

proposal on the privacy and other rights of individuals. The Department filed a report describing the modified system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Deputy Administrator of the Office of Information and Regulatory Affairs, OMB on May 18, 2020.

**SYSTEM NAME AND NUMBER:** COMMERCE/CENSUS-5, Decennial Census Programs.

**SECURITY CLASSIFICATION:** None.

**SYSTEM LOCATION:** U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233-8100; Bureau of the Census, Bowie Computer Center, 17101 Medford Boulevard, Bowie, Maryland 20715; and at Amazon Web Services (AWS), located at 410 Terry Ave. N, Seattle, WA 98109.

**SYSTEM MANAGER(S):** Associate Director for Decennial Census Programs, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233-8000.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** 13 U.S.C. 6(c), 141 and 193.

**PURPOSE(S) OF THE SYSTEM:**

The purpose of this system is to collect statistical information from respondents for Decennial Census Programs using responses to questions in order to provide key social, housing, and economic data for the nation. This system of records for Decennial Census Programs records is comprised of the Decennial Census of Population and Housing (the Decennial Census) records and American Community Survey (ACS) records. The primary uses of ACS data include: Supporting the federal government in administration of programs; providing public officials,

planners, and entrepreneurs with information they can use to assess the past and plan for the future; providing information for community planning for hospitals and schools, supporting school lunch programs, improving emergency services, building bridges; and, informing businesses looking to add jobs and expand to new markets. The primary uses of decennial census data include: Apportioning the representation among states as mandated by Article I, Section 2 of the United States Constitution; drawing congressional and state legislative districts, school districts and voting precincts; enforcing voting rights and civil rights legislation; providing data for federal, state, local and tribal governments to use in distributing federal dollars to states; informing federal, tribal, state, and local government planning decisions; informing business and nonprofit organization decisions (e.g., where to locate and size of the market); and, providing population benchmarks for nearly every other U.S. survey. Census and survey records from the Decennial Census Programs are also maintained to conduct research and analysis with survey and administrative data for projects and to undertake methodological evaluations and enhancements by the Census Bureau to improve data collection and quality control. Also, information collected by the decennial census is used to provide official census transcripts of the results to the named person(s), their heirs, or legal representatives as described in COMMERCE/CENSUS-6, Population Census Personal Service Records for 1910 and All Subsequent Decennial Censuses (this does not apply to the ACS and test census or survey records).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** All individuals responding to Decennial Census Programs, which include the ongoing ACS, the Decennial Census, as well as the test censuses, focus groups, cognitive interviews and surveys related to the ACS and the Decennial Census, are covered by the system. Participation in Decennial Census

Programs is mandatory. Data collected directly from respondents may be supplemented with data from administrative record files received from other federal, state, or local agencies, and third-party entities (e.g., commercial sources) collected and processed under COMMERCE/CENSUS-8, Statistical Administrative Records System. Please see COMMERCE/CENSUS-8, Statistical Administrative Records System for more information.

**CATEGORIES OF RECORDS IN THE SYSTEM:** Records collected by the ACS and its test surveys contains information such as: Population information--name, address, email address, telephone number (both landline and cell phone number), age, sex, race, date of birth, Hispanic origin, ethnicity, relationships, housing tenure, number of persons in the household, as well as more detailed information on topics such as marital status and history, fertility, income and sources, employment and history (e.g., number of weeks worked), citizenship, education, transportation type, health insurance or health coverage plans, disability, grandparents as caregivers, military status and history, etc.; Housing information--year built, structure description, uses, features, amenities, number of rooms, utilities including type of fuel, purchase type (e.g., mortgage or deed of trust), number of vehicles kept or used, and financial characteristics (e.g., ownership, home value, property taxes).

