

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

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

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

Defendants.

20-CV-5770 (JMF)

NEW YORK IMMIGRATION
COALITION, et al.,

Plaintiffs,

v.

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

Defendants.

20-CV-5781 (JMF)

**PLAINTIFFS' CONSOLIDATED MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND
REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION**

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INTRODUCTION

Plaintiffs challenge an order by the President targeting a fundamental underpinning of our democracy—the apportionment of seats in the House of Representatives based on the total population of each State. The President has declared an official policy of excluding *all* undocumented immigrants from the apportionment base, and Defendants are actively implementing that policy. The Constitution and laws of the United States unambiguously forbid this attempted manipulation of representative government, which injures Plaintiffs now and is capable and worthy of judicial resolution now. For these and other reasons set forth below, the Court should grant Plaintiffs’ motion for summary judgment and deny Defendants’ motion to dismiss.

ARGUMENT

I. Plaintiffs have standing to challenge the Presidential Memorandum.

A. Plaintiffs have demonstrated injury-in-fact.

An injury establishing standing “need not be large.” *LaFleur v. Whitman*, 300 F.3d 256, 270 (2d Cir. 2002). And threatened harm need not be “literally certain” to come about.” *Ross v. AXA Equitable Life Ins. Co.*, 115 F. Supp. 3d 424, 433 (S.D.N.Y. 2015) (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414 n.5 (2013)).

Plaintiffs’ injuries more than suffice here. *First*, Plaintiffs have demonstrated a “substantial risk” of a “concrete” apportionment injury. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016); *see* Pls.’ Mem. 8–10. The PM acknowledges that excluding undocumented immigrants “for the purpose of apportionment” will redistribute political power to punish immigrant-friendly jurisdictions and impact the “allocation of two or three” congressional seats. 85 Fed. Reg. 44,679, 44,680 (July 23, 2020). And the federal government estimates that California and Texas are respectively home to 2.9 and 1.9 million undocumented residents—

populations larger than a congressional district. Pls.’ 56.1 Stmt. ¶¶ 3–7; Defs.’ 56.1 Resp. ¶¶ 3–7. The PM itself thus establishes Plaintiffs’ standing. *See, e.g., Massachusetts v. U.S. Dep’t of Health & Human Servs.*, 923 F.3d 209, 224–25 (1st Cir. 2019). Moreover, Plaintiffs’ un rebutted expert evidence confirms that excluding undocumented immigrants will “almost certainly” cause these States and others to lose House seats. Pls.’ 56.1 Stmt. ¶¶ 21–22; Pls.’ Mem. 9; *see Dep’t of Commerce v. U.S. House of Reps.* (“*U.S. House*”), 525 U.S. 316, 330 (1999).

Defendants’ suggestion that this is speculative because they may not do what the PM *requires* is absurd. Defs.’ Mem. 11. The President has declared an official “policy” of excluding *all* undocumented immigrants from the apportionment and has ordered Defendants to carry out that policy. 85 Fed. Reg. at 44,680. Defendants cannot evade review on the premise that they may fail to carry out the official policy of the United States—contrary to the presumption of regularity that Defendants frequently invoke. There is certainly a “substantial risk” that Defendants will follow the President’s direction, causing the loss of congressional seats that “satisfies the injury-in-fact requirement of Article III standing.”¹ *New York v. U.S. Dep’t of Commerce*, 351 F. Supp. 3d 502, 607 (S.D.N.Y. 2019) (quotation marks omitted).

Second, the overwhelming evidence reflects that the PM will harm Plaintiffs by deterring immigrant families from responding to the census. *See* Pls.’ Mem. 42–45; Barreto Reply Decl. ¶¶ 2–3, 14, 18 (Ex. 65); Espinosa Supp. Decl. ¶¶ 4–6 (Ex. 62); Oshiro Supp. Decl. ¶ 3 (Ex. 63); Seon Supp. Decl. ¶ 4 (Ex. 64); Awawdeh Decl. ¶ 3 (Ex. 60). Defendants contend there is “no reason why such a Memorandum should have any effect on census response rates.” Defs.’

¹ Dr. Abowd states that, “consistent with best practices for a federal statistical agency,” it is “impossible to assess precisely the effects of the PM on apportionment.” Abowd Decl. ¶ 15 (ECF No. 119). But “[t]he Court’s task is not to determine whether the evidence . . . can satisfy the Census Bureau’s high statistical standards,” *New York*, 351 F. Supp. 3d at 593, only whether Plaintiffs are substantially likely to lose representation in Congress.

Mem. 12. But this ignores the “[f]ar-ranging social science research” demonstrating that the PM “sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count,” Barreto Decl. ¶ 14 (Ex. 56), thereby eroding trust in the census and causing avoidant behavior. *Id.* ¶¶ 14–23; *see also* Barreto Reply Decl. ¶¶ 20–23, 32 (Ex. 65); Espinosa Supp. Decl. ¶¶ 4–6 (Ex. 62); Oshiro Supp. Decl. ¶ 3 (Ex. 63); Seon Supp. Decl. ¶¶ 4–6 (Ex. 64); Awawdeh Decl. ¶ 3 (Ex. 60); *cf. New York*, 351 F. Supp. 3d at 579 (“macroenvironment” factors, “including a higher ‘level of concern about using citizenship data for enforcement purposes,’ could exacerbate the effects of adding a citizenship question”). And the PM “discredits the essential message that everyone’s response matters” and undermines the effectiveness of Plaintiffs’ outreach. Salvo Decl. ¶ 10 (Ex. 41); Pls.’ Mem. 42–43. Defendants’ blithe dismissal of dozens of fact witnesses, including from groups the Census Bureau has itself engaged as “partners” and trusted messengers to immigrant communities,² *see* Barreto Reply Decl. ¶¶ 28–29, 34–35 (Ex. 65); Awawdeh Decl. ¶ 6 (Ex. 60); Espinosa Supp. Decl. ¶ 6 (Ex. 62), ignores the compelling and specific evidence that the PM is deterring census participation *right now*.³

² *See, e.g.*, U.S. Census Bureau, *National Partners and Supporters List*, <https://2020census.gov/en/partners/directory.html> (listing Plaintiff American-Arab Anti-Discrimination Committee as a “National Partner”); U.S. Census Bureau, *Community Partners and Supporters* 1767 (Feb. 25, 2020), <https://bit.ly/31pHRma> (listing Plaintiff New York Immigration Coalition as a “Community Partner”).

³ There is no merit to Defendants’ argument that this uncontroverted factual evidence should be disregarded as hearsay or conclusory. Many of Plaintiffs’ witnesses describe concerns in immigrant communities regarding whether—because of the PM—the census will be used to deport them. *See, e.g.*, Choi Decl. ¶¶ 19, 27 (Ex. 14); Cullinane Decl. ¶ 8 (Ex. 17); Espinosa Supp. Decl. ¶ 5 (Ex. 62); Seon Supp. Decl. ¶ 3 (Ex. 64). This testimony is not hearsay because it is not offered for truth, but rather to show state of mind. *See* Fed. R. Evid. 801(a), (c). This evidence is detailed and specific, not conclusory. *See, e.g.*, Soto Decl. ¶ 12 (Ex. 45). This explains why the PM has forced Plaintiffs to divert resources for increased census outreach. *See* Awawdeh Decl. ¶¶ 4–5 (Ex. 60); Choi Decl. ¶ 26 (Ex. 14); Espinosa Decl. ¶ 14 (Ex. 18); Espinosa Supp. Decl. ¶ 4–7 (Ex. 62); Oshiro Supp. Decl. ¶¶ 3–4 (Ex. 63); Seon Decl. ¶¶ 16–17 (Ex. 43); Seon Supp. Decl. ¶¶ 4–7 (Ex. 64).

Moreover, contrary to Defendants’ suggestion, the Census Bureau’s 2019 randomized control test regarding the effect of a citizenship question—which does not purport to measure the effect of excluding undocumented immigrants from the apportionment—actually *supports* Plaintiffs’ standing. It found “statistically significant lower self-response rates” for mixed status households and Latino households. U.S. Census Bureau, *2019 Census Test Report* 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”); *see* Barreto Reply Decl. ¶¶ 5, 9–12 (Ex. 65). Although the study concluded that *overall* response rates did not decline significantly, *see* 2019 Census Test Report at ix; Defs.’ Mem. 51–52, the Bureau found “*statistically significant lower self-response rates* for the test questionnaire with the citizenship question” among, *inter alia*, “census tracts with greater than 4.9 percent noncitizens,” “greater than 49.1 percent Hispanic residents,” and significant numbers of Asian residents. *Id.* at x (emphasis added).⁴ Plaintiffs’ members and constituents include substantial immigrant populations and will bear the brunt of these effects. *E.g.*, Baldwin Decl. ¶¶ 8–9 (Ex. 4); Bird Decl. ¶ 12 (Ex. 9); Choi Decl. ¶ 27 (Ex. 14); Espinosa Decl. ¶¶ 10–13 (Ex. 18); Khalaf Decl. ¶¶ 11–12 (Ex. 26); Mostofi Decl. ¶ 9 (Ex. 34); Oshiro Decl. ¶¶ 11–14 (Ex. 36); Sarmiento Decl. ¶ 7 (Ex. 42); Seon Decl. ¶¶ 13–17 (Ex. 43); Sivongxay Decl. ¶ 13 (Ex. 44); Soto Decl. ¶ 12 (Ex. 45); Torres Decl. ¶¶ 2, 16 (Ex. 47); Aranda-Yanoc Decl. ¶ 7 (Ex. 51). This predictably harms Plaintiffs in numerous ways, including by degrading the “statistical backbone of our country,” Salvo Decl. ¶ 13 (Ex. 41); forcing the NGO Plaintiffs to divert resources and revise

⁴ Dr. Abowd’s declaration also fails to note that this study “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 the 2020 Census overall.” 2019 Census Test Report at x. “[E]ach of NRFU’s steps will replicate or exacerbate the effects of the net differential decline in self-response rates among noncitizen households.” *New York*, 351 F. Supp. 3d at 583.

census outreach plans; and exacerbating the undercount of immigrant communities. *See, e.g., id.*; Pls.’ Mem. 45, 48 (listing witness testimony in support); *New York*, 351 F. Supp. 3d at 597–98.

Third, the PM also injures the State Plaintiffs’ quasi-sovereign, or *parens patriae*, interests in the well-being of their residents. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982). In *Carey v. Klutznick*, the Second Circuit held that “the State of New York has standing in its capacity as *parens patriae*” to sue the Commerce Department on a claim that the 1980 decennial census unlawfully undercounted New York residents. 637 F.2d 834, 838 (2d Cir. 1980); *see also Massachusetts v. EPA*, 549 U.S. 497, 520 n.17 (2007). The State Plaintiffs have standing in their capacity as *parens patriae* based on their quasi-sovereign interests in census accuracy and related representational, data quality, and resource interests. Warshaw Decl. ¶ 47 tbl. 8 (Ex. 58); Pls.’ Mem. 47.

B. Plaintiffs’ injuries are caused by the Memorandum and will be redressed by its invalidation.

Plaintiffs’ injuries are fairly traceable to the PM. There is no genuine dispute that the PM’s stated aim—to exclude undocumented immigrants from the apportionment base—will *directly* affect apportionment in Plaintiffs’ jurisdictions. 85 Fed. Reg. at 44,680; *see* Warshaw Decl. ¶ 11 (Ex. 58). And the predictable effects of Defendants’ actions on the accuracy of the census establish traceability, even when those effects are caused by irrational or illegal acts by third parties. *See Dep’t of Commerce v. New York* (“*New York*”), 139 S. Ct. 2551, 2566 (2019).

Defendants’ efforts to distance themselves from messages carried by “independent actors” such as community groups, *see* Defs.’ Mem. 16–17, cannot be taken seriously: The Census Bureau intentionally relies on third party organizations as trusted partners to encourage self-responses. *New York*, 351 F. Supp. 3d at 521; Thompson Reply Decl. ¶¶ 11–13 (Ex. 66); *see also supra* at 3 n.3. These trusted partners are now reporting that the PM directly undermines

their efforts. *See* Barreto Reply Decl. ¶¶ 34–35 (Ex. 65); Awawdeh Decl. ¶¶ 4, 6 (Ex. 60); Choi Decl. ¶ 12 (Ex. 14); Espinosa Decl. ¶¶ 10–14 (Ex. 18); Espinosa Supp. Decl. ¶¶ 6–7 (Ex. 62).

Plaintiffs’ injuries will be remedied by a favorable ruling. Requiring Defendants to “count[] the whole number of persons in each State,” U.S. Const. amend. XIV, § 2, would both resolve Plaintiffs’ apportionment harms and help assuage fears that the Administration is surveilling undocumented immigrants via the census to deport them. Pls.’ Mem. 42–44, 51–52; Barreto Reply Decl. ¶ 27 (Ex. 65); Espinosa Decl. ¶ 13 (Ex. 18); Choi Decl. ¶ 19 (Ex. 14); Oshiro Decl. ¶ 10 (Ex. 36); Seon Supp. Decl. ¶¶ 5–7 (Ex. 64); Torres Decl. ¶ 20 (Ex. 47). A favorable ruling will also convey that everyone *does* count for the census, restoring the effectiveness of Plaintiffs’ messaging efforts, *see* Barreto Decl. ¶ 68 (Ex. 56); Thompson Reply Decl. ¶¶ 11, 13 (Ex. 66), and freeing up organizational resources for other purposes, *see* Espinosa Supp. Decl. ¶¶ 7–8 (Ex. 62); Oshiro Supp. Decl. ¶ 5 (Ex. 63).

II. Plaintiffs’ claims are ripe for judicial review.

Plaintiffs’ claims are ripe for review as both a constitutional and prudential matter. The constitutional ripeness inquiry essentially mirrors the Article III standing analysis. *See In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 725 F.3d 65, 110 (2d Cir. 2013). Plaintiffs’ claims are constitutionally ripe because Plaintiffs face both present injury and a “substantial risk” of future injury unless this Court halts the PM. *New York*, 139 S. Ct. at 2565; *see Ross v. Bank of America, N.A. (USA)*, 524 F.3d 217, 226 (2d Cir. 2008). Defendants’ ripeness argument (Defs.’ Mem. 6–10) entirely ignores the present injury that the NGO Plaintiffs are suffering from being forced to divert their resources, due to the deterrent effect that the PM is having on participation in the ongoing census. *See* Pls.’ Mem. 42–46; *supra* Part I.A.

In addition, Plaintiffs’ apportionment injury is not “conjectural or hypothetical.” Defs.’ Mem. 7. Defendants do not dispute that a claim can be ripe when future injury is “certainly

impending, or [when] there is a substantial risk that the harm will occur.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quotation marks omitted); *see New York v. United States*, 505 U.S. 144, 175 (1992) (claims ripe where statutory provision did not take effect for three years). The Supreme Court and lower courts have made clear that courts may review a decision that would alter the enumeration or the resulting apportionment even before the census begins. *U.S. House of Representatives*, 525 U.S. at 332; *see New York*, 351 F. Supp. 3d at 573–74; *Carey v. Klutznick*, 508 F. Supp. 404, 407, 411–12 (S.D.N.Y. 1980).

Here, there is far more than a “substantial risk” that Plaintiffs will suffer apportionment injury. The PM definitively announces a policy of excluding undocumented immigrants from the apportionment base. It directs the Secretary of Commerce to help “carry out the policy” by providing a count of the number of undocumented immigrants in each State, 85 Fed. Reg. at 44,680—and Defendants admit they are already carrying out that policy (Defs.’ Mem. 7). *See City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1238 (9th Cir. 2018). And the PM explicitly acknowledges that this will cause California to lose “two or three . . . congressional seats.” 85 Fed. Reg. at 44,680; *see* Pls.’ Mem. 4 & n.2; *Kidder, Peabody & Co. v. Maxus Energy Corp.*, 925 F.2d 556, 563 (2d Cir. 1991) (declaring “the rights of the parties in accordance with the very representations” made by defendant). Plaintiffs’ claims here are thus not an “abstract disagreement[]” over an informal proposal that might affect apportionment, Defs.’ Mem. 6; rather, they challenge an official “policy” that is already being implemented and that is expressly intended to reallocate House seats. *See Glavin v. Clinton*, 19 F. Supp. 2d 543, 547–48 (E.D. Va. 1998) (three-judge court) (finding ripeness “[g]iven the finality of the Department’s decision to

utilize statistical sampling” for 2020 census), *aff’d* 525 U.S. 316 (1999).⁵

Defendants’ only response is to speculate (Defs.’ Mem. 7-8) that the Secretary might fail to do what the President has ordered. That possibility does not address the PM’s ongoing effect of deterring census participation or forcing Plaintiffs to divert resources to mitigate that impact. And the mere possibility that Defendants may prove incapable of implementing their unlawful policy cannot insulate that policy from judicial review. A claim is ripe when a plaintiff faces a “threat of injury resulting from the [government] employing an operational plan that will likely lead” to injury. *Cent. Delta Water Agency v. U.S.*, 306 F.3d 938, 948 (9th Cir. 2002). Injury need not be guaranteed. *See Mountain States Legal Found. v. Glickman*, 92 F.3d 1228, 1234 (D.C. Cir. 1996). The possibility that Defendants “may change their course of conduct is not the type of contingency” that can defeat ripeness. *Cent. Delta Water Agency*, 306 F.3d at 950. It is always possible that the federal government might abandon a course of conduct, “but that hardly renders the litigation nonjusticiable before that event occurs.” *Glavin*, 19 F. Supp. 2d at 547–48. “It would be inequitable in the extreme” for Defendants “to create a significantly increased risk of harm” to Plaintiffs from excluding undocumented immigrants from the apportionment base, but then thwart judicial review by saying that they might not do what the President has commanded. *Cent. Delta Water Agency*, 306 F.3d at 950; *see Susan B. Anthony*, 573 U.S. at 165.⁶

Defendants’ relentless efforts to identify immigrants for purposes of excluding them from

⁵ Defendants misplace their reliance (Defs.’ Mem. 9-10) on decisions that addressed a completed enumeration or apportionment. None of those decisions even addressed ripeness, let alone held that apportionment-related census litigation is ripe only after the apportionment.

⁶ *Texas v. United States*, 523 U.S. 296 (1998), is not to the contrary. Defs.’ Mem. 6. There, the Supreme Court concluded that Texas was prematurely seeking a declaration that Section 5 of the Voting Rights Act was inapplicable to a possible future change in local elections where those changes were not “currently foreseen or even likely.” 523 U.S. at 300. Here, Defendants have already decided to exclude undocumented immigrants from the apportionment base and will do so unless they unilaterally decide to change their own conduct.

apportionment and redistricting make it implausible that Secretary Ross will not carry out the President’s directive. Secretary Ross began taking steps to add a citizenship question to the census shortly after his appointment in February 2017; disregarded warnings from the Census Bureau that adding the question would undermine the accuracy of the enumeration; and ultimately engineered—and presented to this Court—a “contrived” rationale that did not honestly reflect his actual objective. *New York*, 139 S. Ct. at 2575. After the Supreme Court ruled, the President then directed all executive agencies to provide to Secretary Ross “the maximum assistance permissible” to determine “the number of citizens and noncitizens in the country,” Exec. Order No. 13,880, 84 Fed. Reg. 33,821, 33,824 (July 11, 2019); and the Attorney General declared that this information could be used to determine “whether illegal aliens can be included for apportionment purposes.”⁷ The PM is thus the latest action in a nearly four-year effort to exclude immigrants from apportionment, and presumably reflects a year’s worth of “maximum assistance” to come up with a count of the undocumented population. It beggars belief that Secretary Ross might now abandon the PM’s policy. This Court is “not required to exhibit a naiveté from which ordinary citizens are free.” *New York*, 139 S. Ct. at 2575 (internal quotation marks and citation omitted).

Defendants’ arguments on prudential ripeness are also meritless. No further factual or administrative development is needed to resolve the “purely legal” issue of whether the PM’s policy directing the categorical exclusion of undocumented immigrants from the apportionment base violates the Constitution and the Census Act. *Susan B. Anthony*, 573 U.S. at 167; *NRDC v. U.S. E.P.A.*, 859 F.2d 156, 168 (D.C. Cir. 1988). That exclusion would be unlawful no matter

⁷ *Remarks by Attorney General William P. Barr on Census Citizenship Question* (July 11, 2019), <https://www.justice.gov/opa/speech/remarks-attorney-general-william-p-barr-census-citizenship-question>.

how Defendants choose to accomplish it. More fundamentally, “time is of the essence,” and “[d]elayed review would cause hardship to Plaintiffs.” *New York*, 351 F. Supp. 3d at 626; *see also Miller v. Brown*, 462 F.3d 312, 319 (4th Cir. 2006). Defendants’ actions are already impairing the Census Bureau’s ability to conduct an accurate enumeration, to the detriment of Plaintiffs and the public—harm that has been exacerbated by Defendants’ sudden decision to shorten NRFU operations by a month. *See* Pls.’ Mem. 46; *see also infra* Part V.B.

