead, the only randomized control trial that Dr. Abowd cites shows the opposite, i.e., A) media coverage of census citizenship issues can affect response rates; and B) the citizenship question significantly reduced immigrant and Latino response rates. Indeed, in my August 7 Declaration, I cite dozens of published academic and Census Bureau studies on the topic of perceived threat and participation among immigrants which point to a chilling effect and withdrawal (Montoya 1992; Stepick 1992; Velasco 1992; De La Puente 1995; Berk & Schur 2001; Arbona 2010; Abrego 2011; Menjivar 2011; Yoshikawa 2011; Szkupinski et al 2014; Watson 2014; Dreby 2015; Vargas 2015; O'Hare et al 2016; Kissam 2017; Pedraza and Osorio 2017; Terry et al 2017; Cruz-Nichols, LeBrón, and Pedraza 2018; Michelson and Montforti 2018; Amuedo-Dorantes & Arenas-Arroyo 2019; Desai 2019; Garcia 2019; Kissam 2019; Asad 2020). Without exception, every single research study finds that when a new threat emerges, immigrants, especially the most vulnerable, will withdraw and reduce civic

¹¹ Barreto, Matt 2018. "Expert Report of Matthew A. Barreto, Ph.D" in *State of New York v. U.S. Dep't of Commerce* (Sept. 7, 2018).

participation. I am aware of no rigorous published social science research that finds increased threat has no debilitating effect.

21. In paragraph 18 of his declaration, Dr. Abowd explains that later in the NRFU process, enumerators may seek to get a simple total person count of a household, and not full characteristics of each household member, and suggests that during such interactions, households do not have the same incentives to avoid responding or misrepresenting the number of people in the household. However, Dr. Abowd's opinion misses three key points. First, the PM provides household members in undocumented or mixed-status households with a reduced incentive to give federal Census enumerators *any* information at all because the President has just declared that their numbers will be not counted for the core purpose of the Census—apportionment. As a result, they will be less likely to open the door in the first place to cooperate with *any* interview. While the enumerator might only be looking for a population count, the household member does not know this. Instead, the only relevant recent information they may have is news about the PM attempting to exclude certain immigrant communities from the Census count. This is consistent with decades of research including de la Puente, the Census's own ethnographer, who has clear and consistent findings about how undocumented communities avoid the Census when they have concerns about immigration status (de la Puente 1995, 2004). According to de la Puente (2004): “individuals with an insecure immigration status were much less likely to trust the government and specifically less likely to fill out the Census questionnaire. Undocumented immigrants have long been a concern for the Census Bureau. This research demonstrated that respondents with irregular immigration statuses are unlikely to directly cooperate with the Census.”

22. Second, research by Kissam (2019) is clear that immigrant households under-report non-immediate family members who may not be documented. Even when a simple count is requested, the immigrant household is far more likely to misreport household size when they believe the government is monitoring or checking about immigration status. The PM reinforces this concern. Finally, Dr. Abowd predicates an opinion on the assumption that NRFU will be full and complete as originally planned and not impacted by the PM; however, Dr. Abowd's

point is speculative, and based on no empirical evidence that NRFU will reach the required level of completeness.

23. In paragraphs 19 and 20 of his declaration, Dr. Abowd discusses imputation and opines that COVID-19 pandemic will make it very difficult to predict which neighborhoods will need more, or less imputation. However, the unpredictability reinforces the point about imputation being prone to problems when there is a low or unequal response rate to the Census. Extensive published literature discusses the difficulty of accurate imputation when response rates are low and uneven. Again, while acknowledging the significant and widespread difficulty that COVID-19 presents, the pandemic does not subsume and/or negate the impact of all other factors on the enumeration. The PM will make the enumeration even more difficult, with increasing non-response in specific communities – not at random – and the imputation models will not be able to see inside invisible households. It is clear that non-responding households are larger in size and more likely to be immigrant (Kissam 2019). Thus, when imputation models – which are based on responding households – are applied, they will under-count the number of people who live in non-responding households. Research indicated the inclusion of a citizenship question was also likely to have a negative impact on the accuracy of imputation, and the logical effect of the PM on imputation is the same. The new PM introduces a perceived threat in the immigrant community which leads to differential non-response which greatly undermines imputation. In effect, the PM serves to weaken the imputation model, because in the final phase of NRFU, households that may have responded pre-PM are not responding because of immigration concerns, and at differential rates than the general public. While the challenge of COVID-19 may affect Census participation regardless of the race or immigration status of a household, it is Latino and immigrant households which face the new and additional challenge presented by the PM, which has targeted the immigrants from being excluded from the Census apportionment.