Records collected during the Decennial Census and its test censuses may contain information such as: Population information--name, address, email address, telephone number (both landline and cell phone number), age, sex, race, Hispanic origin, relationship, housing tenure, number of persons in the household. Note that the Decennial Census of Population and Housing (the Decennial Census) does not collect citizenship information from respondents. In accordance with 13 U.S.C. 6(c), information in the Decennial Census Programs may, under specific circumstances and arrangements, also come from administrative records obtained from federal,

states, counties, cities, or other units of government. For instance, the Census Bureau works with all Federal agencies to obtain counts from their records of Federally affiliated persons living overseas. The Census Bureau also makes arrangements with certain types of facilities (e.g., prisons, long-term care facilities, colleges) to obtain administrative records data on individuals when direct enumeration of those people is not feasible for safety, health, or other reasons. Please see COMMERCE/CENSUS-8, Statistical Administrative Records for more information. Test censuses, surveys, and research study records may contain information on individuals similar to that included in the ACS and Decennial Census. Field Representative and interviewer characteristics as well as paradata collected during the Decennial Census Programs (including data obtained during recordings) may also be collected. Paradata maintained in this system of records includes: Method of interview; time and date stamps; deleted changes; audit trail and trace files; item non-response, refusals, and don't know responses; Global Positioning System coordinates; all internet paradata, including internet Protocol address; mobile device identification, etc.

**RECORD SOURCE CATEGORIES:** In general, the records in this system come from the subject individuals covered by Census Bureau decennial censuses and the ACS as well as subjects from tests, focus groups, and cognitive interviews. Data collected directly from respondents may be supplemented with information from administrative records for person-level characteristics or address updates obtained from federal, states, counties, cities, or other units of. Please see COMMERCE/CENSUS-8, Statistical Administrative Records System for more information.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

There are no routine uses for the COMMERCE/CENSUS-5, Decennial Census Programs. Access to records maintained in the system is restricted to Census Bureau employees and certain individuals authorized by Title 13, U.S. Code (designated as Special Sworn Status individuals). Although there are no routine uses for the COMMERCE/CENSUS-5, Decennial Census Programs, access to records maintained in the system is restricted to Census Bureau employees and certain individuals authorized by Title 13, U.S. Code (designated as Special Sworn Status individuals). These individuals are subject to the same confidentiality requirements as regular Census Bureau employees.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** Records (including, but not limited to, sound and video files of survey and cognitive interviews, and pilot tests) are stored in a secure computerized system and on magnetic media; output data will be either electronic or paper copies (including transcripts of sound files). Paper copies or magnetic media are stored in a secure area within a locked drawer or cabinet. Datasets may be accessed only by authorized personnel. Control lists will be used to limit access to those employees with a need to know; rights will be granted based on job functions. Decennial Census records may also be stored at the AWS cloud service provider (CSP). The AWS CSP will maintain Decennial Census records (including testing information) during decennial census operations; no ACS records will be maintained by the AWS CSP. The AWS CSP has no access to Decennial Census records including incidental access. After decennial operations, the records maintained by the AWS CSP will be archived at the Census Bureau.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** Information collected by the Decennial Census Programs may be retrieved by direct identifiers such as name and address. However, only a limited number of sworn Census Bureau staff will be permitted to

retrieve records containing direct identifiers for authorized work-related purposes. Staff producing final statistical products will have access only to data sets from which direct identifiers have been deleted and replaced by unique non-identifying codes internal to the Census Bureau.

#### **POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Respondent data collected through the Decennial Census Programs, including personally identifiable data, are in some cases captured as images suitable for computer processing. Original paper data sources are destroyed, according to the record disposal procedures, after confirmation of successful electronic data capture and secure data transmission of the images to Census Bureau headquarters. For the ACS, personally identifiable data are scheduled for permanent retention (excluding sound and video files) in accordance with the General Records Schedule and Census Bureau records control schedules that are approved by NARA. For the Decennial Census, a record of individual responses, including all names and other entries provided by the respondent, and all associated address and geographic information for each housing unit or person living in group quarters are scheduled for permanent retention (excluding sound and video files that are retained in accordance with the General Records Schedule and Census Bureau records control schedules that are approved by the NARA). Pilot and cognitive test data collections, data capture, and data processing records are destroyed when two years old or when no longer needed for Census Bureau program or evaluation purposes, whichever is later. Unless otherwise specified, all records are retained in accordance with the General Records Schedule and Census Bureau records control schedules that are approved by NARA.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:** The Census Bureau is committed to respecting respondent privacy and protecting confidentiality. Through

the Data Stewardship Program, the Census Bureau has implemented management, operational, and technical controls and practices to ensure high-level data protection to respondents of our censuses and surveys.