Waiting until Defendants actually impair the apportionment in January 2021 would also create extensive confusion and disrupt the State Plaintiffs’ redistricting processes, which begin soon after the President transmits his apportionment statement to Congress.⁸ Plaintiffs cannot meaningfully engage in these processes under the specter of substantial uncertainty about how many House seats each State will have. *See Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 201–02 (1983). If a State does redistrict and its number of House seats is later altered, confusion and collateral litigation will result. If litigants

⁸ After the 2010 census, for example, the Census Bureau began delivering the redistricting data summary files required by Pub. L. No. 94-171 for state redistricting on February 3, 2011. *See* U.S. Census Bureau, *Decennial Census P.L. 94-171 Redistricting Data* (May 8, 2017), <https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.2010.html>. Many Plaintiff States are required by their constitutions or laws to propose or enact maps just a few months later. *E.g.*, Maine must enact its statewide plans by June 11, 2021. Me. Const. art. IV, pt. 1, § 3; *id.* pt. 2, § 2; *id.* art. IX, § 24. Delaware must complete legislative redistricting by June 30. *See* 29 Del. C. § 805. Other States must begin redistricting immediately after the apportionment data are released to meet interim or final deadlines. *E.g.*, Colo. Const. Art. V, § 44.2(1)(a) (Mar. 15 deadline to convene redistricting commission); Conn. Const. Art. XXVI, §§ 2(a), (b) (Feb. 15 deadline to appoint reapportionment committee); N.C. Gen. Stat. § 163-291(2)(a) (July 26 deadline to complete redistricting in time for candidate filing); *see generally* Yuriy Rudensky, Michael Li, & Annie Lo, *How Changes to the 2020 Census Timeline Will Impact Redistricting* (May 4, 2020), https://www.brennancenter.org/sites/default/files/2020-05/2020_04_RedistrictingMemo.pdf. Waiting until *after* the apportionment count is reported to adjudicate Plaintiffs’ claims would disrupt these deadlines, harming Plaintiffs’ “sovereign interests in the making and enforcement of their own laws.” *New York*, 351 F. Supp. 3d at 611.

had to file new challenges to an unconstitutional apportionment in January 2021, the Supreme Court may not resolve them until 2022, which could be too late to re-redistrict before the 2022 primaries. There is no reason to invite such chaos when Defendants' exclusion of undocumented immigrants from apportionment will "occur by a clearly determinable time in the near (if not immediate) future." *Chem. Waste Mgmt., Inc. v. EPA*, 869 F.2d 1526, 1534 (D.C. Cir. 1989).⁹

By contrast, Defendants will suffer no prejudice from immediate judicial resolution of the legal issues presented here. There is an irreconcilable inconsistency between Defendants' conclusory arguments that (a) judicial review of the PM "would improperly interfere with the Census, which is currently in progress" (Defs.' Mem. 9), but that (b) the PM itself has no disruptive effect on the census at all (Defs.' Mem. 12). Defendants are half-right: Both the PM and judicial review will affect the census; however, the weight of evidence shows that the former is harming response rates and the latter would undo some of that damage. *See* Pls.' Mem. 42–46; Barreto Decl. ¶ 68 (Ex. 56); Awawdeh Decl. ¶ 3 (Ex. 60); Espinosa Supp. Decl. ¶¶ 5–8 (Ex. 62); Oshiro Supp. Decl. ¶¶ 3–5 (Ex. 63); Seon Supp. Decl. ¶¶ 4–7 (Ex. 64). Defendants' inconsistent argument seems designed to avoid merits review, contending simultaneously that this case is not ripe because they might not succeed at excluding undocumented immigrants from apportionment, but also that review might impede their ability to succeed at that objective. *See New York*, 351 F. Supp. 3d at 628. Even if it were plausible to believe that Secretary Ross is genuinely debating whether will comply with the President's directive, "a judicial decision" here "would hardly 'interfere' with [that] administrative action." *Id.* at 627 (challenge to citizenship

⁹ Defendants assert that Plaintiffs' claims can be decided after the President's report is transmitted to Congress in January 2021, Defs.' Mem. 9, but notably refused to confirm that the apportionment figures can be altered after that time. *See* Tr. 16:11–14 (ECF No. 79), *New York v. Trump*, No. 20-cv-5770 (S.D.N.Y. Aug. 5, 2020); *cf. Utah v. Evans*, 536 U.S. 452, 462 (2002).

question ripe despite possibility that OMB might disapprove question). “[T]he hardship to the parties of withholding court consideration” thus weighs decisively in favor of deeming this dispute to be ripe. *Abbott Labs. v. Gardner*, 387 U.S. 136, 148–49 (1977).

III. Summary judgment is warranted on Plaintiffs’ claims that the Presidential Memorandum violates the Constitution and the Census Act.

A. Defendants’ decision to exclude undocumented immigrants from the apportionment base violates Article I and the Fourteenth Amendment.

The exclusion of undocumented immigrants from the apportionment base violates two distinct constitutional requirements: first, the mandate to apportion representatives based on “the whole number of persons in each State,” U.S. Const. amend. XIV, § 2 (Pls.’ Mem. 10-24); and second, the requirement that apportionment be based solely on the “Numbers” from the “actual Enumeration,” *id.* art. I, § 2, cl. 3 (Pls.’ Mem. 24-27).

Defendants entirely fail to address the second issue. They ignore Plaintiffs’ claim that the Constitution forbids them from manipulating the actual enumeration numbers—by subtracting out people who *are* enumerated—in allocating House seats. Plaintiffs are accordingly entitled to summary judgment on this ground alone. Indeed, Defendants concede that they will violate this requirement. They admit that they will conduct an actual enumeration that counts undocumented immigrants at the residence where they live, Fontenot Decl. ¶ 11 (ECF No. 120), “according to the methodology set forth in the Final 2020 Census Residence Criteria and Residence Situations.” Defs.’ Mem. 4. Defendants further admit that the Secretary will then produce “two sets of numbers”: the actual enumeration, and a separate count that *reduces* the actual enumeration by subtracting out undocumented immigrants, and then will use the lower figure for apportionment. Defs.’ Mem. 7, 42. Such manipulation of the actual enumeration is the kind of “political chicanery” that the Founders sought to avoid. *See Utah v. Evans*, 536 U.S. 452, 500, 503 (2002) (Thomas, J., concurring in part and dissenting in part); *see* Pls.’ Mem. 24–25.

Nor is the exclusion of undocumented immigrants from the apportionment base compatible with the Fourteenth Amendment. The Constitution’s express terms, more than two centuries of unbroken history and practice, and controlling Supreme Court precedent prohibit the exclusion of millions of undocumented immigrants who indisputably reside here. Pls.’ Mem. 10–23. The Framers of both the original Article I and the Fourteenth Amendment purposefully made a person’s residence the constitutional lodestar for apportionment. Defendants do not and cannot dispute that the Framers repeatedly specified that they adopted all “persons” as the apportionment base—rather than “citizens”—specifically to include “the *entire* immigrant population” in the apportionment count. *Id.* at 16. And Defendants fail to respond to the universal understanding expressed by courts, Congress, the Census Bureau, the Commerce Department, and the Department of Justice that the Constitution mandates that the apportionment base include all undocumented immigrants who reside here.

Defendants’ arguments to the contrary are fatally undermined by two fundamental errors. *First*, Defendants assert the relevant question is whether the Fourteenth Amendment “require[s] including *all* illegal aliens in the apportionment,” and that Defendants thus prevail so long as *some* hypothetical subset of undocumented immigrants could be excluded—including for reasons unrelated to their immigration status. Defs.’ Mem. 34. This framing is untethered from the policy the President adopted. The PM does not purport to exclude some subcategory of undocumented immigrants from the apportionment base. To the contrary, it expressly states that “it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act,” and accordingly directs that *all* of “these illegal aliens” be excluded solely because they are “not in a lawful immigration status.” 85 Fed. Reg. at 44,680. Nor does the PM direct the Secretary to provide a count of any

subpopulation of undocumented immigrants, but rather *all* undocumented immigrants in each State. *See* Defs.’ Mem. 4, 7, 32. This policy of categorical exclusion cannot be insulated from review by incanting the words “to the extent permissible and consistent with law” and hypothesizing that some nonexistent, narrower policy might be lawful.

Second, Defendants ignore the fact that, by definition, the undocumented immigrants who would be excluded from the apportionment base under the PM are those whom the Census Bureau will *already* have determined have their “usual residence” in a particular State—and thus are “inhabitants” of that State even under Defendants’ theory. *See, e.g.*, Defs.’ Mem. 29 (equating “inhabitants” with “usual residents”). Under the Residence Rule, the 2020 census will follow the “constitutional and statutory mandates to count all residents of the several states” by enumerating all persons “in accordance with the concept of ‘usual residence,’” that is, “the place where a person lives and sleeps most of the time.” Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018). There is no dispute that this enumeration includes undocumented immigrants where they usually reside.

Many of Defendants’ arguments are strawmen that ignore this fact. For example, Defendants note that “transient aliens, such as those temporarily residing here for vacation or business, are not included in the apportionment base,” Defs.’ Mem. 30, but that exclusion, consistent with the Residence Rule, is due to such individuals’ *transient* status, not their *immigration* status. Indeed, even U.S. citizens who usually reside outside this country would not be counted here if they were only transiently present. *See* 83 Fed. Reg. at 5533. And Defendants’ assertion that “physical presence” is not “dispositive,” Defs.’ Mem. 27, is beside the point because their policy would exclude undocumented immigrants who are not only physically present but whom the Census Bureau concludes are usual residents of a State.

Defendants also ignore the historical record in asserting that the Framers' embrace of immigrants in the apportionment count not have contemplated persons who are unlawfully present because the first federal immigration law was enacted only after the Fourteenth Amendment. Defs.' Mem. 36. Defendants ignore the fact that certain States had immigration laws that predated the Fourteenth Amendment's adoption, such as laws that prohibited entry of persons who were mentally ill or "likely to become permanently a public charge." Ch. 195, § 3, 1847 N.Y. Laws 182, 184; *see* Kunal M. Parker, *State, Citizenship, and Territory: The Legal Construction of Immigrants in Antebellum Massachusetts*, 3 Law & History Review 583, 622–25 (2001) (describing Massachusetts' immigration laws from 1840 to 1860). There is no indication that the Fourteenth Amendment's Framers believed that immigrants who were here in violation of those state laws should be excluded from the apportionment base. *Cf.* Cong. Globe, 39th Cong., 1st Sess. 1256 (1866) (Massachusetts Senator Henry Wilson objecting to voter-population apportionment base because it would "throw out of the basis two and half millions of unnaturalized foreign-born men and women" and cost Massachusetts House seats).

In any event, the Constitution's history is unmistakably clear that the Framers affirmatively rejected using an apportionment base that turns on *any* legal status, including voter, citizenship, and immigration status. The Framers understood that mandating an apportionment base that includes "every single person residing in the United States," *New York*, 351 F. Supp. 3d at 514, would forbid such status-based exclusions and fulfill the Framers' conviction that "[a]ll the people, or all the members of a State or community, are equally entitled" to representation in the House. Cong. Globe, 39th Cong., 1st Sess. 2962 (1866) (Sen. Luke Poland).

The Supreme Court explained in *Evenwel v. Abbott*, 136 S. Ct. 1120, 1128–29 (2016), that the Framers adopted this "theory of the constitution." Defendants remarkably devote just a

single sentence in their brief to *Evenwel*, claiming that it “begs the central question here as to the limits on how ‘inhabitant’ may be defined.” Defs.’ Mem. 38. But *Evenwel* upheld intra-state redistricting on the basis of “total population,” 136 S. Ct. at 1123—which indisputably encompassed undocumented immigrants, *see* Br. of Amicus Curiae Immigration Reform Law Inst. in Supp. of Appellants, *Evenwel*, No. 14-940, 2015 WL 4747986 (U.S. Aug. 7, 2015)—*because* the Constitution *requires* the use of the same “total population” base for inter-state apportionment. *Evenwel*, 136 S. Ct. at 1129. Defendants’ position is irreconcilable with *Evenwel*.

Defendants’ repeated references to the President’s supposed “discretion” (Defs.’ Mem. 31–33) thus miss the point: whatever discretion the President might have in conducting the census, that discretion does not extend to the categorical exclusion of a class of residents based solely on their immigration status. Tellingly, the principal example that Defendants marshal was a policy to *include* overseas military personnel in the enumeration because they could reasonably be considered “usual residents of the United States” and had maintained their “ties to their home States” during their *temporary* postings abroad. *Franklin v. Massachusetts*, 505 U.S. 788, 806 (1992). That more embracing policy offers no support for Defendants’ decision here to *exclude* undocumented immigrants *despite* the fact that they indisputably reside here. The invidiousness of Defendants’ argument is laid bare by their reliance on *Franklin* to suggest that Defendants may deem undocumented immigrants who indisputably live here to be “noninhabitants” based on their purported lack of “allegiance.” Defs.’ Mem. 26–28. Under that limitless theory, Defendants could exclude *all noncitizens*—or many other residents who have not shown sufficient “allegiance”—from the apportionment base. The Framers based apportionment on total population to prevent precisely such dangerous erosion of the foundational principle of “equal representation for equal numbers of people.” *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964).

Defendants also err in arguing that they may unilaterally deem people in immigration detention or removal proceedings “nonresidents” for purposes of apportionment. Defs.’ Mem. 33. Such a unilateral determination is inconsistent with constitutional and statutory mandates, uniform historical practice, and the Residence Rule. And detained individuals comprise a small subset of the undocumented population; undocumented adults have lived in the United States for a median of 15.1 years, with 66% having lived in the United States for more than 10 years. Pew Research Center, *Five Facts about Illegal Immigration in the U.S.* (June 12, 2019), <https://www.pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s>. In any event, many people in immigration custody or removal proceedings have *lawful* immigration status, *see, e.g., Ragbir v. Homan*, 923 F.3d 53, 56 (2d Cir. 2019), and their placement in custody or removal proceedings does not automatically render them unlawfully present. Immigration judges ultimately decide that many in custody or removal proceedings are entitled to remain in this country. *See* TRAC Immigration, *Immigration Judges Decide 57 Percent Entitled to Remain in U.S.*, <https://trac.syr.edu/immigration/reports/435/>. And many individuals initially designated as “undocumented”—including those intercepted at the border—ultimately obtain lawful status, such as asylum. *See* U.S. Dep’t of Justice, Executive Office for Immigration Review, *Statistics Yearbook Fiscal Year 2018*, at 27, <https://www.justice.gov/eoir/file/1198896/download> (55% of asylum applications granted in 2015). Indeed, because inclusion in the apportionment turns on residence, not legal status, Defendants count people in immigration detention facilities in the apportionment base, at the detention facility where they are living. 83 Fed. Reg. at 5535.

Defendants’ remaining arguments are irrelevant, wrong, or both. For example, the federal government’s general authority to set criteria for entering the United States or obtaining

citizenship (Defs.’ Mem. 36–37) is not at issue here—particularly given that such legal status has never mattered for inclusion in the apportionment base. Defendants rely on inapposite cases unrelated to apportionment in contending that, contrary to two hundred years of census history, “inhabitant” means solely persons who have “permission” to stay in a jurisdiction (Defs.’ Mem. 32).¹⁰ Defendants are also incorrect in contending (*id.* at 37) that immigrants’ ability to gain citizenship and the right to vote through naturalization motivated the Framers to include immigrants in the apportionment base; that argument makes no sense given that the Framers’ broad inclusion of all “persons” in the apportionment base swept in individuals who could not vote at all at the time, such as women. *See* Cong. Globe, 39th Cong., 1st Sess. 10 (1865). And the apportionment count has also long included immigrants who might never be eligible for citizenship. *See, e.g.,* Chinese Exclusion Act, Pub. L. No. 47-126, § 14, 22 Stat. 59 (1882) (precluding Chinese immigrants from receiving citizenship); *Takao Ozawa v. United States*, 260 U.S. 178, 192–93 (1922). The debates over the Fourteenth Amendment also make clear that the Framers were motivated to include immigrants in the apportionment base in part because States with large immigrant populations would otherwise decline to ratify the Fourteenth Amendment—which would make little sense if such immigrants could freely be excluded anyway. *See, e.g., id.* at 359 (Representative Conkling).

None of the snippets of congressional debates cherry-picked by Defendants alter this analysis. For example, when properly read in context, two of the quotations in Defendants’ brief (at 37) address the Fourteenth Amendment’s penalization of States that continued to deny the

¹⁰ Whatever the term “inhabitant” might mean in unrelated contexts, for purposes of apportionment, it has always meant a person who usually lives in the United States. *Franklin*, 505 U.S. at 804. For example, Esther Kaplan of *Kaplan v. Tod*, 267 U.S. 228 (1925), whom Defendants say never resided in the U.S. because she was denied lawful entry (Defs.’ Mem. 35), was in fact counted as an inhabitant in the 1920 census. *See* Mendelsohn Decl. (Ex. 61).

franchise to Black men (by explaining that States did not entirely deny the franchise to noncitizens). *See* Cong. Globe, 39th Cong., 1st Sess., at 354, 3035. And Representative Conkling referred to immigrants’ ability to gain various political rights through naturalization in condemning the continued political subjugation of former slaves who were denied the right to vote. None of these quotations remotely suggest that persons who plainly live here, including undocumented immigrants, may be removed from the apportionment base—a remarkable contention that is belied by any plausible understanding of the Constitution’s text and history.

B. The Memorandum is *ultra vires* under the statutory scheme implementing the required decennial census and reapportionment of House seats.

In accordance with the above-described constitutional mandates, Congress enacted an “interlock[ing]” statutory scheme directing the Commerce Secretary and President to include the “total population” and “whole number of persons in each State”—including undocumented immigrants—in the decennial census used to apportion representatives. 13 U.S.C. § 141; 2 U.S.C. § 2a; *see generally* Pls.’ Mem. 27–32. “[T]he historical background of the decennial census and the Act that governs it” unambiguously favors Plaintiffs. *U.S. House*, 525 U.S. at 335; *see also id.* at 350 (Scalia, J., concurring in part). Defendants concede that the term “persons” includes undocumented immigrants, Defs.’ Mem. 40, but purport to find ambiguity in the phrase “in each State,” *id.* This argument fails with respect to Defendants’ statutory violations just as it fails with respect to their constitutional violations.

Defendants have no answer for the clear statutory text and history of the Census Act. For example, Congress required an apportionment based on the whole number of persons in each State, including non-citizens (*see* Pls.’ Mem. 27–32), knowing that would include undocumented immigrants. Indeed, prior to adopting the 1929 Census Act, Congress had enacted many statutes restricting immigration (*e.g.*, An Act to Limit the Immigration of Aliens into the United States,

Pub. L. No. 68-139), and expressly rejected an amendment to the 1929 Act to require census enumerators to count immigrants and ascertain whether they had lawfully entered the United States. 71 Cong. Rec. at 2456 (1929). As Defendants essentially concede, the statutory provisions at issue here have *never* been understood to allow exclusion of undocumented immigrants. *See* Pls.’ 56.1 Stmt. ¶ 1; Defs’ 56.1 Resp. ¶ 1; 83 Fed. Reg. at 5526.

Moreover, once the actual enumeration includes undocumented immigrants, Defendants cannot exclude them in apportioning House seats. The statutes require that both the Secretary’s Section 141 apportionment report to the President, and the President’s Section 2a apportionment report to Congress, use the “total population” and “whole number of persons” reflected in the actual enumeration, which will include undocumented immigrants in 2020. Pls.’ Mem. 33–36. And, for the Section 2a report, the President must conduct the “admittedly ministerial” (Defs.’ Mem. 41) calculation of the apportionment using the equal-proportions method. 2 U.S.C. § 2a; *see* Pls.’ Mem. 36–37. The PM violates this ministerial duty because it contemplates an apportionment based on data that is not the actual enumeration but rather subtracts millions of people from the enumeration before performing the equal-proportions calculation.

Franklin does not support Defendants’ argument that excluding undocumented immigrants is within the President’s discretionary power to “mak[e] policy judgments that result in ‘the decennial census.’” Defs.’ Mem. 65 (citing *Franklin*, 505 U.S. at 799). As this Court already noted and Defendants admit, “the [PM] does not purport to change the conduct of the census itself,” ECF 68 at 2; *see* Defs.’ Mem. 7, 10, 12. Instead, it purports to exercise discretion to exclude undocumented immigrants from apportionment *after* the enumeration is completed. 85 Fed. Reg. at 44,680. Whatever non-ministerial duties the President may have with respect to the *conduct* of the census, *see* Pls.’ Mem. 33 n.21, he lacks authority to *depart* from the actual

enumeration for the apportionment. Rather, as *Franklin* affirmed, Section 2a “expressly require[s] the President to use . . . the data from the ‘decennial census.’” 505 U.S. at 797.¹¹ Defendants’ attempt to untether the actual enumeration from the apportionment undermines the Census Act’s purpose of ensuring an “automatic connection” between the enumeration and apportionment, *Franklin*, 505 U.S. at 809 (Stevens, J., concurring in part and concurring in the judgment), and improperly “give[s] the party controlling [the Presidency] the power to distort representation in its own favor,” *U.S. House*, 525 U.S. at 348 (Scalia, J., concurring in part).