III. Fontenot Declaration

24. Albert E. Fontenot, Jr. is Associate Director for Decennial Census Programs and primarily offered information about operations in his report. Mr. Fontenot did not directly respond to any of the claims or evidence in my Declaration. However, some of Mr. Fontenot's points support the conclusion that the PM introduces a new variable into the equation which the Census Bureau is not taking into account.

25. In paragraph 5 of his declaration, Mr. Fontenot describes the current plans for the Census in the final critical weeks of field data collection. He states that the Census Bureau will send more enumerators into the field during the remaining response period; however, in paragraph 12, he states that the PM "has had no impact on the design of field operations for decennial census." Thus, Mr. Fontenot indicates that the Census Bureau will not be adding any new training related to discussing concerns in the immigrant community related to the PM. In prior census research, Census Bureau ethnographer de la Puente has explained that it is important to a successful enumeration to understand immigrant community concerns about responding to the census, and to equip Census enumerators with information to reassure vulnerable populations that their participation is safe. In this case, the PM creates a new reason for concern in immigrant communities, yet Mr. Fontenot makes clear that the Census Bureau has made no changes to their outreach to account for the PM and its effects. The decision not to make any changes to field operations to address the PM is a major shortcoming, and not consistent with best practices recommended by their own internal published research.

26. In paragraph 7 of his declaration, Mr. Fontenot states that the initial phase of the Census returned a 64 percent self-response rate. To date, the initial NRFU increased response rate to 71 percent of all households. These data indicate that among the 36 percent of households that did not respond, 7 percent did respond to NRFU ($64+7=71$) and that 29 percent of households have not responded to NRFU to date. These results indicate a very low response rate during initial NRFU of 19.4 percent ($7 / 36 = 19.4$). While COVID-19 is again cited as a difficulty, the introduction of the new PM adds even more difficulty, particularly in immigrant communities.

There is no indication in Mr. Fontenot's declaration that the Census Bureau is prepared to improve their outreach to vulnerable populations in response to the PM.

27. In paragraph 8 of his declaration, Mr. Fontenot states that the Census Bureau will increase the number of employees and work hours to increase field operations, in light of a shortened calendar period. However, increasing the presence of federal Census enumerators into high density non-citizen communities actually runs the risk of further reducing participation in the face of fear and threat. In my Declaration, I outline clear findings from published social science research reporting that increased perceptions of monitoring leads to reduced participation among immigrants (Berk and Schur 2001; Cruz-Nichols, LeBrón and Pedraza 2018; Kissam 2019; Asad 2020). The PM sends a clear signal of monitoring because it states it is using government administrative records to locate and identify where undocumented immigrants live, and to merge those records with Census data to exclude undocumented immigrants from the final count for purposes of apportionment. While increased enumerators might have helped in an environment without the PM, the new PM changes things by sending a new signal of threat to immigrant communities.

28. In paragraph 10 of his declaration, Mr. Fontenot states that the Census Bureau will keep personally-identifying information confidential. However, when immigrants have concerns over immigration enforcement, even providing those assurances does not help. Extensive social science research documents that immigrants will attempt to conceal their identity, even mis-identify their race on government forms when they have concerns that it could be connected to immigration enforcement (Rodriguez and Hagan 2004). What matters is how immigrant communities perceive the threatening environment, not that Mr. Fontenot understands that the law requires the Census Bureau to keep respondent information confidential—he is not the target of the PM. The PM has deteriorated the trust that Census workers and the Census Bureau's partners—the organizations relied upon to be trusted messengers to immigrant communities and communities of color—have built up since the 2019 Supreme Court ruling which blocked the inclusion of a citizenship question from the 2020 Census questionnaire.