(1) A policy against unauthorized browsing protects respondent information from casual or inappropriate use by any person with access to Census Bureau data. Unauthorized browsing is defined as the act of searching or looking through, for other than work-related purposes, protected personal or business-related information that directly or indirectly identifies individual persons or businesses. Unauthorized browsing is prohibited.

(2) All Census Bureau employees and persons with Special Sworn Status permitted to access the system are subject to the restrictions, penalties, and prohibitions of 13 U.S.C. 9 and 214, as modified by 18 U.S.C. 3551 et seq.; and provisions of the Privacy Act, as applicable. Employees of FedRAMP-approved cloud service providers do not have access to Census Bureau data maintained in this system of records. The Census Bureau's security measures ensure that only a restricted number of authorized people have access to Title 13 information and that access is only granted to conduct our work and for no other purposes. Every person who works with the confidential information collected by the Census Bureau is sworn for life to uphold the law.

(3) All Census Bureau employees and persons with Special Sworn Status will be regularly advised of regulations governing the confidentiality of the data and will be required to complete an annual Data Stewardship Awareness program.

(4) All Census Bureau and FedRAMP-approved computer systems that maintain sensitive information are in compliance with the Federal Information Security Management Act, as amended (44 U.S.C. 3551-3559), which includes auditing and controls over access to restricted data.

(5) The use of unsecured telecommunications to transmit individually identifiable information is prohibited.

(6) Paper copies that contain sensitive information are stored in secure facilities in a locked drawer or file cabinet behind a locked door.

(7) Additional data files containing direct identifiers will be maintained solely for the purpose of data collection activities, such as respondent contact and preloading an instrument for a continued interview, and will not be transferred to, or maintained on, working statistical files.

(8) Any publications based on this system will be cleared for release under the direction of the Census Bureau's Disclosure Review Board, which will confirm that all the required disclosure avoidance procedures have been implemented and no information that identifies any individual is released.

**RECORD ACCESS PROCEDURES:** None.

**CONTESTING RECORD PROCEDURES:** None.

**NOTIFICATION PROCEDURES:** None.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:** Pursuant to 5 U.S.C. 552a(k)(4), this system of records is exempted from subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (t) of the Privacy Act. These subsections include, but are not limited to, certain requirements concerning notification, access, and contest procedures. This exemption is applicable because the data are maintained by the Census Bureau solely as statistical records, as required under Title 13, to be used solely as statistical records and are not used in whole or in part in making any determination about an identifiable individual. This exemption is made in accordance with 15 CFR part 4 subpart B.

**HISTORY:** 81 FR 76557, November 3, 2016, Notice of Amendment of Privacy Act  
System of Records.

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UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., et al.,

Defendants.