Defendants cite cases regarding the Census Bureau’s use of data other than responses to census questionnaires to complete the enumeration of the total population. Defs.’ Mem. 42–43. But none of those cases involved the use of non-enumeration data to *subtract* persons already counted *post hoc*, and thereby manipulate the apportionment. *See Utah*, 536 U.S. at 471 (affirming use of imputation to “fill in” missing census questionnaire responses and thereby tabulate total population); *Franklin*, 505 U.S. at 803 (affirming use of home-of-record data for overseas employees to “allocate[them] to their place of usual residence” as part of the enumeration). Indeed, the Supreme Court has made clear that the President must use the census’s total population count for apportionment. *See, e.g., New York*, 139 S. Ct. at 2568–69 (Acts “mandat[e] a population count that will be used to apportion representatives”); *U.S. House*, 525 U.S. at 321–22 (“Using this information [from the Census], the President must then “transmit to

¹¹ Defendants’ other cases also do not recognize presidential discretion to depart from the enumeration for purposes of apportionment. All three cases, *Flue-Cured Tobacco Coop. Stabilization Corp. v. U.S. E.P.A.*, 313 F.3d 852, 859 (4th Cir. 2002), *Pub. Citizen v. U.S. Trade Representative*, 5 F.3d 549, 552 (D.C. Cir. 1993), and *Alabama v. Dep’t of Commerce*, 396 F. Supp. 3d 1044, 1055 (N.D. Ala. 2019), discuss *Franklin*’s treatment of the Secretary’s report as not final, because it is “still subject to correction.” 505 U.S. at 797. While “Section 2a does not expressly require the President to use the data in the Secretary’s report” because the report itself may be amended or corrected at a later date, the President’s Section 2a report must use still “the data from the ‘decennial census.’” *Id.*

the Congress a statement showing the whole number of persons in each State . . . and the number of Representatives to which each State would be entitled.”).

Finally, Defendants assert that it is “premature” to say whether the President will rely on non-census data in conducting the apportionment. Defs.’ Mem. 43. But as noted above, *supra* Part III.A, Defendants concede that the Secretary will send to the President “two sets of numbers”: the actual census including undocumented immigrants counted in accordance with the “usual residence” rule, and a second number excluding them. Defs.’ Mem. 42. Then, the “President will choose [the latter] to plug into the method of equal proportions.” *Id.* If there are two sets of numbers, and one is the census enumeration, then the other by definition will *not* be. It is inconsistent with the “automatic connection” Congress intended between enumeration and apportionment for the President to use different data and perform extra-statutory calculations to manipulate the enumeration and resulting apportionment to his liking. *Franklin*, 505 U.S. at 809.

IV. Defendants’ motion to dismiss for failure to state a claim should be denied.

A. There is no basis to dismiss Plaintiffs’ claims for relief under the APA.

Defendants’ argument that *Franklin* requires the dismissal of Plaintiffs’ APA claims because there is not yet “final agency action” is premature. Here, Plaintiffs have alleged that final agency action has taken place or will shortly take place because, among other things, the Secretary “has issued (or will imminently issue) directives to the Census Bureau . . . to implement President Trump’s directive to exclude noncitizens from the enumeration and apportionment base.” Am. Compl. ¶ 104. There is a plausible basis for such allegations. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Defendants have been preparing for this exclusionary policy since the President’s announcement in the Rose Garden more than a year ago that all executive agencies should provide “maximum assistance” to the Secretary to count the immigrant population. Am. Compl. ¶ 91. And although Defendants now assert that they have not

yet taken any reviewable action (*e.g.*, Defs.’ Mem. 7–8), they have not produced evidence to support such an assertion; the Census Bureau declarations are notably silent on this point.

In any event, if final agency action has not yet taken place, it will likely take place soon because scant time remains before the Secretary must report the figures that the PM directs him to report. Plaintiffs have not sought summary judgment or a preliminary injunction on their APA claims, and there is no pressing need to address those claims when fast-changing circumstances on the ground (and additional disclosures by Defendants) will clarify whether there is a defect on this point. Defendants’ argument assumes (Defs.’ Mem. 20–21) that no set of circumstances exists under which any action taken by the Secretary or the Census Bureau will constitute final agency action, but that argument is plainly too broad: courts including this one have repeatedly subjected to APA review steps taken by the Department of Commerce or the Census Bureau in advance of the final apportionment numbers submitted by the Secretary or the President. *See, e.g., U.S. House of Representatives*, 525 U.S. at 332; *New York*, 351 F. Supp. 3d at 573–74.

B. The Governmental Plaintiffs’ complaint plausibly alleges that the Memorandum violates the Tenth Amendment.

The Tenth Amendment prohibits the federal government from compelling the States “to implement, by legislation or executive action, federal regulatory programs.” *Printz v. United States*, 521 U.S. 898, 925 (1997). “That is true whether [the federal government] directly commands a State to regulate or indirectly coerces a State to adopt a federal regulatory system as its own.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 578 (2012). Here, the Governmental Plaintiffs plausibly allege that by intentionally targeting states that decline to assist in federal immigration enforcement, the PM “indirectly coerces” States to legislate or promote policies that capitulate to federal interests. Am. Compl. ¶¶ 103–04, 154–55.

Defendants counterfactually respond that the “apportionment policy set forth in the

Memorandum is wholly divorced from immigration enforcement,” Defs.’ Mem. 22, but the PM *says* its policy is to reduce the political power of states that “hobble Federal efforts to enforce the immigration laws.” 85 Fed. Reg. at 44,680. Defendants also assert that Plaintiffs have not alleged facts supporting a “reasonable inference” regarding an “unstated” coercive purpose, Defs.’ Mem. 22, but the PM states its coercive goal right out loud. 85 Fed. Reg. at 44,680 (“States adopting policies that encourage illegal aliens to enter this country . . . should not be rewarded with greater representation in the House of Representatives.”).

In addition, the Governmental Plaintiffs separately alleged (in a claim Defendants ignore) that by targeting certain states for unfavorable treatment, the PM violates the Tenth Amendment’s guarantee of “equal sovereignty.” Am. Compl. ¶¶ 156–57. This “fundamental principle”—which reflects “the constitutional equality of the States”—requires that when the federal government engages in “differential treatment” of the States, any “disparate geographic coverage is sufficiently related to the problem that it targets.” *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 542, 544 (2013) (emphasizing that the government’s intent is highly relevant to a court’s assessment of the fit between the action and its rationale).

The Governmental Plaintiffs plausibly allege both that the PM targets certain States for unfavorable treatment, Am. Compl. ¶¶ 103–04, and that this disparate treatment is not adequately justified by the problem it claims to target—here, protecting “the integrity of the democratic process,” 85 Fed. Reg. at 44,680—because it is instead motivated by discriminatory animus, *see* Am. Compl. ¶¶ 109–16, 157. These allegations state a Tenth Amendment claim.

C. Plaintiffs have adequately stated a claim that the Presidential Memorandum was motivated by intentional discrimination.

To state a claim for intentional discrimination based on race, ethnicity, and national origin, Plaintiffs must allege only that the policy was “motivated at least in part” by improper

animus. *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1216–17 (2d Cir. 1987). Courts assess five non-exclusive factors in considering such a claim: disparate impact; the decision’s “historical background”; “[d]epartures from the normal procedural sequence”; “[s]ubstantive departures” from past practice; and “contemporary statements” by the decisionmakers. *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266–68 (1977).

The complaints sufficiently allege that the PM will have a disparate impact on Latinx and Asian Americans,¹² see NGO Plaintiffs’ First Am. Compl. ¶¶ 23, 161–69, 215, as Defendants do not dispute. Defendants instead argue (Defs.’ Mem. 25) that disparate impact is insufficient to state a claim for intentional discrimination, citing Chief Justice Roberts’s recent plurality opinion in *Department of Homeland Security v. Regents of Univ. of California*, 140 S. Ct. 1891 (2020). But *Regents* did not overrule *Arlington Heights*—it merely applied the relevant factors and held that the disparate impact there was insufficient to state a claim. *Id.* at 1915–16.

The complaints here, however, allege facts regarding all of the other *Arlington Heights* factors, which Defendants largely ignore, including: the PM’s connection to past discriminatory efforts to strip Latinx and Asian American communities of political power; the dramatic departure from decades of counting of undocumented residents for apportionment; the irregular

¹² The Court may take judicial notice of government statistics showing a correlation between States with high percentages of Latinx and Asian Americans and those with the largest percentages of undocumented residents. See *Victoria Cruises, Inc. v. Changjiang Cruise Overseas Travel Co.*, 630 F. Supp. 2d 255, 263 n.3 (E.D.N.Y. 2008). Compare U.S. Dep’t of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 5 (Dec. 2018), https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf, with U.S. Census Bureau, Quick Facts: California, <https://www.census.gov/quickfacts/CA>; U.S. Census Bureau, Quick Facts: Texas, <https://www.census.gov/quickfacts/TX>; U.S. Census Bureau, Quick Facts: New Jersey, <https://www.census.gov/quickfacts/NJ>; U.S. Census Bureau, Quick Facts: Florida, <https://www.census.gov/quickfacts/FL>; U.S. Census Bureau, Quick Facts: New York, <https://www.census.gov/quickfacts/NY>.

and ill-timed procedural sequence involving political interference with Census Bureau operations; and Defendant Trump’s overt expressions of animus. NGO Plaintiffs’ First Am. Compl. ¶¶ 6, 94–106, 114–125, 127–141, 143–151, 216; Governmental Plaintiffs’ Am. Compl. ¶¶ 2, 60, 63–68, 73–76, 109–116; *cf. Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1098 (N.D. Cal. 2018) (“President Trump has expressed animus against non-white, non-European immigrants.”).

Defendants also mischaracterize the connection between the PM and the earlier effort to add a citizenship question to the census. Defs.’ Mem. 25–26. Although the district court held in the citizenship question litigation that—based on evidence available at trial in November 2018—Plaintiffs did not meet their burden of showing the citizenship question was motivated by intentional discrimination, *New York*, 351 F. Supp. 3d at 669–71, substantial new evidence emerged after trial establishing a direct connection between the efforts to add the citizenship question and a study advising that the question would benefit “Republicans and Non-Hispanic Whites” by allowing for the exclusion of non-citizens in redistricting. NGO Plaintiffs’ First Am. Compl. ¶¶ 129–31. And a week after the Supreme Court’s decision, Defendant Trump made clear that the motivation for the citizenship question was not Voting Rights Act enforcement, but “to find out if someone is a citizen as opposed to an illegal” and to use it “for Congress . . . for districting.” *Id.* ¶ 134.

To the extent Defendants contend that the PM is not discriminatory so long as it is rationally related to a legitimate government interest, Defs.’ Mem. 25, Plaintiffs have easily pled facts to clear this hurdle, because “a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.” *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973). And Defendants rely on the wrong standard of review in any event: The Supreme Court employs heightened scrutiny when evaluating the claims of a “discrete class” that is “not

accountable for their disabling status.” *Plyler v. Doe*, 457 U.S. 202, 223 (1982). Here, citizens and non-citizens with legal status who are members of communities with undocumented immigrants will be injured by the PM but did not create their “disabling status.” See NGO Plaintiffs’ First Am. Compl. ¶¶ 23, 32, 51–52, 66–68, 77–80, 219–20.

D. The President is a proper defendant in this action.

It is the courts’ constitutional duty “‘to say what the law is’ in particular cases and controversies,” *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218 (1995) (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)), and this obligation is especially crucial when the lawfulness of the President’s conduct is at issue. *Boumediene v. Bush*, 553 U.S. 723, 765 (2008). Defendants concede (Defs.’ Mem. 45) that declaratory relief is available against the President. See *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 579–80 (S.D.N.Y. 2018) (“*Knight Inst.*”), *aff’d*, 928 F.3d 226 (2d Cir. 2019). Injunctive relief is available as well, and Defendants’ motion to dismiss the President should be denied.¹³

“It is settled law that the separation-of-powers doctrine does not bar every exercise of jurisdiction over the President of the United States.” *Clinton v. Jones*, 520 U.S. 681, 705 (1997) (quoting *Nixon v. Fitzgerald*, 457 U.S. 731, 753–54 (1982)). Courts recognize presidential immunity only where “the dangers of intrusion on the authority and functions of the Executive Branch” outweigh “the constitutional weight of the interest to be served” by the court’s exercise of jurisdiction. *Nixon*, 457 U.S. at 754; *see also, e.g., Saget v. Trump*, 375 F. Supp. 3d 280, 334 (E.D.N.Y. 2019) (denying motion to dismiss the President where “injunctive relief against the President corrects unlawful conduct”). Here, “the census is a matter of national importance,”

¹³ Courts have enjoined past presidents or orders they have issued. *See, e.g., United States v. Nixon*, 418 U.S. 683, 706 (1974); *Youngstown Sheet & Tube Co. v. Sawyer*, 335 U.S. 579, 582, 584, 587–88 (1952); *United States v. Burr*, 25 F. Cas. 187, 191, 196 (No. 14,694) (CC Va. 1807).

with “massive and lasting consequences.” *New York*, 351 F. Supp. 3d at 517. The “constitutional weight” of the interest in ensuring that the census is conducted in accordance with Article I and the Fourteenth Amendment cannot be overstated.

Moreover, where the President lacks discretion to take the challenged action, injunctive relief poses no separation of powers concerns. As Defendants admit, Defs.’ Mem. 44, a President can be “subject to judicial injunction requiring the performance of a purely ‘ministerial’ duty.” *Franklin*, 505 U.S. at 802–03. Here, the President purports to exercise discretion to exclude undocumented immigrants from apportionment after the decennial census is completed. 85 Fed. Reg. at 44,680. But he lacks such discretion. *See supra* Part III.A.¹⁴

Moreover, “the correction of an unconstitutional act” is ministerial, as “[n]o government official . . . possesses the discretion to act unconstitutionally.” *Knight Inst.*, 302 F. Supp. 3d at 579; *see also Saget*, 375 F. Supp. 3d at 334. Enjoining unconstitutional presidential action cannot impinge on the President’s discretion or executive authority. Defendants’ reliance on *Mississippi v. Johnson*, 71 U.S. 475 (1866) is therefore misplaced. In *Mississippi*, states sought an injunction to prevent the President from exercising his discretion in enforcing the post-Civil War Reconstruction Acts; “[h]ere, unlike in *Mississippi*, injunctive relief against the President corrects unlawful conduct (rather than promotes it).” *Saget*, 375 F. Supp. 3d at 335; *see also Knight Inst.*, 302 F. Supp. 3d at 579.¹⁵

¹⁴ Defendants assert that, under *Franklin*, an express statement by Congress would be required for this Court to issue injunctive relief. Defs.’ Mem. 45. But *Franklin* held that “the President’s actions may still be reviewed for constitutionality,” though not under the APA. *Id.* at 801.

¹⁵ Also, it would be premature to dismiss Plaintiffs’ claims for injunctive relief against the President. Despite the “delicate” nature of the question, courts have declined to dismiss the President at the motion-to-dismiss stage. *See Mayor & City Council of Baltimore v. Trump*, 416 F. Supp. 3d 452, 516–517 (D. Md. 2019); *see also Saget v. Trump*, 345 F. Supp. 3d at 297–98.

V. Injunctive relief is warranted to prevent irreparable harm.

A. The Memorandum imposes imminent and irreparable harms.

The harms caused by the PM are imminent and irreparable. Plaintiffs allege two primary types of harms attributable to the Presidential Memorandum: harms stemming from the exclusion of undocumented immigrants in the apportionment count, and harms caused by the Memorandum’s deterrent effect on census participation. Both require immediate injunctive relief. Although Defendants urge that harms stemming from excluding immigrants in the apportionment count “can be remedied after the fact,” Defs.’ Br. 48, reporting unlawful apportionment numbers would wreak havoc on Plaintiffs and their state redistricting processes. *See supra* Part II. These harms cannot be unwound after the fact, and the Court should reject Defendants’ invitation to wait for these injuries to be inflicted. Defs.’ Mem. 48.

The PM is also causing immediate injury by deterring census participation—which, in turn, forces Plaintiffs to divert resources to additional census outreach, will degrade the quality of census data, and will exacerbate the differential undercount of immigrant communities. *See supra* Part I.A; Pls.’ Mem. 42–48. Absent a preliminary injunction, Plaintiffs “will suffer ‘an injury that is neither remote nor speculative, but actual and imminent,’ and one that cannot be remedied ‘if a court waits until the end of trial to resolve the harm.’” *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007).

Defendants note that the PM “has had no impact on the design of field operations for decennial census.” Fontenot Decl. ¶ 12 (ECF No. 120). But Plaintiffs’ immediate injuries stem from the effect of the PM on census response rates, not from any change to the conduct of the census itself. If anything, the Census Bureau’s failure to adjust its operations to offset the PM’s effect only supports Plaintiffs’ claims. Barreto Reply Decl. ¶¶ 15, 25, 30 (Ex. 65).

Defendants also argue that the PM simply transmits a “general policy message” and not

“something the government has actually done”; therefore, any fear it instills cannot form the basis of irreparable harm. Defs.’ Mem. 51. It is hard to fathom how an official statement from the President directing the Secretary to “take all appropriate action” to carry out federal policy is not something the government has “done.” And Defendants cannot ignore harms stemming from the “predictable effect of government action.” *New York*, 139 S. Ct. at 2566.

B. The balance of equities and public interest favor a preliminary injunction.

The balance of the equities and public interest also weigh strongly in Plaintiffs’ favor. *See* Pls.’ Mem. 50–52. As this Court has recognized, “[t]he integrity of the census is a matter of national importance.” *New York*, 351 F. Supp. 3d at 517. The population count has immense consequences for political power and funding decisions over the next decade. By contrast, Defendants will suffer no injury if the PM is enjoined pending a final decision on the merits. Defendants argue that “an injunction would impede the Executive’s historic discretion in conducting the census.” Defs.’ Mem. 53. But this cannot be squared with Defendants’ concession that “the PM does *not* affect how the Census Bureau is conducting its remaining enumeration operations,” *id.* at 12. The Plaintiffs’ and public’s interest in maintaining the integrity of the census and apportionment process far outweighs Defendants’ interest in enacting a policy that runs counter to the Constitution and hundreds of years of settled practice.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs’ motion for partial summary judgment or preliminary injunction, and should deny Defendants’ motion to dismiss.¹⁶

¹⁶ Notably, Defendants failed to move to dismiss the NGO Plaintiffs’ claim that Defendants are violating the Census Act’s prohibition on statistical sampling. *See* NGO Pls.’ Am. Compl. ¶¶ 251-62 (ECF No. 57). And Defendants’ motion to dismiss with respect to Plaintiffs’ *ultra vires* statutory claims fails to directly address the NGO Plaintiffs’ separate claim that the President has usurped authority delegated to the Secretary of Commerce. *See id.* ¶¶ 222-36.

DATED: August 25, 2020

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Respectfully submitted,

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*** Not admitted in the District of Columbia; practice limited pursuant to D.C. App. R. 49(c)(3).



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

MEMORANDUM FOR: Thomas Dabolt
Chief Data Officer
Office of the Chief Information Officer
Department of the Interior

From: Ron S. Jarmin NICK ORSINI Digitally signed by NICK ORSINI
Date: 2020.08.11 09:27:20 -0400
Deputy Director

Subject: Request for Authorized Use as Amendment #1 to September 18, 2019,
Agreement No. 2064-FY19-NFE-0293.000, "Memorandum of
Understanding Through Which the U.S. Census Bureau is Acquiring
Citizenship Data from the U.S. Department of Interior"

Thank you for your continuing support to our data acquisition efforts pursuant to the September 18, 2019, Agreement No. 2064-FY19-NFE-0293.000, "Memorandum of Understanding Through Which the U.S. Census Bureau is Acquiring Citizenship Data from the U.S. Department of Interior (DOI)" to support our work under Executive Order 13880 to create estimates of citizenship status. I write to request that all DOI data acquired under Agreement No. 2064-FY19-NFE-0293.000 be added as an approved use for a Census Bureau project responding to the July 21, 2020 *Presidential Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*. The Census Bureau's project description in response to this Memorandum is attached.

DOI support to the citizenship project consisted of extracting and transferring to the Census Bureau two deliveries of data drawn from DOI 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 michael.a.berning@census.gov.

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

Attachment

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.

NICK ORSINI Digitally signed by NICK ORSINI
Date: 2020.08.11 09:26:34 -0400

8-11-2020

Ron S. Jarmin
Deputy Director
U.S. Census Bureau

(Date)

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

Thomas Dabolt
Chief Data Officer
Office of the Chief Information Officer
Department of Interior

(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 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: James W. McCament
Deputy Under Secretary
Office of Strategy, Policy, and Plans
Department of Homeland Security

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

Subject: "Request for Additional Data Elements and Authorized Uses as
Amendment #3 to Dec. 23, 2019, Agreement No. 2064-FY20-NFE-
0335, "Memorandum of Agreement Between the United States
Department of Commerce U.S. Census Bureau and United States
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 additional data elements be included as a supplement to the second delivery of data as scheduled within our Memorandum of Agreement. The additional data elements will be drawn from the Immigrations and Custom Enforcement (ICE) data and will be used by Census to develop estimates of the documentation status of noncitizen. The data will include, but not be limited to: information from the ICE Enforcement and Removal databases. I also ask that all ICE data acquired under Agreement No. 2064-FY20-NFE-0335 be approved for use by the Census Bureau project in response to the *Presidential Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census*, dated July 21, 2020. A description of that project is attached.