29. In paragraph 35 of my Declaration, I identified reports from the non-governmental organizations who are working in partnership with the Census Bureau to act as trusted messengers for census outreach in the immigrant community which stated that the new PM changes the landscape for encouraging census response for the worse:

35. According to Arturo Vargas, the CEO of NALEO, one of the nation's top civic engagement organizations in the Latino and immigrant community, the new PM is a setback that creates fear in the immigrant community. NALEO has been identified by the Census Bureau itself as one of the most important “trusted voices” to earn trust in the Latino community. Vargas stated on Twitter: *“With a successful #NALEOVirtual Conference done, time now to refocus on #Census2020 - which just got even MORE DIFFICULT with @POTUS effort to exclude immigrants from the apportionment numbers and cutting short @uscensusbureau's time to finish the count. Our community is scared.”* Vargas went further to note that the new PM was undoing progress made after striking the citizenship question, *“#Census2020 is the most challenging to promote participation I have seen in my career. After @SCOTUS stopped a citizenship question, we had a fighting chance. Now @POTUS has made it much harder by his July 21 memo and by cutting off @uscensusbureau's field work early. @NALEO”*

Given that NALEO has been aligned with the Census Bureau in terms of the importance of encouraging census response by immigrants and Latinos, Mr. Vargas’ comment indicates that the PM is actively undermining the Census Bureau’s collaborative outreach efforts with its trusted messengers.

30. However, Mr. Fontenot makes clear that the Census Bureau has made no attempt to change its approach and incorporate new training, or new outreach to alleviate fears in the immigrant community as a result of the PM. The overwhelming finding in the published research is that new threats result in new withdrawal and the Census Bureau is not prepared for that.

IV. Defendants' Brief

31. Finally, while the Defendants make reference to the points above by Dr. Abowd and Mr. Fontenot, there are additional criticisms they raise—unsupported by any evidence of their own—which I will address in this section.

32. On pages 12-13 of their brief, Defendants claim that the extensive evidence and published studies which I rely upon in part to conclude that the PM will create a chilling effect on census participation are not specific to the PM. Designing, testing, conducting and analyzing a randomized control field trial on the effect of the PM on census participation within a month of the PM's publication is an insurmountable task. However, the expansive social science literature, much of which are my own studies and published research, addresses conditions remarkably similar to the PM and is specific to new instances of perceived threat. Tellingly, while demanding an impossible type of new research, neither Defendants, nor Dr. Abowd, nor Mr. Fontenot, cite any studies indicating that the PM will not negatively impact participation. In instances such as this, when we are asked to assess the impact of a new policy without the time required to conduct field research, the best practice in the social sciences is to A) closely examine the policy and place it within the context of other similar policies; and B) to review what happened when other similar policies were enacted. Based on the extensive research I have conducted, I am confident that the research reviewed in my Declaration, which all points to increased perceived threat and withdrawal or decline in participation in immigrant communities, is applicable to the PM.

33. On page 13, Defendants state that I did not consider the results of the 2019 Census Test on the citizenship question. As I reviewed above in paragraphs 5-13 above, findings concerning participation by subgroup in the 2019 Census Test show clear evidence of reduced participation in Latino and immigrant communities.

34. On page 16, Defendants state that my analysis of media coverage of the PM is misguided because “the media, and the community activists they feature, are independent actors,” and not part of the Census Bureau. However, the Census Bureau has made clear on several instances that

A) they have a formal partnership with Spanish-language media and Latino community groups; and B) they need close cooperation and cooperation with Spanish-language media and Latino community groups to implement an accurate 2020 Census. Raul E. Cisneros, director of national partnerships for the U.S. Census Bureau wrote on a census.gov website¹² that the Census was planning a “massive effort, a collaboration between Univision and two Census Bureau programs,” which included not only Spanish-language media, but also “representatives from major advocacy groups, from the National Association of Latino Elected and Appointed Officials to the League of United Latin American Citizens, along with representatives from Univision affiliates in California.” The Census has described Spanish-language media and Latino community groups as “national partners during the 2020 Census.” Defendants’ cognitive dissonance is astounding; stating on the one hand that Spanish-language media and community groups are the “trusted voices” whose cooperation is integral to their field operations to encourage census participation, and then also claiming that those groups are independent actors with no connection to the Census who are simply fearmongering in their concerns about the PM. As recently as March 2020, the Census Bureau continued to partner with Spanish-language media to promote information about the Census. They are not “independent actors” as Defendants suggest. In fact, the Census Bureau continues to feature its partnership with Univision on its web site.¹³

35. Additionally, with respect to the organizations that Defendants derisively call “community activists,” the official field operations plan for the 2020 Census highlights the necessity of working with these “trusted voices” in order to gain trust in the community and improve the likelihood of an accurate count. In his deposition during *N.Y. v. Department of Commerce*, Dr. Abowd stated that part of the Census Bureau’s effort to communicate and

¹² Raul E. Cisneros, *Univision Hosts Meeting to Discuss Challenges, Solutions*, U.S. Census Bureau, Oct. 16, 2018, <https://www.census.gov/library/stories/2018/10/tv-network-advocacy-groups-support-complete-census-count.html>.