CASE NO. 5:20-cv-05799-LHK

**SUPPLEMENTAL BRIEF IN SUPPORT  
 OF MOTION FOR STAY AND FOR  
 PRELIMINARY INJUNCTION**

Date: TBD  
 Time: TBD  
 Place: Courtroom 8  
 Judge: Hon. Lucy H. Koh

On September 20 and September 21, 2020 Defendants disclosed to Plaintiffs, via FTP transfer, a number of Administrative Record (“AR”) documents which had been initially redacted or entirely withheld on assertions of attorney client and/or deliberative process privilege. Although the number of unique documents is relatively small, given duplication (or near-duplication) in the documents produced, it is nevertheless telling. And it explains why Defendants have devoted so little time and space to defending their actions on the merits. The materials confirm what Plaintiffs have long argued: the Census Bureau was forced to scrap a decade of detailed planning and testing for a retrofitted and truncated “Replan” that they knew was impossible to do right. The decision to abandon the COVID-19 Plan did not come from the Bureau. The decision did not acknowledge, let alone explain, the radical departure from the factual findings underlying the COVID-19 Plan—it simply ignored those contrary facts and the serious reliance interests engendered thereby. The decision was not driven by a (mistaken) belief that adherence to the COVID-19 Plan would be unlawful because of the statutory deadline. And the decision cannot be said to have a “reasonable relationship” to an actual enumeration when the Bureau itself said it did not.

The recently released Office of Inspector General for the U.S. Department of Commerce publicly released a report titled *The Acceleration of the Census Schedule Increases the Risks to a Complete and Accurate 2020 Census* (“OIG Report”) further confirms what the existing AR shows. This is not surprising, given that the AR is largely a product of the OIG Documents. In that report, dated September 18, 2020 and first provided to the Department of Commerce on or about that date, the Inspector General made two primary findings: (1) “[t]he decision to accelerate the Census schedule was not made by the Census Bureau,” and (2) “[t]he accelerated schedule increases the risks to obtaining a complete and accurate 2020 Census.”

Plaintiffs have written at length about all of these matters, and look forward to discussing them in detail at the September 22 preliminary injunction hearing. For purposes of this submission, Plaintiffs will allow a small but illuminating subset of these new AR materials—set forth below, along with other evidence the Court has seen and the OIG Report—to speak with their own voice (with attribution left off of the selected images, due to Defendants not yet

providing Plaintiffs with PII-redacted materials). In addition, as requested, Plaintiffs attach as Exhibit A a short timeline of when and how the Replan was created and adopted and when and how the agency considered the statutory deadlines for the COVID-19 Plan and the Replan.

**A. The Decision To Truncate The Census Timeline Was Not Made By The Census Bureau And Was Made Shortly After The President's July 21, 2020 Apportionment Exclusion Order**

As the OIG Report found, the decision to cut the census timeline nearly in half was not made by the Census Bureau and was made shortly after the President's July 21, 2020 Apportionment Exclusion Order. Exhibit A goes into the timeline in detail. Below are key excerpts from the AR that speak to that finding.

- **July 23, 2020**, "2020 updated for Soft Launch at DOC" email chain between Bureau employees (KD40<sup>1</sup>; DOC-7737-39):

We need to sound the alarm to realities on the ground - people are afraid to work for us and it is reflected in the numbers of enumerators working in the 1a ACOs. And this means it is ludicrous to think we can complete 100% of the nation's data collection earlier than 10/31 and any thinking person who would believe we can deliver apportionment by 12/31 has either a mental deficiency or a political motivation.

Agree that elevating the reality is critical, especially in light of the push to complete NRFU asap for all the reasons we know about.

- **July 29, 2020**. According to Mr. Fontenot (Sep. 4, 2020, Fontenot Dec. ¶ 81), on July 29, several days before the Replan announcement on August 3, 2020, the Secretary of Commerce "directed" the Bureau to "present a plan" to "accelerate the remaining operations" to meet the December 31 deadline.
- **August 1, 2020**, "'Draft Replan Deck for Review" email chain between Bureau employees (KD88, DOC\_10183):

Subject: Re: Draft Replan Deck for Review  
Date: Saturday, August 01, 2020 9:13:20 PM

I REALLY think we need to say something on page 2 that this is what we've been directed to do or that we are presenting these in response to their direction/request. This is not our idea and we shouldn't have to own it.

<sup>1</sup> "KD1" is a cross reference to Plaintiffs' final Key Document submission to this Court. Plaintiffs use that protocol throughout this filing for ease of reference.

- August 1, 2020, “Draft Replan Deck for Review” follow-up email chain between Bureau employees, (KD95, DOC\_10940):

Question - “your” or “Department of Commerce request”

**Subject:** Re: Draft Replan Deck for Review  
**Date:** Saturday, August 01, 2020 10:55:00 PM

I would say your is more accurate, but your call.