DHS 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 ICE 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 data gaps from our initial request for data that will impact the quality of our citizenship project work. The DHS Office of Immigration Statistics (OIS) staff have been very helpful in assisting us to identify data that would help us fill that gap. And, based on those conversations, we are requesting variables from the Enforcement and

Removal data. Specific data elements requested from each of these sources are listed in the attached modification to Addendum #3 of the base agreement.

Thank you in advance for your assistance in providing the additional variables from ICE systems in the next delivery of DHS data to the Census Bureau in support of Executive Order 13880. 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 DHS is amenable to providing the additional ICE data to the Census Bureau and approving the use of all ICE data for the additional July 21, 2020 Presidential Memorandum project, your signature below will signify concurrence to amend Addendum #3 of Agreement No. 2064-FY20-NFE-0335, by adding the variables to the list of Individual Data Elements to Section A.4 shown in Addendum #3. This will constitute Amendment #3 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
U.S. Census Bureau

(Date)

On behalf of the Department of Homeland Security, 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 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: Barry W. Johnson
Director, Statistics of Income Division
Internal Revenue Service

From: Ron S. Jarmin
Deputy Director

Subject: Request for Authorized Use as Amendment #2 to October 10, 2019, Agreement No. 2064-19-PAY-06, "Interagency Agreement between the U.S. Census Bureau and the Internal Revenue Service, Statistics of Income Division"

Thank you for your continuing support to our data acquisition efforts pursuant to the October 10, 2019, Agreement No. 2064-19-PAY-06, "Interagency Agreement between the U.S. Census Bureau and the Internal Revenue Service, Statistics of Income Division" to support our work under Executive Order 13880 to create estimates of citizenship status. I write to request that all Internal Revenue Service data acquired under Agreement No. 2064-19-PAY-06 be added as an approved use for a Census Bureau project responding to the July 21, 2020 *Presidential Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*. The Census Bureau's project description in response to this Memorandum is attached.

IRS's support to the citizenship project consisted of extracting and transferring to the Census Bureau two deliveries of data drawn from IRS 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 IRS is amenable to authorizing the use of IRS data to support the July 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
U.S. Census Bureau

(Date)

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

Barry W. Johnson
Director, Statistics of Income Division
Internal Revenue Service

(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 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
Department of Homeland Security

From: Ron S. Jarmin
Deputy Director

Subject: Request for Additional Data Elements and Authorized Uses as
Amendment #2 to Dec. 23, 2019, Agreement No. 2064-FY20-NFE-0335,
"Memorandum of Agreement Between the United States Department of
Commerce U.S. Census Bureau and United States Department of
Homeland Security Regarding the Transfer of Immigration and
Citizenship-Related Data"

Thank you for your continuing support of our data acquisition efforts pursuant to the December 23, 2019, Agreement No. 2064-FY20-NFE-0335, "Memorandum of Agreement Between the United States Department of Commerce U.S. Census Bureau and United States Department of Homeland Security Regarding the Transfer of Immigration and Citizenship-Related Data," (MOA), and support of our work under Executive Order 13880 to create estimates of citizenship status. I write to request that additional data elements maintained by U.S. Citizenship and Immigration Services (USCIS) be provided to help inform this work. The additional data elements will be drawn from USCIS data sources, specifically information pertaining to: Lawful Permanent Resident (LPR) denied applications; Deferred Action for Childhood Arrivals (DACA); and, Special Immigrant Juveniles (SIJ) and, data from USCIS data source that have characteristics on individuals who at some point have filed an application, petition, or request with USCIS who appear not to be in a lawful immigration status. In addition, I ask that USCIS approve the use of data acquired pursuant to Agreement No. 2064-FY20-NFE-0335, as amended by this memorandum, to assist the Census Bureau, as directed by the Secretary of Commerce, with performing the mandates contained in *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.

To date, DHS support to the citizenship project consisted of extracting and providing two tranches of data drawn from DHS component databases to the Census Bureau. The first delivery was provided in December of 2019 while the second delivery occurred July of 2020. We have been hard at work analyzing those data provided pursuant to the terms of the MOA. Based on that analysis, and the later issuance of the July 21, 2020 Presidential Memorandum, we recognized data gaps from our initial request for data that will impact the quality of our citizenship project work. The DHS Office of Immigration Statistics (OIS) staff have been very helpful in assisting us to identify data that would help us fill that gap. As a result of those conversations we are requesting additional variables pertaining to Lawful Permanent Resident



[census.gov](https://www.census.gov)

(LPR) denied applications; Deferred Action for Childhood Arrivals (DACA); and, Special Immigrant Juveniles (SIJ) maintained by USCIS. Additionally, we request data from USCIS data source that have characteristics on individuals who at some point have filed an application, petition, or request with USCIS who appear not to be in a lawful immigration status. Specific data elements requested from each of these sources are listed in the attached modification to addendum one of the base agreement.

Thank you in advance for your assistance in providing the additional variables from USCIS systems to the Census Bureau in support of the Executive-Level directed project. 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 DHS is amenable to the provision of the additional USCIS variables to the Census Bureau and in the use of CIS data to support the July 2020 Presidential Memorandum, your signature below will signify concurrence to amend Addendum #1 of Agreement No. 2064-FY20-NFE-0335, by adding the variables to the list of Individual Data Elements shown in item A.5. of the Addendum. 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
U.S. Census Bureau

(Date)

On behalf of the Department of Homeland Security, 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)

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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 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.

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

MEMORANDUM FOR: Sonya D. Thompson
Acting Assistant Director for Information, Policy & Public Affairs
Federal Bureau of Prisons

From: Ron S. Jarmin
Deputy Director

Subject: Request for Authorized Use as Amendment #1 to October 24, 2019, Agreement No. 2064-FY20-NFE-0313.000, "Memorandum of Understanding Through Which the U.S. Census Bureau is Acquiring Prisoner Data From The Federal Bureau of Prisons"

Thank you for your continuing support to our data acquisition efforts pursuant to the October 24, 2019, Agreement No. 2064-FY20-NFE-0313.000, "Memorandum of Understanding Through Which the U.S. Census Bureau is Acquiring Prisoner Data From The Federal Bureau of Prisons" (BOP) to support our work under Executive Order 13880 to create estimates of citizenship status. I write to request that all Bureau of Prisons data acquired under Agreement No. 2064-FY20-NFE-0313.000 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.

BOP's support to the citizenship project consisted of extracting and transferring to the Census Bureau two deliveries of data drawn from BOP 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 BOP is amenable to authorizing the use of BOP 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
U.S. Census Bureau

(Date)

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

Sonya D. Thompson
Acting Assistant Director for Information, Policy & Public Affairs
Federal Bureau of Prisons

(Date)

Attachment:



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

MEMORANDUM FOR: Carol O'Connell
Acting Assistant Secretary
Bureau of Population, Refugees, and Migration
U.S. Department of State

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

Subject: Request for Authorized Use as Amendment #1 to January 7, 2020, Agreement No. 2064-FY20-NFE-0333.000, "Memorandum of Understanding Through Which the U.S. Census Bureau Acquires Certain Refugee Data from the Department of State Bureau of Population, Refugees, and Migration (PRM)"

Thank you for your continuing support to our data acquisition efforts pursuant to the January 7, 2020, Agreement No. 2064-FY20-NFE-0333.000, "Memorandum of Understanding Through Which the U.S. Census Bureau Acquires Certain Refugee Data from the Department of State Bureau of Population, Refugees, and Migration (PRM)" to support our work under Executive Order 13880 to create estimates of citizenship status. I write to request that all Department of State data acquired under Agreement No. 2064-FY20-NFE-0333.000 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.

The Department of State's support to the citizenship project consisted of extracting and transferring to the Census Bureau two deliveries of data drawn from Department of State 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 Department of State is amenable to authorizing the use of Department of State 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 Department of State, the undersigned individual hereby attests that he or she is authorized to enter into this Amendment and agrees to all the terms specified herein.

Carol O'Connell
Acting Assistant Secretary
Bureau of Population, Refugees, and Migration
U.S. Department of State

(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 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: James W. McCament
Deputy Under Secretary
Office of Strategy, Policy, and Plans
Department of Homeland Security

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

Subject: Request for Additional Data Elements and Authorized Uses as
Amendment #2 to Dec. 23, 2019, Agreement No. 2064-FY20-NFE-
0335, "Memorandum of Agreement Between the United States
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 of our data acquisition efforts pursuant to the December 23, 2019, Agreement No. 2064-FY20-NFE-0335, "Memorandum of Agreement Between the United States Department of Commerce U.S. Census Bureau and United States Department of Homeland Security Regarding the Transfer of Immigration and Citizenship-Related Data," (MOA), and support of our work under Executive Order 13880 to create estimates of citizenship status. I write to request that additional data elements maintained by U.S. Citizenship and Immigration Services (USCIS) be provided to help inform this work. The additional data elements will be drawn from USCIS data sources, specifically information pertaining to: Lawful Permanent Resident (LPR) denied applications; Deferred Action for Childhood Arrivals (DACA); and, Special Immigrant Juveniles (SIJ). In addition, I ask that USCIS approve the use of data acquired pursuant to Agreement No. 2064-FY20-NFE-0335, as amended by this memorandum, to assist the Census Bureau, as directed by the Secretary of Commerce, with performing the mandates contained in *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.

To date, DHS support to the citizenship project consisted of extracting and providing two tranches of data drawn from DHS component databases to the Census Bureau. The first delivery was provided in December of 2019 while the second delivery occurred July of 2020. We have been hard at work analyzing those data provided pursuant to the terms of the MOA. Based on that analysis, and the later issuance of the July 21, 2020 Presidential Memorandum, we recognized data gaps from our initial request for data that will impact the quality of our citizenship project work. The DHS Office of Immigration Statistics (OIS) staff have been very helpful in assisting us to identify data that would help us fill that gap. As a result of those conversations we are requesting additional variables pertaining to Lawful Permanent Resident (LPR) denied applications; Deferred Action for Childhood Arrivals (DACA); and, Special Immigrant Juveniles (SIJ) maintained by USCIS. Specific data elements requested from each of these sources are listed in the attached modification to addendum one of the base agreement.

Thank you in advance for your assistance in providing the additional variables from USCIS systems to the Census Bureau in support of the Executive-Level directed project. 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 the provision of the additional USCIS variables to the Census Bureau and in the use of CIS data to support the July 2020 Presidential Memorandum, your signature below will signify concurrence to amend Addendum #1 of Agreement No. 2064-FY20-NFE-0335, by adding the variables to the list of Individual Data Elements shown in item A.5. of the Addendum. 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.

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

(Date)

On behalf of the Department of Homeland Security, 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 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.

MEMORANDUM OF AGREEMENT
ESTABLISHING A JOINT PROJECT
BETWEEN THE
US Census Bureau
U.S. DEPARTMENT OF COMMERCE
AND
THE POPULATION REFERENCE BUREAU
Agreement No. 0075-2021-JPA-02

I. PARTIES

This document constitutes an agreement between the U.S. Census Bureau, U.S. Department of Commerce, and the Population Reference Bureau, which is a private, nonprofit organization.

II. AUTHORITY

The Census Bureau's authority to participate in a joint statistical project with the Population Reference Bureau 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. Such staff members must demonstrate that they have suitable background clearance and they must take Title 13 awareness training.

III. PURPOSE

Pursuant to this agreement, the parties will collaborate on a research study that aims to develop and analyze detailed national, state, and sub-state estimates of household, elderly, and child well-being; the characteristics of low-income and poor working families; and the characteristics of scientists and engineers from American Community Survey (ACS) microdata files.

The ACS is a nationwide survey designed to provide communities with reliable and timely demographic, social, economic, and housing data every year. The ACS provides, for the first time, a continuous stream of updated information for states and local areas that is changing the way federal, state, local, and tribal governments plan, administer, and evaluate their programs.

In the years following the 2000 Census, concerns about poverty and overall economic well-being have remained at the forefront of program and policy agendas for many nonprofit research and advocacy organizations, as well as state and local governments. Annual information is needed at the state and sub-state levels by these organizations in order to track trends and assess differences in poverty and well-being among different population sub-groups and geographic areas. Since the onset of the recession in 2007, other organizations continue to assess the impact of the recession on economic well-being and the pace of recovery for particular sub-state areas. For example, the Appalachian Regional Commission wants to determine whether areas in Appalachia have been affected disproportionately by the economic downturn and whether they are lagging behind other areas in the United States in recovery from the recession.

There is also interest among researchers, organizations, and policymakers in the size, characteristics, and geographic location of the Science and Engineering (S&E) workforce in the U.S. ACS estimates can help advance knowledge about regional variations and trends in the S&E workforce and persons with scientific and technical degrees.

Using data from the 1-year, 3-year, and 5-year edited, weighted, internal ACS microdata person and housing files as they become available, this project will develop and analyze the following: 1) a comprehensive set of estimates of well-being for households, children, older persons ages 50+, and for low-income and poor working families; and 2) estimates of the number and characteristics of scientists and engineers. The full, internal microdata files are needed to develop reliable and accurate estimates at the state and sub-state level for two reasons: 1) Many of the population sub-groups of interest (e.g., immigrant children, racial and ethnic minority children and families, elderly persons, scientists and engineers) are small in number at the state and sub-state level and using all of the respondents, rather than just the sample included in the Public Use Microdata Sample File (PUMS) increases the number of geographic areas for which estimates can be produced and improves the precision of the estimates; and 2) Microdata files are required to define and construct specific measures of well-being for particular population groups because such detailed data are not available through the data.census.gov website or ACS Summary Files. For example, microdata are required to develop state-level estimates of the number of poor working families, defined as a married couple or single-parent family with at least one child under 18, where the parent(s) either have a combined work effort of 39+ weeks in the last 12 months, or the parent(s) have a combined work effort of 26+ weeks in the last 12 months and one currently unemployed parent looked for work in the previous four weeks, and income is below 100% of poverty.

After approval from the American Community Survey Office (ACSO) and the Disclosure Review Board, the estimates developed and analyzed through this project will be provided to the Annie E. Casey Foundation for publication on their website, the KIDS COUNT Data Center (<https://datacenter.kidscount.org/>) and for research reports for their KIDS COUNT project, and to the Child and Adolescent Health Measurement Initiative at Johns Hopkins University for dissemination through their website. Estimates of child well-being in California for the Lucile Packard Foundation for Children's Health will be disseminated through a series of online tables on the Foundation's Kidsdata website (<https://www.kidsdata.org/>). Estimates of the well-being of older persons ages 50+ will be disseminated through PRB's website.

Some of the estimates will also be published on the Working Poor Families Project website (<http://www.workingpoorfamilies.org>) and will support the efforts of nonprofit groups in 22 states and the District of Columbia to identify the number and assess the well-being of low-income and poor working families, and to help improve policies and programs to assist these families in achieving economic security. Single-year estimates of household well-being (e.g. income, employment, home values) will be aggregated to different types of county groups (each with at least 65,000 people) in the 13 Appalachian states, and provided to the Appalachian Regional Commission (ARC) in a report and for a database to be published on the ARC website. There are no county groupings that would enable a data user to derive estimates by subtraction for a county with less than 65,000 people. Multiyear estimates of household well-being at the county level from the 2005-2009 to 2015-2019 ACS data will also be aggregated to five county groups within the 13 Appalachian states and provided to the Appalachian Regional Commission.

Estimates of the science and engineering workforce and persons with scientific and technical degrees will be provided on PRB's website in a report or web articles, as well as in a dataset designed for use by researchers.

This project is necessary and essential to further the mission of the Census Bureau in that it will provide accurate and current measures of the U.S. population and economy to meet the needs of nonprofit organizations, policymakers, and the public.

The Census Bureau's ACSO has determined that this project would not be done without the participation of the Population Reference Bureau (PRB) because it requires the development and analysis of a large number of complex measures of child and family well-being for states and sub-state geographies, for which PRB is a leading data expert. PRB has been collaborating with the Casey Foundation to develop and analyze measures of child well-being since 1990, and has been working with the Working Poor Families Project since 2002 to develop and analyze measures of the well-being of low-income and poor working families. PRB's expertise in developing and analyzing these measures is demonstrated by the numerous research studies, first based on the ACS Supplementary Survey data and continuing with 2002 through 2018 ACS data, that PRB staff have authored or co-authored.

These studies are available on both the Casey Foundation's website (<http://www.aecf.org/KnowledgeCenter/PublicationsSeries/KCDataResrchRpts.aspx>) and PRB's website (<https://www.prb.org/>). PRB has also worked with the Appalachian Regional Commission since 2002 to produce a series of reports analyzing 1960-2010 census data and 2005-2009 to 2014-2018 ACS data for counties in the Appalachian region. These reports are available on both ARC's website (<http://www.ARC.gov>) and PRB's website. Finally, PRB has been using ACS data to analyze the characteristics of scientists and engineers at the national and state-level since 2005.

IV. MUTUAL INTEREST OF THE PARTIES

This project is of mutual interest to the parties because it benefits their respective missions to enhance the utility and availability of their datasets in analyzing the benefits of programs and policies that benefit the public.

This work will benefit the Census Bureau because it further demonstrates the utility and benefit of the ACS. Under the Census Bureau's Policy for articulating the Title 13 benefits of Census Bureau projects, this project specifically addresses the following criteria:

- Criterion 3 -- developing means of increasing the utility of Census Bureau data for analyzing public programs, public policy, and/or demographic, economic, or social conditions;
- Criterion 5 -- understanding and/or improving the quality of data produced through a Title 13, Chapter 5 survey, census, or estimate; and
- Criterion 11 -- preparing estimates of population and characteristics of population as authorized under Title 13, Chapter 5.

The success of this research will pave the way for future uses of ACS data.

This agreement benefits PRB in its ongoing mission to inform people around the world about population, health, and the environment, and to empower them to use that information to advance the well-being of current and future generations. This project specifically furthers PRB's ongoing efforts to develop, analyze, and disseminate complex measures of child, family, and elderly well-being and information about the S & E workforce in formats that are easily accessed and understood by advocates, policymakers, and the public. It will enable PRB to use its strong analytic capabilities and ACS expertise to continue to provide essential information on the S&E workforce and child, family, and elderly well-being at the state and sub-state level to a wide network of advocate organizations, as well as the Appalachian Regional Commission, foundations, policymakers and the public.

The anticipated outcomes of this research study include:

1. Annual estimates of child well-being for all states, the District of Columbia, Puerto Rico, large cities, and other sub-state geographies that will be published on the Child and Adolescent Health Measurement Initiative website and the Casey Foundation website (<https://datacenter.kidscount.org/>), with a subset to be published in the Foundation's annual *KIDS COUNT Data Book* and other reports (<http://www.aecf.org/work/kids-count/>); and annual estimates of child well-being in California that will be published on the Lucile Packard Foundation for Children's Health website (<https://www.kidsdata.org/>).
2. Annual estimates of the number, characteristics, and well-being of low-income and poor working families for the nation, all states, the District of Columbia, Puerto Rico, and sub-state geographies that will be published on the Working Poor Families Project website (<http://www.workingpoorfamilies.org>).
3. Reports analyzing 2007, 2009, and 2005-2009 to 2015-2019 estimates of household/family well-being for several different types of county groups and for counties (with 5-year data) in the 13 Appalachian states. Reports and datasets with the estimates will be provided to the Appalachian Regional Commission for publication on their website.

4. A report or several web articles analyzing estimates of the number and characteristics of scientists and engineers and persons with scientific and technical degrees for the nation, states, the District of Columbia, the 50-largest metropolitan areas, and the 100-largest cities and counties. This report (or web articles) and a dataset with these estimates will be published on PRB's website to help advance knowledge about regional variations and trends in the S&E workforce.
5. Annual estimates of the well-being of older persons ages 50+ for all states and the District of Columbia that will be published on PRB's website and featured in PRB web articles and reports.

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 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. 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.

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The parties understand that Title 13 confidentiality protection and disclosure avoidance techniques apply to all work described in this agreement. The disclosure avoidance 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 SSS and a need to know, or moved to a computer not approved for controlled data according to Census' existing policies and procedures.

V. RESPONSIBILITIES OF THE PARTIES

The Census Bureau agrees to perform the following activities and provide the following resources in support of the research study:

- a. Access to the 1-year, 3-year, and 5-year edited, weighted, internal ACS microdata person and housing files as they become available. The ACSO will provide access to a cubicle and

personal computer for PRB researchers to use to access and analyze the ACS data. ACS staff will also provide technical assistance and support as needed.

- b. Support from the Disclosure Review Board (DRB) in evaluating disclosure concerns regarding the estimates developed through this project.

The Population Reference Bureau agrees to perform the following activities and provide the following resources in support of the research study:

- a. All PRB researchers who access Title 13-protected data for this study will be required to first obtain Census Bureau Special Sworn Status (SSS) pursuant to 13 U.S.C 23(c). This entails a background check, personal identification verification, taking the Census Bureau Oath of Nondisclosure, and successful completion of Title 13 Training, Title 26 Training, and IT Security Training.
- b. The PRB researchers who obtain SSS will comply with all DRB disclosure rules in developing ACS estimates for this study and will not be permitted to leave the Census Bureau with any Title 13-protected data or any Personal Identifiable Information (PII). Disclosure Review Board and ACSO approval will be obtained before any ACS estimates developed in this study are released outside of the Census Bureau.
- c. PRB researchers will provide a Brown Bag seminar on request to share the results of this research study with ACSO staff.
- d. PRB will ensure that all tabulated data are made available to the public.