¹³ U.S. Census Bureau, *Partner Spotlight: Univision*, <https://2020census.gov/en/partners/partner-spotlight-archive/univision-tv.html>.

convince the public to fill out the Census included “recruiting partner organizations” and later described community organizations as “a source of advice and outreach to many of the populations that we - that it’s important to have partnerships with when you collect the data.”¹⁴ Importantly, Dr. Abowd stated these trusted partnerships are important during field operations (i.e., “when you collect the data”), and the Census is currently in field collecting data, which means now is the key time to shore up community partnerships with Latino organizations. In his own expert report submitted in the citizenship question case, Dr. Abowd explained on page 15 that trust can be a barrier in communities with low response rates and that having the so-called *trusted voices* is critical to getting an accurate final count.¹⁵ In this very section of his September 2018 expert report, Dr. Abowd mentions the National Association of Latino Elected Officials (NALEO) as one of the “major organizations” they will need to work with as a trusted voice. The Census Bureau’s “trusted voices” in the Latino community, including Spanish-language media and organizations such as NALEO, state clearly that the PM will make data collection more difficult, as explained clearly in paragraph 23 above and paragraph 35 of my August 7 declaration. Indeed, this is consistent with extensive research by Census ethnographer de la Puente (2004) who writes that: “based on this research it appears that Immigrant centered community-based organizations could be important conduits that attract distrustful and growing undocumented populations.”

¹⁴ Deposition of Dr. John Abowd in *State of New York v. U.S. Dep’t of Commerce*, at 298 (Aug. 29, 2018).

¹⁵ Expert Report of Dr. John Abowd in *State of New York v. U.S. Dep’t of Commerce*, at 15 (Sept. 21, 2018).

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36. I reserve the right to amend or supplement my opinions if additional information or materials become available. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on August 25, 2020 in Los Angeles, CA.

A handwritten signature in black ink, appearing to read "Matt A. Barreto", is written over a horizontal line.

Matthew A. Barreto

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Exhibit 66

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*, et al.,

Defendants.

20-CV-5770 (JMF)

NEW YORK IMMIGRATION
COALITION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*, et al.,

Defendants.

20-CV-5781 (JMF)

Expert Reply Declaration of Mr. John Thompson

I. Introduction

1. On July 21, 2020, President Trump issued a Memorandum for the Secretary of Commerce on *Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census* (in the remainder of my statement, I will use the term “Memorandum” to refer to this document).

2. I prepared and executed a declaration for this case on August 6, 2020 (“Declaration”).¹ In my Declaration, I stated: “It is my opinion that the effects of the Memorandum on the current macro environment are likely to be as great if not greater than the addition of a citizenship question. Therefore, immigrants and the families of immigrants will be reluctant to participate in the Nonresponse Followup (“NRFU”) and many will not be enumerated. It is also likely, in my opinion, that this reluctance to participate will extend to other hard-to-count populations as well. The issuance of the Memorandum has significantly increased the risk of larger total and differential undercounts, relative to previous censuses.”
3. The Census Bureau conducted the 2019 Census Test, a nationally representative randomized experiment designed to study the potential impact on self-response of including a citizenship question on the 2020 Census questionnaire.² This was a well-designed randomized control test that compared the effects of adding a citizenship question to the 2020 Census questionnaire. I have carefully read the final report for this test, and the results are consistent with and, in fact, bolster the opinion that I expressed in my Declaration.
4. Because the test found that there was no statistically significant difference in overall self-response rates between households that received a questionnaire with the citizenship question and those that received a questionnaire without the citizenship question, the Census Bureau concluded that the addition of a citizenship question would not have affected staffing needs for NRFU. However, the Census Bureau, by design, did not investigate what effect the inclusion of the citizenship question would have on increasing undercounts of immigrant and hard-to-count communities. Furthermore, as I will discuss below, adequately staffing NRFU is not sufficient to obtain a complete and accurate enumeration of the traditionally hard-to-count populations.³
5. Importantly, the 2019 Census Test contained additional findings that I believe are relevant to understanding the likelihood that the Memorandum will negatively impact response rates, and the potential for the Memorandum to significantly increase the risk of larger and total undercounts relative to previous censuses.
6. In particular, the 2019 Census Test found that in some areas and for some subgroups, there were statistically significant lower self-response rates for the test questionnaire with

¹ See *State of New York, et al. v. Trump, et al.*, 20-CV-5770 (JMF), and *New York Immigration Coalition, et al. v. Trump, et al.*, 20-CV-5781 (JMF), Doc. 57.