- August 2, 2020 email between top Census Bureau employees, (DOC\_13150), in a meeting set up to discuss what the Census Bureau had been directed to do:

**Subject:** Fw: brute force method - meeting info in this message  
**Date:** Sunday, August 02, 2020 10:46:23 AM  
**Attachments:** Operational and Processing Options to meet September 30 Final.pdf

- September 18, 2020. And here’s what the OIG found, after an investigation into this very issue:

## Findings and Conclusion

### I. The Decision to Accelerate the Census Schedule Was Not Made by the Census Bureau

On August 3, 2020, the Bureau issued a press release announcing the decision “to accelerate” the 2020 Census.<sup>22</sup> The schedule change was not the Bureau’s decision, nor was it the first time the 2020 Census schedule had been changed. Senior officials at the Bureau, including the Director, did not know who ultimately made the decision to accelerate the Census schedule. As a consequence, this management alert does not identify the decision maker. Some Bureau officials speculated the decision came from the Department, while others thought the decision likely came from the White House. However, Bureau officials confirmed that the decision was not the Bureau’s.

### B. The Replan’s Truncated-Census Directive Was Made Without Consultation With Bureau Officials, With No Analysis Of The Statutory Deadline or Effects on Accuracy, and Without Considering All Relevant Issues

As set forth above, and previously discussed in Plaintiffs’ filings, the undisputed record establishes that Bureau officials were given no more than a few days to determine how best to

1 implement a directive previously made, *without any apparent deliberation at all*. This decision-  
 2 making process was backwards: the Secretary directed the Bureau to revise the timeline to meet  
 3 the deadline without considering important factors that would bear on that, and then directed  
 4 Bureau experts to, effectively, make it happen, regardless of what the open issues or problems  
 5 were, what had been studied or analyzed (or not), and so on. By way of just a few examples:

- 6 • **July 31, 2020**, “5:00 Process Planning Meeting” email chain between Census employees

7 Should we mention any global risks, such as the following:

8 -- Many of these changes delay activities required for developing the  
 9 remaining data products following apportionment, some of them (but not all  
 10 until after 12/31/20, increasing the risk that they will not be completed on  
 11 time, whatever that schedule becomes.

12 -- Many of these changes, separately or in combination, have not been

13 <value><item>DOC\_0009073</item></value>

14  
 15 previously studied or analyzed for their effects on data quality. We risk  
 16 decreasing the accuracy of apportionment counts and other statistics  
 17 released later.

18 -- With these changes to the original operational plan and schedule, we  
 19 increase the chance of subsequent data concerns. For example, it may be  
 20 necessary to release tabulations later that are not all completely consistent.

- 21 • **July 31, 2020**, email between Bureau employees responding to the “new revised  
 22 schedule” shown to them (KD67; DOC\_9242):

23 Thanks Christine! Jason will you take the lead with Christine to polish what we will send to  
 24 Tori? We want to emphasize what will not get done for each file review and apportionment -  
 25 considering the Clark revised schedule. We also want to emphasize the risk involved. I would  
 26 also focus on the total pop review as well as the characteristics review. It is not clear if the  
 27 demo characteristics will be on this initial version of the CUF - and we don't want anyone  
 28 trying to cut our days because they think we have less review to do.

- **July 31, 2020**, “2020 Census Response Processing Review,” (KD68, DOC\_9245), details various potential issues from the shortened schedule, including “inaccurate counts of the total population and characteristics” and differentials between states:

With the current proposed schedule, we plan to conduct the activities listed below; however, there will be limitations in how in-depth we can complete the reasonableness review listed in activity six. We will also focus our review on the first four to ten states produced by DITD; later states will undergo a more cursory review. Finally, with this reduced schedule, the time available to review any reruns will be limited.