VI. EQUITABLE APPORTIONMENT OF COSTS

The costs of this activity are equitably apportioned. In order to conduct their research, the Population Reference Bureau (PRB) needs data from the Census Bureau; therefore, the project is highly beneficial to PRB. While not a requirement for the Census Bureau, the Census Bureau will benefit by having access to the research conducted by PRB, they will gain additional exposure of their data, and will learn from their collaboration with an important data user. Census's estimated percentage of total costs for this project is 34 percent. The Population Reference Bureau's estimated percentage of total costs is 66 percent. Costs incurred by the Census Bureau and PRB will be covered by each of the parties, and neither party will be responsible for any of the other parties' costs.

VII. CONTACTS

The contacts of each party to this agreement are:

David Raglin
Chief, ACS Survey Analytics and Measures Branch (4H269)
American Community Survey Office
U.S. Census Bureau
4600 Silver Hill Road
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Linda A. Jacobsen
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Population Reference Bureau
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Washington, DC 20009
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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.

VIII. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

This agreement will become effective when signed by all parties. The agreement will terminate on September 30, 2024, but may be amended at any time by mutual consent of the parties. Every two years, the parties agree to review this agreement and determine whether it should be revised or cancelled.

Any party may terminate this agreement by providing 30 days written notice to the other party. In the event this agreement is terminated, each party shall be solely responsible for the payment of any expenses it has incurred.

IX. OTHER PROVISIONS

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 30 days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

[signature]

Steven Dillingham
Director
U.S. Census Bureau
U.S. Department of Commerce
4600 Silver Hill Road
Washington, DC 20233

[signature]

Jeffrey Jordan
President and CEO
Population Reference Bureau
1875 Connecticut Avenue, NW, Suite 520
Washington, DC 20009

[date]

[date]

MEMORANDUM OF AGREEMENT
ESTABLISHING A JOINT PROJECT
BETWEEN THE
US Census Bureau
U.S. DEPARTMENT OF COMMERCE
AND
THE POPULATION REFERENCE BUREAU
Agreement No. 0075-2021-JPA-02

I. PARTIES

This document constitutes an agreement between the U.S. Census Bureau, U.S. Department of Commerce, and the Population Reference Bureau, which is a private, nonprofit organization.

II. AUTHORITY

The Census Bureau's authority to participate in a joint statistical project with the Population Reference Bureau 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. Such staff members must demonstrate that they have suitable background clearance and they must take Title 13 awareness training.

III. PURPOSE

Pursuant to this agreement, the parties will collaborate on a research study that aims to develop and analyze detailed national, state, and sub-state estimates of household, elderly, and child well-being; the characteristics of low-income and poor working families; and the characteristics of scientists and engineers from American Community Survey (ACS) microdata files.

The ACS is a nationwide survey designed to provide communities with reliable and timely demographic, social, economic, and housing data every year. The ACS provides, for the first time, a continuous stream of updated information for states and local areas that is changing the way federal, state, local, and tribal governments plan, administer, and evaluate their programs.

In the years following the 2000 Census, concerns about poverty and overall economic well-being have remained at the forefront of program and policy agendas for many nonprofit research and advocacy organizations, as well as state and local governments. Annual information is needed at the state and sub-state levels by these organizations in order to track trends and assess differences in poverty and well-being among different population sub-groups and geographic areas. Since the onset of the recession in 2007, other organizations continue to assess the impact of the recession on economic well-being and the pace of recovery for particular sub-state areas. For example, the Appalachian Regional Commission wants to determine whether areas in Appalachia have been affected disproportionately by the economic downturn and whether they are lagging behind other areas in the United States in recovery from the recession.

There is also interest among researchers, organizations, and policymakers in the size, characteristics, and geographic location of the Science and Engineering (S&E) workforce in the U.S. ACS estimates can help advance knowledge about regional variations and trends in the S&E workforce and persons with scientific and technical degrees.

Using data from the 1-year, 3-year, and 5-year edited, weighted, internal ACS microdata person and housing files as they become available, this project will develop and analyze the following: 1) a comprehensive set of estimates of well-being for households, children, older persons ages 50+, and for low-income and poor working families; and 2) estimates of the number and characteristics of scientists and engineers. The full, internal microdata files are needed to develop reliable and accurate estimates at the state and sub-state level for two reasons: 1) Many of the population sub-groups of interest (e.g., immigrant children, racial and ethnic minority children and families, elderly persons, scientists and engineers) are small in number at the state and sub-state level and using all of the respondents, rather than just the sample included in the Public Use Microdata Sample File (PUMS) increases the number of geographic areas for which estimates can be produced and improves the precision of the estimates; and 2) Microdata files are required to define and construct specific measures of well-being for particular population groups because such detailed data are not available through the data.census.gov website or ACS Summary Files. For example, microdata are required to develop state-level estimates of the number of poor working families, defined as a married couple or single-parent family with at least one child under 18, where the parent(s) either have a combined work effort of 39+ weeks in the last 12 months, or the parent(s) have a combined work effort of 26+ weeks in the last 12 months and one currently unemployed parent looked for work in the previous four weeks, and income is below 100% of poverty.

After approval from the American Community Survey Office (ACSO) and the Disclosure Review Board, the estimates developed and analyzed through this project will be provided to the Annie E. Casey Foundation for publication on their website, the KIDS COUNT Data Center (<https://datacenter.kidscount.org/>) and for research reports for their KIDS COUNT project, and to the Child and Adolescent Health Measurement Initiative at Johns Hopkins University for dissemination through their website. Estimates of child well-being in California for the Lucile Packard Foundation for Children's Health will be disseminated through a series of online tables on the Foundation's Kidsdata website (<https://www.kidsdata.org/>). Estimates of the well-being of older persons ages 50+ will be disseminated through PRB's website.

Some of the estimates will also be published on the Working Poor Families Project website (<http://www.workingpoorfamilies.org>) and will support the efforts of nonprofit groups in 22 states and the District of Columbia to identify the number and assess the well-being of low-income and poor working families, and to help improve policies and programs to assist these families in achieving economic security. Single-year estimates of household well-being (e.g. income, employment, home values) will be aggregated to different types of county groups (each with at least 65,000 people) in the 13 Appalachian states, and provided to the Appalachian Regional Commission (ARC) in a report and for a database to be published on the ARC website. There are no county groupings that would enable a data user to derive estimates by subtraction for a county with less than 65,000 people. Multiyear estimates of household well-being at the county level from the 2005-2009 to 2015-2019 ACS data will also be aggregated to five county groups within the 13 Appalachian states and provided to the Appalachian Regional Commission.

Estimates of the science and engineering workforce and persons with scientific and technical degrees will be provided on PRB's website in a report or web articles, as well as in a dataset designed for use by researchers.

This project is necessary and essential to further the mission of the Census Bureau in that it will provide accurate and current measures of the U.S. population and economy to meet the needs of nonprofit organizations, policymakers, and the public.

The Census Bureau's ACSO has determined that this project would not be done without the participation of the Population Reference Bureau (PRB) because it requires the development and analysis of a large number of complex measures of child and family well-being for states and sub-state geographies, for which PRB is a leading data expert. PRB has been collaborating with the Casey Foundation to develop and analyze measures of child well-being since 1990, and has been working with the Working Poor Families Project since 2002 to develop and analyze measures of the well-being of low-income and poor working families. PRB's expertise in developing and analyzing these measures is demonstrated by the numerous research studies, first based on the ACS Supplementary Survey data and continuing with 2002 through 2018 ACS data, that PRB staff have authored or co-authored.

These studies are available on both the Casey Foundation's website (<http://www.aecf.org/KnowledgeCenter/PublicationsSeries/KCDataResrchRpts.aspx>) and PRB's website (<https://www.prb.org/>). PRB has also worked with the Appalachian Regional Commission since 2002 to produce a series of reports analyzing 1960-2010 census data and 2005-2009 to 2014-2018 ACS data for counties in the Appalachian region. These reports are available on both ARC's website (<http://www.ARC.gov>) and PRB's website. Finally, PRB has been using ACS data to analyze the characteristics of scientists and engineers at the national and state-level since 2005.

IV. MUTUAL INTEREST OF THE PARTIES

This project is of mutual interest to the parties because it benefits their respective missions to enhance the utility and availability of their datasets in analyzing the benefits of programs and policies that benefit the public.

This work will benefit the Census Bureau because it further demonstrates the utility and benefit of the ACS. Under the Census Bureau's Policy for articulating the Title 13 benefits of Census Bureau projects, this project specifically addresses the following criteria:

- Criterion 3 -- developing means of increasing the utility of Census Bureau data for analyzing public programs, public policy, and/or demographic, economic, or social conditions;
- Criterion 5 -- understanding and/or improving the quality of data produced through a Title 13, Chapter 5 survey, census, or estimate; and
- Criterion 11 -- preparing estimates of population and characteristics of population as authorized under Title 13, Chapter 5.

The success of this research will pave the way for future uses of ACS data.

This agreement benefits PRB in its ongoing mission to inform people around the world about population, health, and the environment, and to empower them to use that information to advance the well-being of current and future generations. This project specifically furthers PRB's ongoing efforts to develop, analyze, and disseminate complex measures of child, family, and elderly well-being and information about the S & E workforce in formats that are easily accessed and understood by advocates, policymakers, and the public. It will enable PRB to use its strong analytic capabilities and ACS expertise to continue to provide essential information on the S&E workforce and child, family, and elderly well-being at the state and sub-state level to a wide network of advocate organizations, as well as the Appalachian Regional Commission, foundations, policymakers and the public.

The anticipated outcomes of this research study include:

1. Annual estimates of child well-being for all states, the District of Columbia, Puerto Rico, large cities, and other sub-state geographies that will be published on the Child and Adolescent Health Measurement Initiative website and the Casey Foundation website (<https://datacenter.kidscount.org/>), with a subset to be published in the Foundation's annual *KIDS COUNT Data Book* and other reports (<http://www.aecf.org/work/kids-count/>); and annual estimates of child well-being in California that will be published on the Lucile Packard Foundation for Children's Health website (<https://www.kidsdata.org/>).
2. Annual estimates of the number, characteristics, and well-being of low-income and poor working families for the nation, all states, the District of Columbia, Puerto Rico, and sub-state geographies that will be published on the Working Poor Families Project website (<http://www.workingpoorfamilies.org>).
3. Reports analyzing 2007, 2009, and 2005-2009 to 2015-2019 estimates of household/family well-being for several different types of county groups and for counties (with 5-year data) in the 13 Appalachian states. Reports and datasets with the estimates will be provided to the Appalachian Regional Commission for publication on their website.

4. A report or several web articles analyzing estimates of the number and characteristics of scientists and engineers and persons with scientific and technical degrees for the nation, states, the District of Columbia, the 50-largest metropolitan areas, and the 100-largest cities and counties. This report (or web articles) and a dataset with these estimates will be published on PRB's website to help advance knowledge about regional variations and trends in the S&E workforce.
5. Annual estimates of the well-being of older persons ages 50+ for all states and the District of Columbia that will be published on PRB's website and featured in PRB web articles and reports.

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 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.

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The parties understand that Title 13 confidentiality protection and disclosure avoidance techniques apply to all work described in this agreement. The disclosure avoidance 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 SSS and a need to know, or moved to a computer not approved for controlled data according to Census' existing policies and procedures.

V. RESPONSIBILITIES OF THE PARTIES

The Census Bureau agrees to perform the following activities and provide the following resources in support of the research study:

- a. Access to the 1-year, 3-year, and 5-year edited, weighted, internal ACS microdata person and housing files as they become available. The ACSO will provide access to a cubicle and personal computer for PRB researchers to use to access and analyze the ACS data. ACS staff will also provide technical assistance and support as needed.
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- d. PRB will ensure that all tabulated data are made available to the public.

VI. EQUITABLE APPORTIONMENT OF COSTS

The costs of this activity are equitably apportioned. In order to conduct their research, the Population Reference Bureau (PRB) needs data from the Census Bureau; therefore, the project is highly beneficial to PRB. While not a requirement for the Census Bureau, the Census Bureau will benefit by having access to the research conducted by PRB, they will gain additional exposure of their data, and will learn from their collaboration with an important data user. Census's estimated percentage of total costs for this project is 34 percent. The Population Reference Bureau's estimated percentage of total costs is 66 percent. Costs incurred by the Census Bureau and PRB will be covered by each of the parties, and neither party will be responsible for any of the other parties' costs.

VII. CONTACTS

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[signature]

Steven Dillingham
Director
U.S. Census Bureau
U.S. Department of Commerce
4600 Silver Hill Road
Washington, DC 20233

[signature]

Jeffrey Jordan
President and CEO
Population Reference Bureau
1875 Connecticut Avenue, NW, Suite 520
Washington, DC 20009

[date]

[date]



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
Department of Homeland Security

From: Ron S. Jarmin
Deputy Director

Subject: Request for Additional Data Elements and Authorized Uses as
Amendment #2 to Dec. 23, 2019, Agreement No. 2064-FY20-NFE-0335,
"Memorandum of Agreement Between the United States Department of
Commerce U.S. Census Bureau and United States Department of
Homeland Security Regarding the Transfer of Immigration and
Citizenship-Related Data"

Thank you for your continuing support of our data acquisition efforts pursuant to the December 23, 2019, Agreement No. 2064-FY20-NFE-0335, "Memorandum of Agreement Between the United States Department of Commerce U.S. Census Bureau and United States Department of Homeland Security Regarding the Transfer of Immigration and Citizenship-Related Data," (MOA), and support of our work under Executive Order 13880 to create estimates of citizenship status. I write to request that additional data elements maintained by U.S. Citizenship and Immigration Services (USCIS) be provided to help inform this work. The additional data elements will be drawn from USCIS data sources, specifically information pertaining to: Lawful Permanent Resident (LPR) denied applications; Deferred Action for Childhood Arrivals (DACA); Special Immigrant Juveniles (SIJ) and, data from USCIS data source that have characteristics on individuals who at some point have filed an application, petition, or request with USCIS who appear not to be in a lawful immigration status. In addition, I ask that USCIS approve the use of data acquired pursuant to Agreement No. 2064-FY20-NFE-0335, as amended by this memorandum, to assist the Census Bureau, as directed by the Secretary of Commerce, with performing the mandates contained in *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.

To date, DHS support to the citizenship project consisted of extracting and providing two tranches of data drawn from DHS component databases to the Census Bureau. The first delivery was provided in December of 2019 while the second delivery occurred July of 2020. We have been hard at work analyzing those data provided pursuant to the terms of the MOA. Based on that analysis, and the later issuance of the July 21, 2020 Presidential Memorandum, we recognized data gaps from our initial request for data that will impact the quality of our citizenship project work. The DHS Office of Immigration Statistics (OIS) staff have been very helpful in assisting us to identify data that would help us fill that gap. As a result of those conversations we are requesting additional variables pertaining to Lawful Permanent Resident

(LPR) denied applications; Deferred Action for Childhood Arrivals (DACA); and, Special Immigrant Juveniles (SIJ) maintained by USCIS. Additionally, we request data from USCIS data source that have characteristics on individuals who at some point have filed an application, petition, or request with USCIS who appear not to be in a lawful immigration status. Specific data elements requested from each of these sources are listed in the attached modification to addendum one of the base agreement.

Thank you in advance for your assistance in providing the additional variables from USCIS systems to the Census Bureau in support of the Executive-Level directed project. 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 the provision of the additional USCIS variables to the Census Bureau and in the use of CIS data to support the July 2020 Presidential Memorandum, your signature below will signify concurrence to amend Addendum #1 of Agreement No. 2064-FY20-NFE-0335, by adding the variables to the list of Individual Data Elements shown in item A.5. of the Addendum. 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 JARMIN

Digitally signed by RON JARMIN
Date: 2020.08.20 12:03:08 -04'00'

Ron S. Jarmin
Deputy Director
U.S. Census Bureau

(Date)

On behalf of the Department of Homeland Security, 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

Digitally signed by JAMES W
MCCAMENT
Date: 2020.09.10 15:13:25 -04'00'

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 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.

Congress of the United States
Washington, DC 20515

September 4, 2020

The Honorable Wilbur Ross
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue N.W.
Washington, DC 20230

The Honorable Steven Dillingham
Director
U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233

Dear Secretary Ross and Director Dillingham:

We write to follow up on our recent discussions with White House Chief of Staff Mark Meadows and Treasury Secretary Steven Mnuchin, the Administration's lead negotiators on coronavirus relief legislation, regarding the 2020 Census.

As you know, on April 13, 2020, the Commerce Department and the Census Bureau issued a joint statement announcing that the Census Bureau was delaying in part and extending in part Census operations and would now complete its work on October 31, 2020, due to the coronavirus pandemic. It also stated that the Bureau needed a statutory extension of the deadline to deliver the apportionment data to the Secretary of Commerce and the President and that the statutory delays were necessary "to ensure the completeness and accuracy of the 2020 Census."¹

During the course of our negotiations on the 4th Coronavirus bill, the Administration suddenly reversed course. On July 29, 2020, Director Dillingham refused to state in testimony before the House whether he continued to support the necessary deadline extension, claiming that he was "not party" to the negotiations between the Administration and Congress. The same day, the Bureau changed the end date of the Census on its website—from "October 31, 2020" to "as soon as possible, as it strives to comply with the law and statutory deadlines"—without notification or justification to Congress.²

On that same day, Director Dillingham and Census Bureau Deputy Director Ron Jarmin were told, on a phone call with Deputy Secretary of Commerce Karen Dunn Kelley, that Secretary Ross wanted them to create a new plan to deliver the apportionment count without any statutory extension. She requested this new schedule in time for a meeting with Secretary Ross on August 3rd.³

¹ U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Steven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19, Census Bureau (Apr. 13, 2020) (online at www.census.gov/newsroom/press-releases/2020/statement-covid-19-2020.html).

² *Census Cuts All Counting Efforts Short By A Month*, National Public Radio (Aug. 3, 2020) (online at www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30).

³ Letter from Chairwoman Carolyn B. Maloney, House Committee on Oversight and Reform, to Congressional Leadership (Sept. 2, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2020-09-02.CBM%20to%20%20House%20and%20Senate%20Leadership%20re%20Census.pdf>).

On August 3, 2020, the Census Bureau announced publicly that it was moving the end date of the Census field operations to September 30th in order to deliver apportionment data by December 31st.⁴ We have since learned that an internal Census Bureau presentation dated the same day—and not provided to Congress by the Administration—outlined the risks of the “[h]ighly compressed schedule” and warned that data products “will be negatively impacted under this revised plan.” It cautioned that “eliminated activities” will “reduce accuracy;” that the schedule “creates risk for serious errors not being discovered in the data;” and that such errors “may not be fixed—due to lack of time to research and understand the root cause or to re-run and re-review one or multiple state files.”⁵

When we raised our concerns about these actions to Administration negotiators on August 3rd and cited the expert consensus that condensing the Census schedule would result in an inaccurate count, Mr. Meadows claimed that he could ensure a “99 percent accurate count” by September 30th. Mr. Meadows provided no evidence as to how this would be achieved, but simply asserted that the staff he consulted at the Census Bureau told him they could. When asked if he consulted Director Dillingham directly about plans to move back the dates for which field operations and data processing would end, Mr. Meadows said he had not. Later, after consulting with aides, Mr. Meadows reported to us that Director Dillingham would soon be issuing a statement in support of moving the end date of Census field operations to September 30th and delivering apportionment data by December 31st.

On August 5th, we provided the Administration negotiators a letter signed by four former Census directors, from Republican and Democratic administrations, stating that it is not possible to have a fair, accurate Census count using the White House-imposed schedule and that the date of the data delivery must be extended into 2021, as originally requested by experts within the Census Bureau, and as conveyed by both of you to Congress in April. When Secretary Mnuchin responded that he would review the letter, Mr. Meadows interjected and stated, “the Democrats just want to control the apportionment and we aren’t going to let them do that.”

It appears that Mr. Meadows may have made the previously unspoken intentions of President and his Administration clear: the White House was intervening to ensure President Trump would control the apportionment process while in office rather than ensuring an accurate count for the American people as required by the Constitution.

Congress and the American people deserve answers on the reasons for this Administration’s sudden reversal on delaying Census operations during a pandemic to ensure the completeness and accuracy of the 2020 Census. We request that you produce to Congress all documents and communications referring or relating to the following no later than September 17, 2020:

- Any discussions between the Commerce Department and Census Bureau since June 2020 regarding the schedule for completion of the 2020 Census, including all calendar invitations, meeting notes, written directives, or accounting of unwritten directives, as well as any justifications or analyses accompanying such discussions.

⁴ *Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count*, Census Bureau (Apr. 13, 2020) (online at www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html).

⁵ *Operational and Processing Options to Meet Statutory Date of December 31, 2020 for Apportionment*, Census Bureau (online at [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Census%20Slide%20Deck%20Aug%203%20202020.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Census%20Slide%20Deck%20Aug%203%202020.pdf)).