² US Census Bureau, *2019 Census Test, Final Report*, December 30, 2019.

³ It should be noted that if the Census Bureau fails to meet its hiring goals for NRFU, then undercounts would most likely follow.

the citizenship question than for the test questionnaire without the citizenship question. These differences were observed for the following:

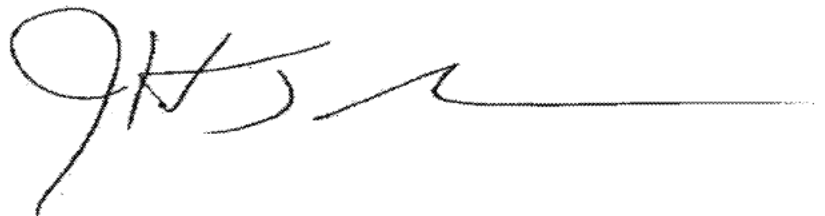
- Mail respondents.
 - Tracts designated to receive bilingual materials.
 - Tracts with greater than 4.9 percent noncitizens.
 - Tracts with greater than 49.1 percent Hispanic residents.
 - Tracts with between 5.0-20.0 percent Asian residents.
 - Housing units within the Los Angeles Regional Census Center and New York Regional Census Center boundaries.
7. In addition, the proportion of those who identified as Hispanic (and were listed as the first person on the questionnaire) was statistically significantly lower for the treatment with the citizenship question.
 8. These results indicate that the citizenship question would have seriously affected the propensity of many of the hard-to-count communities to self-respond to the 2020 Census. As I discussed in my Declaration, it would follow that they would also be less likely to participate in NRFU resulting in undercounts of immigrants and the families of immigrants, as well as all of the traditionally hard-to-count communities. Accordingly, there would be a significant risk that these undercounts would be larger than were observed in previous censuses.
 9. In conclusion, the 2019 test further demonstrates that the addition of a citizenship question to the 2020 Census questionnaire would lower self-response for populations at risk of being undercounted. This bolsters my opinion that the Memorandum will have a similar, if not greater, effect on the macro environment in which the 2020 Census is being conducted, particularly for NRFU.
 10. The Census Bureau must do a lot more than simply hire enough enumerators to meet their staffing goals for NRFU in order to achieve a fair and accurate count of all populations and areas. They and their partners⁴ must create the kind of macro environment that convinces the traditionally hard-to-count populations to fully participate in the 2020 Census, and importantly to accurately respond in NRFU.

⁴ In my original Declaration, I discussed the Census Bureau's partnership program. These partners include advocacy organizations, local governments, religious leaders, and many other community organizations. The Census Bureau recruits these partners to help deliver messages to the communities that they work with about the importance of responding to the census and the confidentiality of these responses. A critical component of the message from trusted voices is that the Census Bureau does not share any identifiable information with any outside entities including law or immigration enforcement.

11. The Memorandum is a major barrier preventing the Census Bureau and its partners from creating such a macro environment. Furthermore, it is my opinion, that a timely ruling from a court enjoining the Memorandum would greatly help the Census Bureau and its trusted partners in their efforts to convince hard-to-count populations, such as immigrant populations, that they can trust the Census Bureau and should respond to the census.
12. As explained in my Declaration, the role of trusted partners was developed during my tenure at the Census Bureau before the 2000 Census, and used to great effect in both the 2000 and 2010 Censuses to help reach hard-to-count populations. The Memorandum is limiting what has previously proven to be a very effective program to help increase census responses because it undermines the message that the Census Bureau is trustworthy and is not seeking to single out immigrants or individuals without legal status.
13. A court order enjoining the Memorandum would mitigate the damage because it would allow trusted partners to better explain during their outreach that all individuals will in fact be counted for apportionment, and bolster the advocacy that these partners do within their communities about the trustworthiness of the Census Bureau – supporting the point that the Census Bureau is not singling out immigrants and individuals who do not have legal status. Messaging refuting the proposal in the Memorandum would help improve the effectiveness of efforts by the Census Bureau and its trusted partners to convince individuals to respond to the 2020 Census during NRFU. And it would help the Census Bureau better carry out its mission to conduct a fair and accurate enumeration in the 2020 Census.

Executed on August 24, 2020 at Bend, Oregon.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'JH', followed by a long horizontal line extending to the right.

John Thompson