- Any discussions regarding the schedule for completion of the 2020 Census between or among officials of the Census Bureau or the Commerce Department and other Administration officials, including the White House and the Office of Management and Budget.
- The Census Bureau's August 3, 2020 announcement that field operations will end on September 30th and data processing will end by December 31st, the decision-making that led to that announcement, any Census experts consulted in the decision-making process, and any internal analysis or modeling assessing changes to existing processes and risks to data accuracy resulting from changing the timeline to shorten field operations and data-processing operations.
- Any consultations with Census Bureau experts regarding the decision to abruptly change the 2020 Census schedule to deliver apportionment data by December 31st, including any risk assessments or analyses prepared by career staff about this decision.
- Risk assessments, analyses, and operational plan alternatives provided to agency leadership by career staff in order to complete the Census more rapidly and deliver apportionment data by December 31st, provided before and after the internal decision to revert to the December 31st date, including any analyses or warnings about decreased accuracy or increased risks in any part of the operations due to an accelerated schedule.

Please also find enclosed a summary of communications between the Census Bureau, Commerce Department, and Congress since April 2020. Thank you for your attention to this important matter.

Sincerely,



Nancy Pelosi
Speaker
U.S. House of Representatives



Charles E. Schumer
Democratic Leader
U.S. Senate

cc: The Honorable Carolyn B. Maloney
The Honorable James Comer
The Honorable Ron Johnson
The Honorable Gary C. Peters

**Summary of communications between the Census Bureau,
Commerce Department and Congress since April 2020**

- On April 13, 2020, Secretary Ross called Members of Congress including Chairwoman Maloney. On the call, Secretary Ross said the Census Bureau was delaying in part and extending in part Census operations and would now finish on October 31, 2020, due to the coronavirus pandemic. Secretary Ross also stated that the Bureau needed a statutory extension of the deadline to deliver the apportionment data to the Secretary of Commerce and the President.
- During a staff briefing on April 13, 2020, the Bureau stated they thought extending collecting data through October 2020 would provide adequate quality Census data for apportionment, redistricting, and other uses.
- On April 18, 2020, the Bureau provided staff with proposed legislative language for the delay in statutory deadlines. Our language in the HEROES Act builds on that language.
- On April 28, 2020, during a Member briefing, Director Dillingham explained these proposed delays and, referencing the statutory deadlines for the delivery of the apportionment count and redistricting data, said, “Those are the two dates that we need relief on.”
- On May 26, 2020, at a public Census roundtable, Tim Olson, Associate Director for Field Operations, stated: “We have passed the point where we could even meet the current legislative requirement of December 31. We can’t do that anymore. We’ve passed that for quite a while now.”⁶
- On July 8, 2020, at a press briefing, Al Fontenot, Associate Director for Decennial Census Programs, stated, “We are past the window of being able to get those counts by those dates at this point.”⁷
- On August 7, 2020, during a congressional staff briefing, Al Fontenot stated that career employees wanted the additional time previously requested to ensure an accurate and complete apportionment count. Mr. Fontenot also stated that, under the shortened timeframe, Census Bureau career employees are removing some key verification steps when compiling Census data for the apportionment data product. Mr. Fontenot stated that the shortened field operation timeline and the statutory deadlines will introduce increased risks of inaccuracy into Census data.
- During the August 7, 2020 congressional staff briefing, Al Fontenot stated that the Bureau would not need to use more imputation and administrative records to fill-in-the-blanks than they originally anticipated because of COVID-related operational delays. However, other reporting based on internal Census emails contradicts that claim.
- On August 27 and 28, 2020, Mr. Fontenot, Mr. Olson, and Deputy Director Ron Jarmin appeared for transcribed staff briefings with the House Oversight Committee. All three

⁶ *The 2020 Census Could Be the Least Accurate Ever—And It’s Ending a Month Early*, National Public Radio (Aug. 14, 2020) (online at www.npr.org/transcripts/901833534).

⁷ *Operational Press Briefing—2020 Census Update*, Census Bureau (July 8, 2020) (online at www.census.gov/content/dam/Census/newsroom/press-kits/2020/news-briefing-program-transcript-july8.pdf).

officials agreed that providing more time would reduce the risk of an inaccurate or incomplete count. Mr. Olson stated: "More time is always a good thing." Mr. Fontenot stated, "Anytime you have more time it reduces risk, and that would have reduced our risk." When Dr. Jarmin was asked whether he agreed with the first two officials that "ideally more time would be better both for data collection and data processing," he replied, "Absolutely." Although the officials expressed optimism about their ability to mitigate the risks of this truncated schedule, they made clear that they were forced to dramatically compress their operations because Congress has not extended the statutory deadlines.

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United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025
<http://appropriations.senate.gov>

August 4, 2020

The Honorable Stephen Dillingham
Director
U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233

Dear Director Dillingham:

I write to express my deep concern regarding the expedited schedule for the 2020 Decennial Census that puts the success of the Constitutionally-mandated count at risk. On August 3, 2020, you announced that data collection operations will be reduced by a month and data processing operations will be compressed by several months in order to allow the Secretary of Commerce to transmit the apportionment counts to the president by December 31, 2020.¹ This announcement comes after it was previously reported that senior White House and Department of Commerce officials are trying to rush the execution of the 2020 Decennial Census for perceived political gain.² This is unacceptable.

Due to the COVID-19 pandemic, on April 13, 2020, you and Secretary of Commerce Wilbur Ross released a joint statement announcing that the Bureau of the Census (Census Bureau) was delaying field operations by three months. At the same time, you requested a fourth-month delay in the statutory deadlines for reporting apportionment and redistricting counts, stating:

"In order to ensure the completeness and accuracy of the 2020 Census, the Census Bureau is seeking statutory relief from Congress of 120 additional calendar days to deliver final apportionment counts. Under this plan, the Census Bureau would extend the window for field data collection and self-response to October 31, 2020, which will allow for apportionment counts to be delivered to the President by April 30, 2021, and redistricting data to be delivered to the states no later than July 31, 2021."³

You have expressed to me on several occasions a desire to allow career Census Bureau experts to carry out the critical agency mission absent political meddling—most recently, in

¹ "Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count," U.S. Census Bureau, 3 August 2020, <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>.

² Wines, M. (2020, July 28). New Census Worry: A Rushed Count Could Mean a Botched One. *New York Times*, <https://www.nytimes.com/2020/07/28/us/trump-census.html>

³ "U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Steven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19," U.S. Census Bureau, 13 April 2020, <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020>.

response to a letter Chairman Jerry Moran and I sent you on July 2, 2020, regarding the importance of executing a complete and accurate 2020 Decennial Census, free from political interference. In your response, dated, July, 10, 2020, you asserted:

“The leadership and staff of the Census Bureau are fully committed to a complete and accurate count of all people living in the United States, without exception...I want to be clear that the 2020 Census is nonpartisan in its operation and support, whether during data collection from self-response and field work or the complicated and important work during post-enumeration processing.”

However, I’m seriously concerned that in a mere matter of weeks this is no longer the case. On August 3, 2020, you announced that: “We will end field data collection by September 30, 2020,” a month earlier than the plan you announced in April 2020. I find it impossible to believe that this decision was based on the best recommendations of career Census Bureau experts. Census data collection operations are incredibly complicated even in the best of conditions, but their complexity is greatly exacerbated by the COVID-19 pandemic. In fact, Census experts believe that the results of accelerating the data collection operations under current conditions could be disastrous, with a career official stating, “It’s going to be impossible to complete the count in time. I’m very fearful we’re going to have a massive undercount.”⁴

Further, in response to a question during a House Committee on Oversight and Reform hearing on July 29, 2020, you contested the expert opinions of Census career staff regarding the need for a delay of statutory requirements. Tim Olson, director of field operations for the 2020 Decennial, stated back in May 2020 that, “We have passed the point where we could even meet the current legislative requirement of Dec. 31...We can’t do that anymore.”⁵ But, when this issue was raised at the hearing, you disagreed, stating: “I can’t agree with him, we have many more assessments ahead of us here.”

The expedited 2020 Decennial Census schedule, along with the Presidential Memorandum issued on July 21, 2020, excluding undocumented immigrants from the apportionment count, has heightened concerns that the Trump Administration is trying to manipulate the 2020 Decennial Census for political gain. As such, I would like a formal response, in writing, to the following questions regarding the Census’s operational plans for the 2020 Decennial Census. I request a response by August 14, 2020.

1. Is the Census Bureau still requesting a four-month statutory extension of the apportionment and restricting deadlines? If not, what has changed with regard to the COVID-19 pandemic that no longer make these statutory changes necessary?
2. What has changed with regard to the COVID-19 pandemic that allows the Bureau to thoroughly complete the nonresponse followup and self-response operations in

⁴ Hansi, L.W. (2020, July 30). Census Door Knocking Cut A Month Short Amid Pressure To Finish Count. *National Public Radio*, <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals>

⁵ Hansi, L.W. (2020, May 27). 'We're Running Out Of Time': Census Turns To Congress To Push Deadlines. *National Public Radio*, <https://www.npr.org/sections/coronavirus-live-updates/2020/05/27/863290458/we-re-running-out-of-time-census-turns-to-congress-to-push-deadlines>

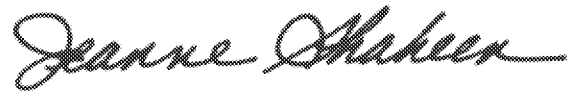
a compressed timeframe from October 31, 2020, to September 30, 2020? Do career employees agree with this change?

3. Since the nonresponse followup operations will be cut short by a month, will the Census Bureau have to reduce the number of times enumerators approach each household? Will use of administrative records to enumerate unresponsive households increase? Will imputation of data increase, and how much use of imputation is acceptable, especially for “whole households” from which the Bureau could not collect data directly?
4. Is the Census Bureau requesting additional resources to rush data collection operations? What evidence do you have that additional funding will allow the Bureau to complete nonresponse follow-up, as well as operations to count special populations, such as people experiencing homelessness, in a thorough manner, given the unpredictability of coronavirus surges and natural disasters, as well as difficulty the Bureau already has encountered in retaining qualified enumerators and field supervisors?
5. How would a compressed schedule affect vital quality-check activities for the nonresponse followup and self-response operations? Will the Census Bureau still carry out the full re-interview operation as laid out in the detailed operational plan for nonresponse followup? If not, why not, and what will the effect be on the quality of census data?
6. The original schedule included five months to complete data processing and tabulation. How long will these operations last under the new schedule and how will these operations change with the compressed schedule? Will the Bureau still conduct the Count Review program, and if so, how will the schedule for that operation compare to the original timetable?

It is not a lack of resources hampering the data collection process. As the Vice Chair of the Senate Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee, I have worked you and with my colleagues on both sides of the aisle to ensure that the Census Bureau has the resources needed to execute a complete and accurate 2020 Decennial Census. This includes appropriating a \$2 billion contingency reserve that was recommended by Secretary Ross but never requested in the budget. This amount has proven critical, as the Census Bureau required about \$1.5 billion thus far to respond to the COVID-19 impacts, including hiring additional nonresponse followup enumerators.

As I have said throughout this process, it is imperative that the Census counts every person in the United States, where they live. We only have one chance to get this right. I am deeply concerned about the recent announcement. I expect that as the Census Director, you will uphold a complete and accurate count, free of political meddling. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne Shaheen". The signature is fluid and elegant, with a long, sweeping underline.

Jeanne Shaheen
Vice Chair
Subcommittee on Commerce,
Justice, Science and Related Agencies

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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MINORITY (202) 225-6074
<http://oversight.house.gov>

August 4, 2020

The Honorable Steven Dillingham
Director
U.S. Census Bureau
4600 Silver Hill Rd
Suitland-Silver Hill, MD 20746

Dear Director Dillingham:

In light of alarming news about additional efforts to rush and politicize the 2020 Census, the Committee on Oversight and Reform requests the appearance of Census Bureau employees for transcribed interviews.

Last night, you issued a statement that the Census Bureau will be ending Non-Response Follow-Up (NRFU) and online responses on September 30, 2020—a full month earlier than previously announced.¹ You did not mention this change during your testimony last week before the Committee. This move will rush the enumeration process, result in inadequate follow-up, and undercount immigrant communities and communities of color who are historically undercounted. As Former Director John Thompson testified to the Committee:

The career people who are experts at taking the census requested a four month extension of the deadlines that's in their Title. They know what they are doing. They know what it's going to take to get the census done. Not extending those deadlines is going to put tremendous pressure on the Census Bureau. It's not clear what kind of quality counts they can produce if they don't get the extension. So it could be a really big problem.²

Senior career staff at the Census Bureau have publicly stated that meeting the statutory deadlines is impossible because of the delays that have already occurred. On July 8, 2020, Al Fontenot, Associate Director for Decennial Census Programs, stated of the December 31, 2020, statutory deadlines: "We are past the window of being able to get those counts by those dates at

¹ U.S. Census Bureau, *Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count* (Aug. 3, 2020) (online at www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html).

² *Oversight Committee Held Emergency Hearing on Trump Administration's Unconstitutional Politicization of 2020 Census* (July 29, 2020) (online at <https://oversight.house.gov/news/press-releases/oversight-committee-held-emergency-hearing-on-trump-administration-s>).

this point.”³ On May 26, 2020, Tim Olson, Associate Director for Field Operations, said publicly: “We have passed the point where we could even meet the current legislative requirement of December 31. We can’t do that anymore.”⁴

Testimony on July 29, 2020, during the Committee’s emergency hearing underscored the Committee’s concerns about the administration of the 2020 Census. Four former Directors of the Census Bureau testified that the President’s memorandum issued on July 21, 2020, directing the Secretary of Commerce to exclude undocumented immigrants from the apportionment count, is unconstitutional.

In addition, your testimony at that hearing revealed new and troubling information about the White House’s inappropriate partisan influence over how the 2020 Census is conducted. For example, when you were asked whether you or anyone else at the Census Bureau contributed to the President’s July 21, 2020, legal memorandum or provided any input on it before it was released, you responded, “Madam Chairwoman, I certainly did not, and I’m not aware of others in the Census Bureau that did.”⁵ When you were asked when you first became aware of the President’s intention to exclude undocumented immigrants from the Apportionment count, you responded, “As I recall, someone from the press reported that a directive may be coming down.”⁶

For the foregoing reasons, the Committee requests that Census Bureau officials appear for virtual transcribed interviews on the following dates:

- **August 10, 2020:** Enrique Lamas, Chief Advisor to the Deputy Director;
- **August 11, 2020:** Timothy P. Olson, Associate Director for Field Operations;
- **August 12, 2020:** Victoria Velkoff, Associate Director for Demographic Programs;
- **August 14, 2020:** Albert Fontenot, Jr, Associate Director for Decennial Census Programs;
- **August 17, 2020:** John Abowd, Chief Scientist and Associate Director for Research and Methodology;
- **August 19, 2020:** Adam Korzeniewski, Assistant Deputy Director for Policy;
- **August 20, 2020:** Nathaniel Cogley, Deputy Director for Policy; and
- **August 21, 2020:** Ron S. Jarmin, Deputy Director and Chief Operating Officer.

³ *Republicans Signal They’re Willing To Cut The Census Counting Short*, National Public Radio (July 28, 2020) (online at www.npr.org/2020/07/28/895744449/republicans-signal-theyre-willing-to-cut-short-census-counting).

⁴ *‘We’re Running Out of Time’: Census Turns to Congress to Push Deadlines*, National Public Radio (May 27, 2020) (online at www.npr.org/sections/coronavirus-live-updates/2020/05/27/863290458/we-re-running-out-of-time-census-turns-to-congress-to-push-deadlines).

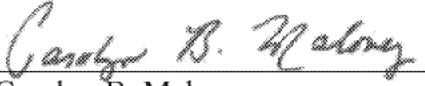
⁵ Committee on Oversight and Reform, *Counting Every Person: Safeguarding the 2020 Census Against the Trump Administration’s Unconstitutional Attacks* (July 29, 2020) (online at <https://oversight.house.gov/legislation/hearings/counting-every-person-safeguarding-the-2020-census-against-the-trump>).

⁶ *Id.*

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. In addition, the Committee has jurisdiction over “Population and demography generally, including the Census.”⁷

Please confirm whether the requested witnesses will appear voluntarily by August 7, 2020. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,


Carolyn B. Maloney
Chairwoman

cc: The Honorable James R. Comer, Ranking Member

⁷ House rule X, clause 1(n)(8).



2020 Census Update

August 13, 2020

**Albert E. Fontenot, Jr.,
Associate Director for Decennial Census Programs**

**Timothy P. Olson
Associate Director for Field Operations**

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BC-DOC-CEN-2020-001602-002586

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2020**

Outline

- Status Update of Current Operations
- Adjustments to Comply With Statutory Deadline for Providing Apportionment Data
- Implementation of Presidential Memorandum

Self-Response Rate Summary

As of 11:59pm August 12, 2020

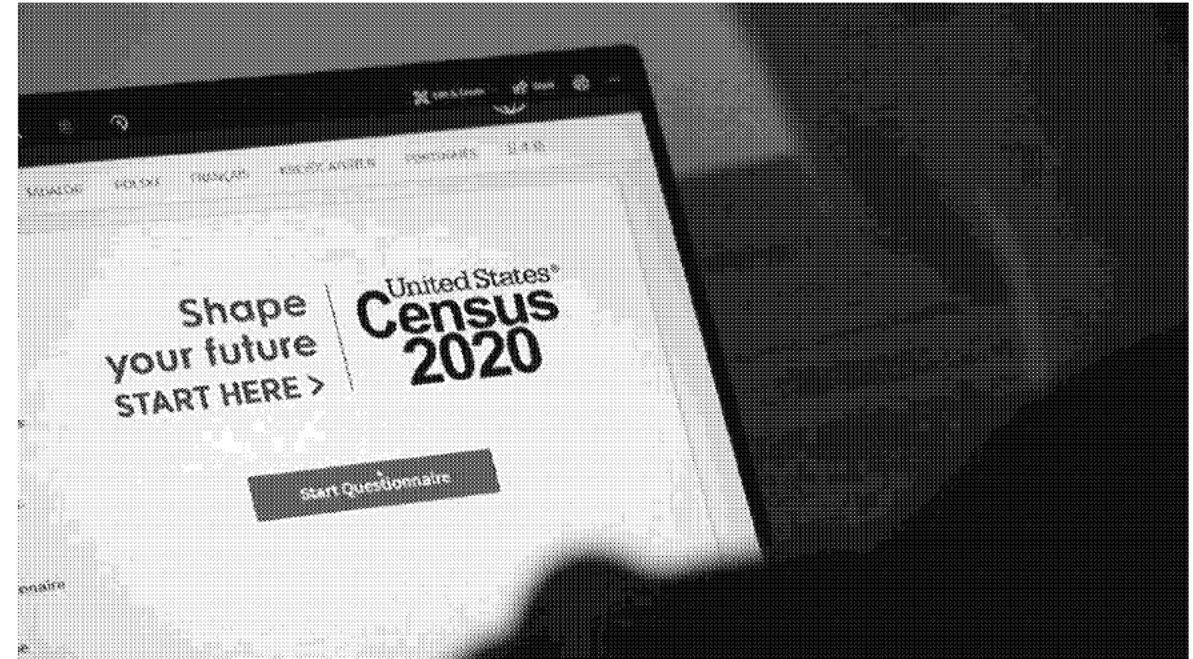
Total Self-Response Rate: 63.5%
Total Responding Housing Units: 93.9M

Responses by mode:

75.1M (79.9%) – Internet

17.4M (18.6%) – Paper

1.4M (1.5%) – Phone



Operational Timelines

Activity / Operation	Original Dates	COVID Adjustments	Replan Timeline
Update Leave (Stateside)	March 15 – April 17	Phased re-opening occurred between May 4 and June 12	
Service Based Enumeration	March 30 – April 1	September 22 – 24	
Targeted Non-Sheltered Outdoor Locations	March 31 – April 1	September 23 – 24	
Group Quarters Enumeration	April 2 – June 5	April 2 – September 3	
Enumeration of Transitory Locations	April 9 – May 4	September 3 – 28	
Nonresponse Followup	May 13 – July 31	August 11 – October 31	August 9 – September 30
Delivery of Apportionment Data	By Statutory Deadline: December 31, 2020	Requested Statutory Delay until April 30, 2021	By Statutory Deadline: December 31, 2020
Delivery Redistricting Data	By Statutory Deadline: March 30, 2021	Requested Statutory Delay until July 31, 2021	TBD

Update Leave – Status Update

Operation:

The Update Leave (UL) operation is designed to occur in areas where the majority of housing units either do not have mail delivered to the physical location of the housing unit, or the mail delivery information for the housing unit cannot be verified. A Census Bureau employee physically delivers a 2020 Census invitation to these housing units. Nonresponding households will be visited by an enumerator during nonresponse followup.

Workload:

- Update Leave Original Workload (does not change): 6,805,523 housing units
- Workload Completed as of March 18 (date field operations were suspended): 736,320 housing units
 - Percentage Completed at suspension: 10.8%
- **The Update Leave workload was completed on August 10, 2020**

Response Rates:

- Total Responses (as of August 12): 2,339,378 (34.4%)
 - Internet: 1,216,109 (52.0%)
 - Paper: 1,077,642 (46.1%)
 - Phone: 45,627 (1.9%)



Group Quarters Enumeration – Status Update

Operation:

Group Quarters Enumeration is the U.S. Census Bureau's special process for counting people who live or stay in group quarters during the 2020 Census. Because group quarters are owned or managed by a third party, the Census Bureau assists group quarters administrators in responding to the census on behalf of residents to ensure a complete and accurate census count.



Group Quarters Enumeration Progress*					
Initial Workload	GQs Added	Current Workload	Completed & Closed Cases	Current Workload	Percent Completed & Closed
195,656	15,441	211,097	166,895	44,202	79.1%

*As of August 12, 2020

Nonresponse Followup Field Operations

Early Start of Nonresponse Followup Operations

6 Cycle 1a Area Census Offices (ACOs) began operations on July 16:

- 52.6% complete as of August 12

6 Cycle 1b ACOs began operations on July 23:

- 40.4% complete as of August 12

35 Cycle 2 ACOs were scheduled to begin operations on July 30; however, we started operations earlier in some ACOs where staff was available:

- 17 ACOs – Started July 26 – 29
- 18 ACOs – Started July 30
 - 30.5% complete as of August 12

39 Cycle 3 ACOs were scheduled to begin operations by August 3:

- 15 ACOs – Started July 31
- 16 ACOs – Started August 1
- 8 ACOs – Started August 3
 - 11.5% complete as of August 12

All remaining ACOs were scheduled to begin August 11, but all began operations by August 9:

- 107 ACOs – Started August 3 – 7
- 55 ACOs (all remaining) – August 9

As of August 9 Nonresponse Followup Operations have begun in all 248 ACOs

Nonresponse Followup National Workload: 60,761,561*

Completed Workload: 9,556,743* (15.7%)

Remaining Workload: 51,204,818*

*As of August 12, 2020

Safety during Field Activities

On August 7, in a joint statement from the Census Bureau and Centers for Disease Control (CDC) on Conducting 2020 Census Non-Response Follow-Up Interviews, the CDC stated that participation in 2020 Census interviews should present a low risk of transmission of COVID-19.

Census takers are trained to rigorously and universally follow these CDC recommendations to mitigate risk of transmission:

- Wearing of face masks.
- Maintaining social distance of 6 ft. or more.
- Practicing hand hygiene.
- Not entering homes, and conducting interviews outside as much as possible or practical.



Providing an Apportionment Count

Objective: We have developed a plan in response to Secretarial direction to provide an apportionment count by the statutory deadline of December 31, 2020.

- **Achieving** an acceptable level of accuracy and completeness, with a goal of resolving at least 99% of Housing Units in every state, comparable with previous censuses.
- **Maintaining** original contact strategy for occupied housing units. Field activities, including number of attempts to contact respondents, will not be changed.
- **Maximizing** staff and production hours for field data collection operations to conclude field data collection by September 30, 2020.
- **Compressing** and streamlining backend processing to deliver apportionment counts by the statutory deadline of December 31, 2020.

Increased Work Hours from Current Enumerators

Award Program	Potential Efficiency Gain / Applicable Costs to Implement
Awards to increase hours worked by enumerators from an average of 19 hours/week to a target of 25 hours/week	Increases capacity by 1.5 million work hours per week, or 80,000 more “19 hour” enumerators per week
Award for enumerator retention, working three weeks of production	Reduce training cost Maintain experienced workforce

Increased Replacement Training for Enumerators

Replacement Training Actions	Potential Efficiency Gain / Applicable Costs to Implement
Inviting More People to Training	Over selection rates will address higher-than-expected no-show rates of 35%, bringing us closer to our target initial staffing levels.
Continual Replacement Training	Expect to conduct replacement training for at least 135K enumerators due to attrition. Projecting over 11,000 additional training sessions.

Contact Methods to Expand Reach of Enumerators

Actions	Potential Efficiency Gain / Applicable Costs to Implement
<p>Expand the use of NRFU Travel Teams:</p> <ul style="list-style-type: none">• Moving teams that have successfully completed their areas to areas requiring additional attention.	<p>Using experienced staff minimizes the need to train new staff – particularly in areas where new staff are not available.</p> <p>Efficiently accelerates closeout process.</p>
<p>Implement outbound phone calling to supplement in-person contact attempts.</p>	<p>Provides an additional method to enumerate hard to reach communities.</p>

Technological Efficiency Gains

- **Employing** expanded technical capacity to conduct analytical Re-Interview selection as the basis for the Re-Interview process.
- **Utilizing** new techniques for the 2020 Census to monitoring quality:
 - **Using** statistical techniques with professional statisticians and analysts to proactively identify, monitor, evaluate, and resolve quality issues.
 - **Analyzing** data and metrics to identify and investigate outliers and other unusual activity.
- **Increasing** efficiency of our strategy for verifying vacant or non-existing Housing Units.



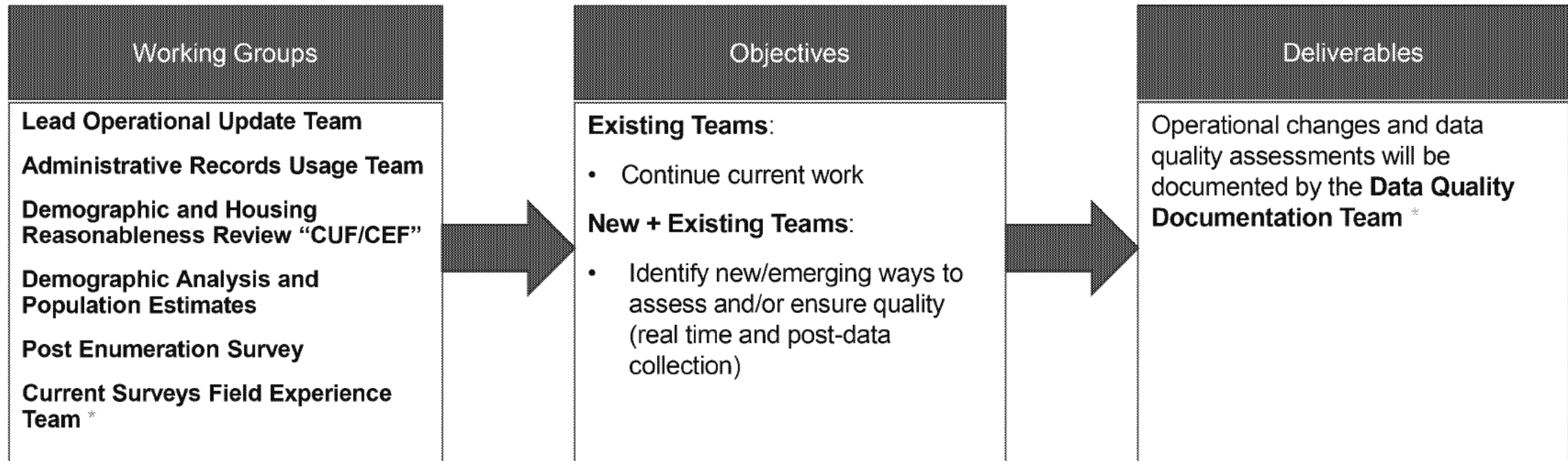
Overview of Backend Processing

Career staffers at the Census Bureau developed a highly compressed schedule for 2020 Census data processing and review of data products. This staff will be closely monitoring the collection and processing of the data and assessing any potential impacts on accuracy, data quality, and coverage.

1. Post-processing must start by October 1, 2020.
2. Post-processing work activities are limited to those required to produce apportionment counts.
3. The impact on the delivery schedule of redistricting data products under the revised plan is being evaluated.
4. All of these activities represent streamlined processes or eliminated activities that may reduce accuracy.

Ensuring Data Quality

Special teams with expertise from within the entire Census Bureau in the fields of census operations, statistical methodology, acquisition and utilization of administrative records, and in the social, economic, and housing subject areas to supplement the existing expert teams and provide extra focus on data quality.



* New team, not previously part of 2020 Census operations

Compressing Backend Processing

Adjusted Activity	Impact and Risks
Cancel Count Review Event 2, eliminating the need for late Group Quarters Enumeration (GQE) operations	State demographer review of GQ data will be cancelled. The Demographic and Decennial staffs will work together to develop the message and communicate it to the Federal State Cooperative for Population Estimates (FSCPE)/states.
Compress POP division and DSSD review and processing times	A compressed review period creates risk for errors not being discovered in the data – thereby decreasing data quality. Additionally, errors discovered in the data may not be fixed – due to reduced time to research and understand the root cause or to re-run and re-review one or multiple state files.
Compress time for creating/verifying apportionment data and preparation of transmittal package for Department of Commerce	A compressed review period creates risk for errors being present in the data.

Implementation of the Presidential Memo

The Census Bureau has been tasked with deriving a process utilizing sound statistical methods and meeting tests of operational feasibility, to achieve the goals of directives from Secretary Ross regarding implementation of the Presidential Memo. To achieve this, the Census Bureau will:

- Build upon the work we have already done based on Executive Order 13880, “Collecting Information about Citizenship Status in Connection with the Decennial Census”.
- Use all administrative records to the extent they are available. Using these records, in combination with other data already obtained regarding citizenship status, we will further refine the non-citizen category.
- Incorporating this work into the schedule to meet the current legal mandates.
- Implementation of the Presidential Memo will not affect the field work of the 2020 Census in any way. **The 2020 Census will still count everyone once, only once, and in the right place.**

Thank You

Albert E. Fontenot, Jr.

Associate Director for Decennial Census Programs

Timothy P. Olson

Associate Director for Field Operations

2020 Census Update

August 13, 2020

Albert E. Fontenot, Jr.,
Associate Director for Decennial Census Programs

Timothy P. Olson
Associate Director for Field Operations

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Outline

- Status Update of Current Operations
- Adjustments to Comply With Statutory Deadline for Providing Apportionment Data
- Implementation of Presidential Memorandum

Self-Response Rate Summary

As of 11:59pm August 12, 2020

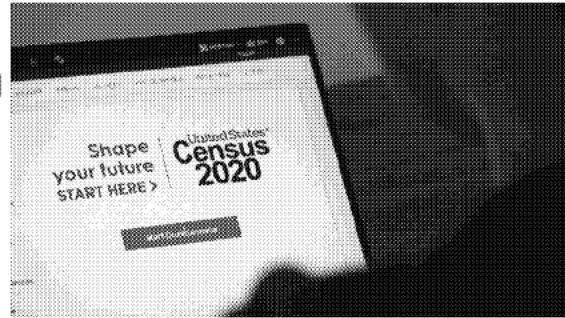
Total Self-Response Rate: 63.5%
Total Responding Housing Units: 93.9M

Responses by mode:

75.1M (79.9%) – Internet

17.4M (18.6%) – Paper

1.4M (1.5%) – Phone



Operational Timelines

Activity / Operation	Original Dates	COVID Adjustments	Replan Timeline
Update Leave (Stateside)	March 15 – April 17	Phased re-opening occurred between May 4 and June 12	
Service Based Enumeration	March 30 – April 1	September 22 – 24	
Targeted Non-Sheltered Outdoor Locations	March 31 – April 1	September 23 – 24	
Group Quarters Enumeration	April 2 – June 5	April 2 – September 3	
Enumeration of Transitory Locations	April 9 – May 4	September 3 – 28	
Nonresponse Followup	May 13 – July 31	August 11 – October 31	August 9 – September 30
Delivery of Apportionment Data	By Statutory Deadline: December 31, 2020	Requested Statutory Delay until April 30, 2021	By Statutory Deadline: December 31, 2020
Delivery Redistricting Data	By Statutory Deadline: March 30, 2021	Requested Statutory Delay until July 31, 2021	TBD

Update Leave – Status Update

Operation:

The Update Leave (UL) operation is designed to occur in areas where the majority of housing units either do not have mail delivered to the physical location of the housing unit, or the mail delivery information for the housing unit cannot be verified. A Census Bureau employee physically delivers a 2020 Census invitation to these housing units. Nonresponding households will be visited by an enumerator during nonresponse followup.

Workload:

- Update Leave Original Workload (does not change): 6,805,523 housing units
- Workload Completed as of March 18 (date field operations were suspended): 736,320 housing units
 - Percentage Completed at suspension: 10.8%
- **The Update Leave workload was completed on August 10, 2020**

Response Rates:

- Total Responses (as of August 12): 2,339,378 (34.4%)
 - Internet: 1,216,109 (52.0%)
 - Paper: 1,077,642 (46.1%)
 - Phone: 45,627 (1.9%)



Group Quarters Enumeration – Status Update

Operation:

Group Quarters Enumeration is the U.S. Census Bureau's special process for counting people who live or stay in group quarters during the 2020 Census. Because group quarters are owned or managed by a third party, the Census Bureau assists group quarters administrators in responding to the census on behalf of residents to ensure a complete and accurate census count.



Group Quarters Enumeration Progress*

Initial Workload	GQs Added	Current Workload	Completed & Closed Cases	Current Workload	Percent Completed & Closed
195,656	15,441	211,097	166,895	44,202	79.1%

*As of August 12, 2020

Nonresponse Followup Field Operations

Early Start of Nonresponse Followup Operations

6 Cycle 1a Area Census Offices (ACOs) began operations on July 16

- 52.6% complete as of August 12

6 Cycle 1b ACOs began operations on July 23

- 40.4% complete as of August 12

35 Cycle 2 ACOs were scheduled to begin operations on July 30; however, we started operations earlier in some ACOs where staff was available

- 17 ACOs – Started July 26 – 29
- 18 ACOs – Started July 30
 - 30.5% complete as of August 12

39 Cycle 3 ACOs were scheduled to begin operations by August 3:

- 15 ACOs – Started July 31
- 16 ACOs – Started August 1
- 8 ACOs – Started August 3
 - 11.5% complete as of August 12

All remaining ACOs were scheduled to begin August 11, but all began operations by August 9

- 107 ACOs – Started August 3 – 7
- 55 ACOs (all remaining) – August 9

As of August 9 Nonresponse Followup Operations have begun in all 248 ACOs

Nonresponse Followup National Workload: 60,761,561*
Completed Workload: 9,556,743* (15.7%)
Remaining Workload: 51,204,818*

*As of August 12, 2020

Safety during Field Activities

On August 7, in a joint statement from the Census Bureau and Centers for Disease Control (CDC) on Conducting 2020 Census Non-Response Follow-Up Interviews, the CDC stated that participation in 2020 Census interviews should present a low risk of transmission of COVID-19.

Census takers are trained to rigorously and universally follow these CDC recommendations to mitigate risk of transmission:

- Wearing of face masks.
- Maintaining social distance of 6 ft. or more.
- Practicing hand hygiene.
- Not entering homes, and conducting interviews outside as much as possible or practical.



Providing an Apportionment Count

Objective: We have developed a plan in response to Secretarial direction to provide an apportionment count by the statutory deadline of December 31, 2020.

- **Achieving** an acceptable level of accuracy and completeness, with a goal of resolving at least 99% of Housing Units in every state, comparable with previous censuses.
- **Maintaining** original contact strategy for occupied housing units. Field activities, including number of attempts to contact respondents, will not be changed.
- **Maximizing** staff and production hours for field data collection operations to conclude field data collection by September 30, 2020.
- **Compressing** and streamlining backend processing to deliver apportionment counts by the statutory deadline of December 31, 2020.

Increased Work Hours from Current Enumerators

Award Program	Potential Efficiency Gain / Applicable Costs to Implement
Awards to increase hours worked by enumerators from an average of 19 hours/week to a target of 25 hours/week	Increases capacity by 1.5 million work hours per week, or 80,000 more "19 hour" enumerators per week
Award for enumerator retention, working three weeks of production	Reduce training cost Maintain experienced workforce

Increased Replacement Training for Enumerators

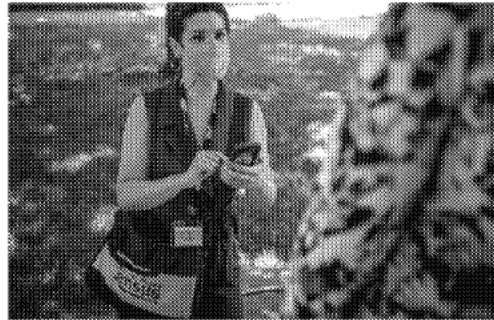
Replacement Training Actions	Potential Efficiency Gain / Applicable Costs to Implement
Inviting More People to Training	Over selection rates will address higher-than-expected no-show rates of 35%, bringing us closer to our target initial staffing levels.
Continual Replacement Training	Expect to conduct replacement training for at least 135K enumerators due to attrition. Projecting over 11,000 additional training sessions.

Contact Methods to Expand Reach of Enumerators

Actions	Potential Efficiency Gain / Applicable Costs to Implement
Expand the use of NRFU Travel Teams: <ul style="list-style-type: none">• Moving teams that have successfully completed their areas to areas requiring additional attention.	Using experienced staff minimizes the need to train new staff – particularly in areas where new staff are not available. Efficiently accelerates closeout process.
Implement outbound phone calling to supplement in-person contact attempts.	Provides an additional method to enumerate hard to reach communities.

Technological Efficiency Gains

- **Employing** expanded technical capacity to conduct analytical Re-Interview selection as the basis for the Re-Interview process.
- **Utilizing** new techniques for the 2020 Census to monitoring quality:
 - **Using** statistical techniques with professional statisticians and analysts to proactively identify, monitor, evaluate, and resolve quality issues.
 - **Analyzing** data and metrics to identify and investigate outliers and other unusual activity.
- **Increasing** efficiency of our strategy for verifying vacant or non-existing Housing Units.



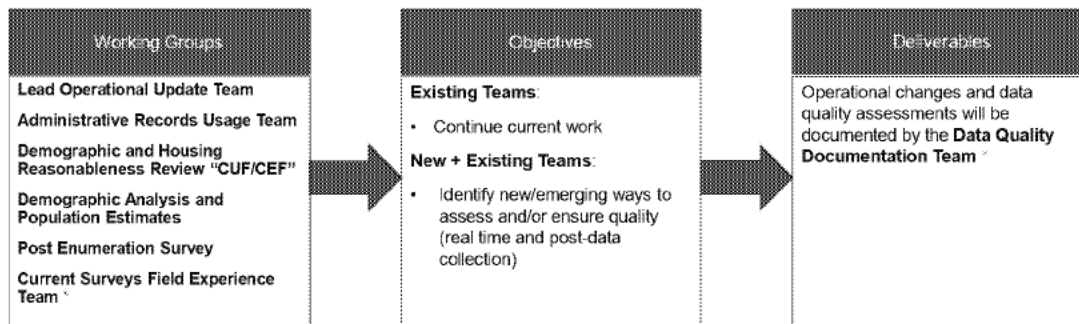
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* New team, not previously part of 2020 Census operations

Compressing Backend Processing

Adjusted Activity	Impact and Risks
Cancel Count Review Event 2, eliminating the need for late Group Quarters Enumeration (GQE) operations	State demographer review of GQ data will be cancelled. The Demographic and Decennial staffs will work together to develop the message and communicate it to the Federal State Cooperative for Population Estimates (FSCPE)/states.
Compress POP division and DSSD review and processing times	A compressed review period creates risk for errors not being discovered in the data – thereby decreasing data quality. Additionally, errors discovered in the data may not be fixed – due to reduced time to research and understand the root cause or to re-run and re-review one or multiple state files.
Compress time for creating/verifying apportionment data and preparation of transmittal package for Department of Commerce	A compressed review period creates risk for errors being present in the data.

Implementation of the Presidential Memo

The Census Bureau has been tasked with deriving a process utilizing sound statistical methods and meeting tests of operational feasibility, to achieve the goals of directives from Secretary Ross regarding implementation of the Presidential Memo. To achieve this, the Census Bureau will:

- Build upon the work we have already done based on Executive Order 13880, "Collecting Information about Citizenship Status in Connection with the Decennial Census".
- Use all administrative records to the extent they are available. Using these records, in combination with other data already obtained regarding citizenship status, we will further refine the non-citizen category.
- Incorporating this work into the schedule to meet the current legal mandates.
- Implementation of the Presidential Memo will not affect the field work of the 2020 Census in any way. **The 2020 Census will still count everyone once, only once, and in the right place.**

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Thank You

Albert E. Fontenot, Jr.
Associate Director for Decennial Census Programs

Timothy P. Olson
Associate Director for Field Operations

Review of 2020 Operational Plan Schedule

August 14, 2020

Albert E. Fontenot, Jr.,
Associate Director for Decennial Census Programs

Timothy P. Olson
Associate Director for Field Operations

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Operational Timelines

Activity / Operation	Original Dates	COVID Adjustments	Replan Timeline
Update Leave (Stateside)	March 15 – April 17	Phased re-opening occurred between May 4 and June 12	
Service Based Enumeration	March 30 – April 1	September 22 – 24	
Targeted Non-Sheltered Outdoor Locations	March 31 – April 1	September 23 – 24	
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Delivery of Apportionment Data	By Statutory Deadline: December 31, 2020	Requested Statutory Delay until April 30, 2021	By Statutory Deadline: December 31, 2020
Delivery Redistricting Data	By Statutory Deadline: March 30, 2021	Requested Statutory Delay until July 31, 2021	Plan in Development

Self-Response Rate Summary

As of 11:59pm August 13, 2020

Total Self-Response Rate: 63.6%

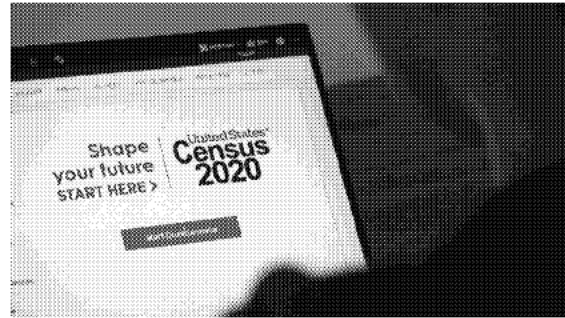
Total Responding Housing Units: 94.0M

Responses by mode:

75.2M (79.9%) – Internet

17.4M (18.6%) – Paper

1.4M (1.5%) – Phone



Update Leave – Status Update

Operation:

The Update Leave (UL) operation is designed to occur in areas where the majority of housing units either do not have mail delivered to the physical location of the housing unit, or the mail delivery information for the housing unit cannot be verified. A Census Bureau employee physically delivers a 2020 Census invitation to these housing units and updates the census address list. Nonresponding households will be visited by an enumerator during nonresponse followup.

Workload:

- Update Leave Original Workload (does not change): 6,805,523 housing units
- Workload Completed as of March 18 (date field operations were suspended): 736,320 housing units
 - Percentage Completed at suspension: 10.8%
- **The Update Leave workload was completed on August 10, 2020**

Response Rates:

- Total Responses (as of August 13): 2,347,481 (34.5%)
 - Internet: 1,223,025 (52.1%)
 - Paper: 1,078,240 (45.9%)
 - Phone: 46,216 (2.0%)



Group Quarters Enumeration – Status Update

Operation:

Group Quarters Enumeration is the U.S. Census Bureau's special process for counting people who live or stay in group quarters during the 2020 Census. Because group quarters are owned or managed by a third party, the Census Bureau assists group quarters administrators in responding to the census on behalf of residents to ensure a complete and accurate census count.



Group Quarters Enumeration Progress*

Initial Workload	GQs Added	Current Workload	Completed & Closed Cases	Current Workload	Percent Completed & Closed
195,656	15,605	211,261	170,169	41,092	80.6%

*As of August 13, 2020

2020 Census Service-Based Enumeration (SBE) Overview

Background

The SBE operation is conducted at service-based locations and targeted non-sheltered outdoor locations (TNSOLs) to provide an opportunity for people experiencing homelessness to be included in the census. These service locations include: emergency and transitional shelters (with sleeping facilities) for people experiencing homelessness, soup kitchens, and regularly scheduled mobile food vans.

Prior to operational adjustments made in lieu of COVID-19, SBE was scheduled to be conducted March 30 – April 1.

Consulted With Major Stakeholders

- In late May/early June we consulted with 67 national and local organizations to assist the Census Bureau in determining the best date to conduct SBE/TNSOL.
- Determining an optimal date to conduct SBE took into consideration the need to conduct a thorough and accurate enumeration, while also understanding the needs of our external partners, which are crucial during SBE.

Operational Decision

- Based on the feedback from our stakeholders, input from Census experts, and consultation with operational team leads, we have selected September 22 – 24 as the dates to conduct SBE and TNSOL.

Current Status

- Updating TNSOLs locations and making appointments with service providers in early September.
- Finalizing training plans for approximately 45,000 SBE field staff.

Nonresponse Followup Field Operations

Early Start of Nonresponse Followup Operations

6 Cycle 1a Area Census Offices (ACOs) began operations on July 16

6 Cycle 1b ACOs began operations on July 23

35 Cycle 2 ACOs were scheduled to begin operations on July 30; however, we started operations earlier in some ACOs where staff was available:

- 17 ACOs – Started July 26 – 29
- 18 ACOs – Started July 30

39 Cycle 3 ACOs were scheduled to begin operations by August 3:

- 15 ACOs – Started July 31
- 16 ACOs – Started August 1
- 8 ACOs – Started August 3

All remaining ACOs were scheduled to begin August 11, but all began operations by August 9:

- 107 ACOs – Started August 3 – 7
- 55 ACOs (all remaining) – August 9

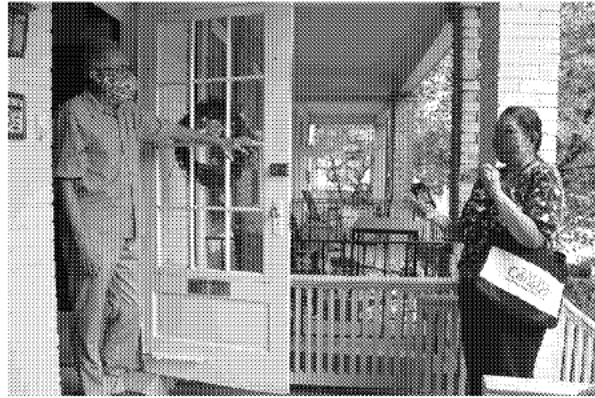
As of August 9 Nonresponse Followup Operations have started in all 248 ACOs

Safety during Field Activities

On August 7, in a joint statement from the Census Bureau and Centers for Disease Control (CDC) on Conducting 2020 Census Non-Response Follow-Up Interviews, the CDC stated that participation in 2020 Census interviews should present a low risk of transmission of COVID-19.

Census takers are trained to rigorously and universally follow these CDC recommendations to mitigate risk of transmission:

- Wearing of face masks.
- Maintaining social distance of 6 ft. or more.
- Practicing hand hygiene.
- Not entering homes, and conducting interviews outside as much as possible or practical.



Nonresponse Followup Field Operations – Current Status

Cycle 1A (6 ACOs) began operations on July 16:

- 55.3% Percent Complete
- 52.7% Percent Goal

Cycle 1B (6 ACOs) began operations on July 23:

- 43.5% Percent Complete
- 41.8% Percent Goal

Cycle 2 (35 ACOs) began operations July 26-30:

- 33.9% Percent Complete
- 28.7% Percent Goal

Cycle 3 (39 ACOs) began operations July 31 - August 3:

- 13.6% Percent Complete
- 4.7% Percent Goal

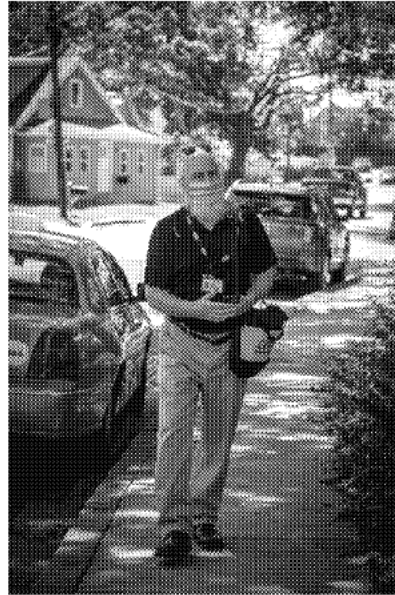
National Metrics (ALL 248 ACOs)

Began operations by August 9:

National Workload: 60,766,676 HUs

Completed Workload: 11,016,892 HUs

- 18.1% Percent Complete
- 10.4% Percent Goal



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Maintaining Original Contact Strategy

We are maintaining the original contact strategy

for occupied housing units. Field activities, including number of attempts to contact respondents, will not be changed.

- In most cases, census workers will make up to six attempts at each housing unit address to count possible residents.



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Increasing Work Hours from Current Enumerators

Nonresponse Followup Employee Award Pay



Earn up to an extra
\$800
on top of your regular pay.

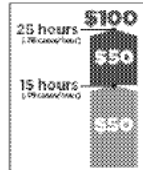
From August 9th through August 29th, Census Field Supervisors and Enumerators who maximize hours worked will have the opportunity to earn **award pay** in addition to their regular pay.

Census Field Supervisor Award Criteria

- Census Field Supervisors who exceed **32** hours or more per week, **between Aug 9-Aug 29**, will earn a **\$750** award.



Census Enumerator Award Criteria



x3=\$300
+\$500=\$800

- Enumerators who work between **15 hours and 24 hours** per week, and complete **.75 cases/hour**, will earn a **\$50** award.
- Enumerators who work **25 hours or more** per week, and complete **.75 cases/hour**, will earn a **\$100** award.
- Enumerators who work **25 hours or more** per week and complete **.75 cases/hour**, **between Aug 9-Aug 29**, will earn a **\$500** award.

Keeping Staff Levels Up

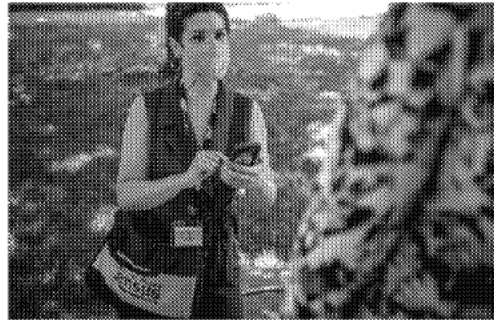
Actions	Benefit
Inviting More People to Training	Over selection rates will address higher-than-expected no-show rates of 35%, bringing us closer to our target initial staffing levels.
Continual Replacement Training	Expect to conduct replacement training for at least 135K enumerators due to attrition. Projecting over 11,000 additional training sessions.

Adapting to Dynamic On The Ground Conditions

Actions	Benefit
Implement outbound phone calling to supplement in-person contact attempts.	Provides an additional method to enumerate hard to reach communities.
Expand the use of NRFU Travel Teams: <ul style="list-style-type: none"> • Moving teams that have successfully completed their areas to areas requiring additional attention. 	Using experienced staff minimizes the need to train new staff – particularly in areas where new staff are not available.
Extending Mobile Questionnaire Assistance (MQA) <ul style="list-style-type: none"> • Deploying trained staff to assist with self-response in low response areas • Will extend through September 30 	Efficiently accelerates closeout process. MQA representatives are in open, public places in the lowest-responding areas of the nation to encourage people to respond to the 2020 Census. Provides a convenient way for the public to get information about the 2020 Census and self-respond in areas with low response.
Targeted Communications	Continue to promote self-response and cooperation with enumerators by focusing on specific, targeted areas.

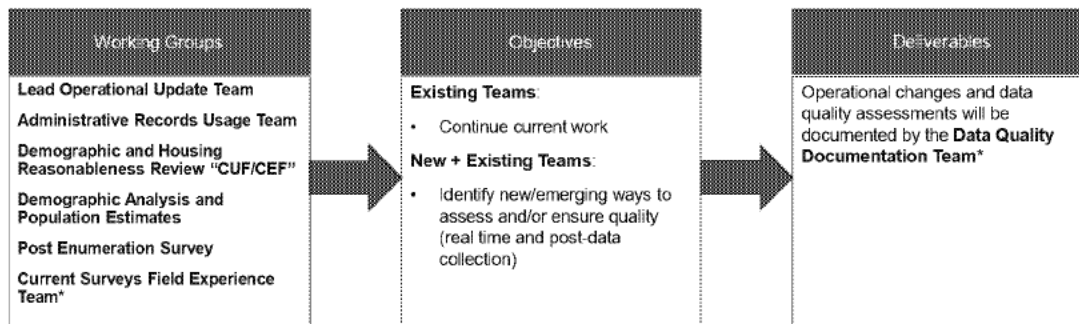
Ensuring Quality of Data Collected during Field Operations

- **Employing** expanded technical capacity to conduct analytical Re-Interview selection as the basis for the Re-Interview process.
- **Utilizing** new techniques for the 2020 Census to monitoring quality:
 - **Using** statistical techniques with professional statisticians and analysts to proactively identify, monitor, evaluate, and resolve quality issues.
 - **Analyzing** data and metrics to identify and investigate outliers and other unusual activity.
- **Increasing** efficiency of our strategy for verifying vacant or non-existing Housing Units.



Ensuring High Quality Data from the 2020 Census

Special teams with expertise from within the entire Census Bureau in the fields of census operations, statistical methodology, acquisition and utilization of administrative records, and in the social, economic, and housing subject areas to supplement the existing expert teams and provide extra focus on data quality.



*New team, not previously part of 2020 Census operations

Post Enumeration Data Processing

Professional career staffers at the Census Bureau are evaluating the processes and procedures and incorporating technological developments, such as the improvements in the quality of the Master Address File, to determine how to effectively and accurately deliver apportionment counts by the statutory deadline of December 31, 2020.

This staff will be closely monitoring the collection and processing of the data and assessing any potential impacts on accuracy, data quality, and coverage.

Further updates on our post enumeration data processing will be provided.

Implementation of the Presidential Memo

The Census Bureau has been tasked with deriving a process utilizing sound statistical methods and meeting tests of operational feasibility, to achieve the goals of directives from regarding implementation of the Presidential Memo. To achieve this, the Census Bureau will:

- Build upon the work we have already done based on Executive Order 13880, "Collecting Information about Citizenship Status in Connection with the Decennial Census".
- **The 2020 Census will still count everyone once, only once, and in the right place.**

Thank You

Albert E. Fontenot, Jr.
Associate Director for Decennial Census Programs

Timothy P. Olson
Associate Director for Field Operations

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Maloney (202) 225-8091
Nease (202) 225-5074

<https://oversight.house.gov>

August 12, 2020

The Honorable Dr. Steven Dillingham
Director
United States Census Bureau
4600 Silver Hill Road
Washington, D.C. 20233

Dear Dr. Dillingham:

On August 4, 2020, the Committee requested the voluntary appearance of eight senior Census Bureau officials for transcribed interviews regarding the Trump Administration's recent efforts to rush the 2020 Census after previously requesting legislation to delay deadlines for operations and reporting due to the coronavirus pandemic.¹

On August 7, 2020, you responded by declining to make a single official available for a transcribed interview.² In that letter, and in subsequent conversations with staff, the Census Bureau has provided inadequate justifications for declining to make these individuals available to the Committee.

The 2020 Decennial Census is the largest and most complex in history. You have testified under oath that the Census Bureau has undertaken a decade of field-tested preparation to ensure an accurate and complete count,³ but that the coronavirus pandemic has added "unprecedented" operational difficulties to the Census Bureau's mission.⁴

¹ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Dr. Steven Dillingham, Director, U.S. Census Bureau (Aug. 4, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-08-04.CBM%20to%20Dillingham%20re%20Transcribed%20Interviews.pdf>).

² Letter from Dr. Steven Dillingham, Director, U.S. Census Bureau, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Aug. 7, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Response%20to%20Chairwoman%20Maloney%20Aug%208%202020.pdf>).

³ Committee on Oversight and Reform, *Hearing with Census Bureau Director, Dr. Steven Dillingham* (Feb. 12, 2020) (online at www.govinfo.gov/content/pkg/CHRG-116hrg39929/pdf/CHRG-116hrg39929.pdf).

⁴ Committee on Oversight and Reform, *Hearing on Counting Every Person: Safeguarding the 2020 Census Against the Trump Administration's Unconstitutional Attacks* (July 29, 2020).

On April 13, 2020, you and Commerce Secretary Wilbur Ross warned that extensions to various statutory deadlines were necessary “to ensure the completeness and accuracy of the 2020 census.”⁵ That same day, Secretary Ross informed several Members of Congress, including me, that the Trump Administration was planning to push the deadline for field operations from July 21, 2020, to October 31, 2020. He also sought legislation to extend the statutory deadline to deliver apportionment data to the President from December 31, 2020, to April 30, 2021, and an extension in the statutory deadline to deliver redistricting data to the states from March 30, 2021, to July 31, 2021.

Subsequent statements by Census Bureau officials underscored the urgency of these legislative changes. On May 26, 2020, Tim Olson, Associate Director for Field Operations, said publicly: “We have passed the point where we could even meet the current legislative requirement of December 31. We can’t do that anymore.”⁶

The Committee has worked in good faith to accommodate the Trump Administration’s request. On April 18, 2020, the Census Bureau provided proposed legislative language for securing the statutory extensions. The Committee included extension provisions in the HEROES Act (H.R. 6800), which the House of Representatives passed on May 15, 2020.

In a stark reversal, on August 3, 2020, you announced that the Census Bureau will cut short follow-up operations by a full month, despite significant delays in starting follow-up operations because of the coronavirus pandemic. You also announced that, with respect to the reporting requirement, the Census Bureau would aim to meet “our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce.”⁷ These reversals were announced after President Trump installed two additional political appointees at the Census Bureau—for a total of six political appointees, which is more than the Census Bureau has had in decades.⁸

At the same time, the Trump Administration has proposed significant changes to the Census Bureau’s methodology and field operations. On July 21, 2020, President Trump issued a memorandum ordering the Secretary of Commerce to provide information that would allow him to exclude undocumented immigrants from the apportionment count. At the Committee’s July

⁵ U.S. Census Bureau, *U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Steven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19* (Apr. 13, 2020) (online at www.census.gov/newsroom/press-releases/2020/statement-covid-19-2020.html).

⁶ *Republicans Signal They’re Willing to Cut Census Counting Short*, National Public Radio (July 28, 2020) (online at www.npr.org/2020/07/28/895744449/republicans-signal-theyre-willing-to-cut-short-census-counting).

⁷ U.S. Census Bureau, *Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count* (Aug. 3, 2020) (online at www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html).

⁸ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, et al., to Wilbur L. Ross, Jr., Secretary, Department of Commerce (July 13, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-07-13.CBM%20Gomez%20Raskin%20Connolly%20Clarke%20to%20Ross-DOC%20re%20Cogley%20and%20Korzeniewski.pdf>).

29, 2020, hearing, you testified that this directive came without any discussions or input from you—despite the fact that the memorandum seeks to change a highly sensitive and apolitical task that the Census Bureau has historically performed.⁹

The Committee is seeking interviews with Census Bureau staff to understand these current—and ongoing—efforts to change timelines and methodologies midstream, and what impact these changes will have on the accuracy, objectivity, and completeness of the Census. The Committee is also seeking to understand how and when these changes were proposed, as well as what role career Census Bureau officials played in these moves, in order to inform our legislative efforts on these matters.

This is an urgent matter that requires immediate compliance. The Trump Administration announced these unprecedented actions—which are projected to have a direct impact on the completeness and accuracy of the census count—just weeks before the end of the Census. Our investigation is critical to ensuring that the 2020 Census adheres to the constitutional requirement to enumerate every person.

For all of these reasons, I respectfully urge you to make these officials available to the Committee on a voluntary basis. Please confirm by close of business on August 14, 2020, whether you will cooperate with the Committee's investigation or whether the Committee should secure these officials' appearance through compulsory measures.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. In addition, the Committee has jurisdiction over "Population and demography generally, including the Census."¹⁰

Sincerely,



Carolyn B. Maloney
Chairwoman

Enclosure

cc: The Honorable James R. Comer, Ranking Member

⁹ Committee on Oversight and Reform, *Hearing on Counting Every Person: Safeguarding the 2020 Census Against the Trump Administration's Unconstitutional Attacks* (July 29, 2020).

¹⁰ House rule X, clause 1(n)(8).

2020 Census Update

August 12, 2020

Albert E. Fontenot, Jr.,
Associate Director for Decennial Census Programs

Timothy P. Olson
Associate Director for Field Operations

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2020
Census

Self-Response Rate Summary

As of 11:59pm August 11, 2020

Total Self-Response Rate: 63.4%

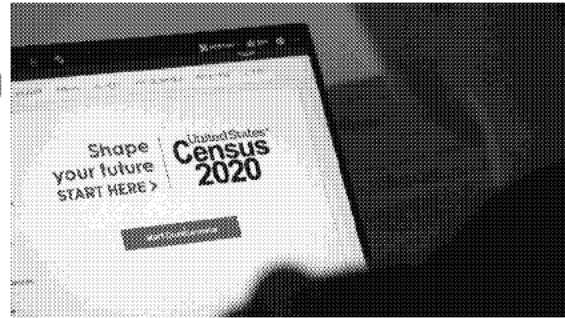
Total Responding Housing Units: 93.8M

Responses by mode:

75.0M (79.9%) – Internet

17.4M (18.6%) – Paper

1.4M (1.5%) – Phone



Update Leave – Status Update

Operation:

The Update Leave (UL) operation is designed to occur in areas where the majority of housing units either do not have mail delivered to the physical location of the housing unit, or the mail delivery information for the housing unit cannot be verified. A Census Bureau employee physically delivers a 2020 Census invitation to these housing units. Nonresponding households will be visited by an enumerator during nonresponse followup.

Workload:

- Update Leave Original Workload (does not change): 6,805,523 housing units
- Workload Completed as of March 18 (date field operations were suspended): 736,320 housing units
 - Percentage Completed at suspension: 10.8%
- **The Update Leave workload was completed on August 10, 2020**

Response Rates:

- Total Responses (as of August 11): 2,330,408 (34.2%)
 - Internet: 1,209,496 (51.9%)
 - Paper: 1,075,767 (46.2%)
 - Phone: 45,145 (1.9%)



Group Quarters Enumeration – Status Update

Operation:

Group Quarters Enumeration is the U.S. Census Bureau's special process for counting people who live or stay in group quarters during the 2020 Census. Because group quarters are owned or managed by a third party, the Census Bureau assists group quarters administrators in responding to the census on behalf of residents to ensure a complete and accurate census count.



Group Quarters Enumeration Progress*

Initial Workload	GQs Added	Current Workload	Completed & Closed Cases	Current Workload	Percent Completed & Closed
195,656	15,088	210,744	163,359	47,385	77.5%

*As of August 11, 2020