- **July 31, 2020**, “Backend Processing Options,” (KD69, DOC\_9458): Discussing significant risks with the “highly compressed schedule,” including threats to the overall fitness of use of the Census

#### Backend Processing Options

This plan presents a revised and highly compressed schedule for 2020 Census post-processing that increases the likelihood of delivering apportionment counts by 12/31/20. It is based on two critical assumptions:

1. Post processing must start by **10/1/2020**, which means all Self Response and FLD collection activities close out, and data are reconciled and loaded in the Census Data Lake (CDL) by that date.
2. Post-processing work activities in this plan are limited to those required to produce apportionment counts, with an understanding that redistricting data products will be taken up later.

All of the changes below, taken together, reduce the time required for post-processing such that, when combined with the operational changes above in this document, make it possible to deliver the apportionment package in time to meet the statutory deadline. All of these activities represent an abbreviated process that is likely to reduce the accuracy of the 2020 Census and threaten the fitness for use. Additionally, the downstream effect of separating apportionment and redistricting processing activities is not known, but presents further risk to redistricting product creation and accuracy.

- **July 31, 2020**, “Operational and Processing Options to Meet September 30,” (KD80, DOC\_9951), which lays out the “significant risk to the accuracy of the census data” from “[a]ccelerating the schedule by 30 days,” *requires* that at least 99% of Housing Units in every state must be resolved, and lays out how each additional day of NRFU results in significant capacity expansion:

#### Operational and Processing Options to meet September 30 July 31, 2020

Due to COVID-19 impacts, the conclusion of field operations for the 2020 Census was previously scheduled to end on October 31. In order to meet the statutory date of December 31, 2020 for apportionment, field operations must now conclude no later than September 30, 2020. Accelerating the schedule by 30 days introduces significant risk to the accuracy of the census data. In order to achieve an acceptable level of accuracy, at least 99% of Housing Units in every state must be resolved.

#### Nonresponse Followup Operational Options

Option	Potential Benefits	Potential efficiency gain / applicable costs to implement
1. Early Start of NRFU operations early everywhere nationwide on 8/9 instead of 8/11	Begins data collection in advance of scheduled start date, allowing more production days.	There are currently 50 days in the production schedule for NRFU. Each additional day of production expands the capacity by 2%.
Cycle 2 Early Starts (7/30 Scheduled):		

- **September 18, 2020**, the recently-released OIG Report, highlights this issue as well at pages 9-10:

The accelerated schedule raises risk besides the potential for natural disasters. As one official explained, the Bureau “no longer [has] the runway” of time to correct discovered errors through re-enumeration, as was necessary in the field portion of the 2010 and 2000 Censuses.

*The Bureau “no longer [has] the runway” of time to correct discovered errors through re-enumeration.*

*As described by one senior Bureau official*

Given this accelerated schedule, the Bureau views “resolving” or “completing” at least 99 percent of housing units in every state, at the end of data collection, to be an acceptable level of accuracy and completeness.<sup>33</sup> “Resolving” or “completing” a housing unit means determining: (1) whether it is in-fact a housing unit; (2) whether it is occupied or vacant; and (3) how many people live there and their basic census characteristics. The 99 percent resolution rate is based on the resolution rates achieved in the fieldwork of the 2010 and 2000 Censuses. Bureau officials expressed confidence that the Bureau could reach the 99 percent figure by the end of data collection.

Senior Bureau officials do not know what will occur if the 99 percent target is not met by September 30, 2020. If the goal is not reached by that date, a decision must be made to either continue data collection to meet 99 percent completeness in every state (and achieve an acceptable level of accuracy and completeness) or cease data collection. There are risks either way. If data collection ends before 99 percent completeness is met in every state, the Bureau will not achieve what it views as an acceptable level of accuracy and completeness. But, if data collection extends beyond September 30, 2020, that will either further condense an already compressed schedule for data processing—which carries its own risks—or the Bureau will miss the December 31, 2020, statutory deadline.

*Senior Bureau officials do not know what will occur if the 99 percent target is not met by September 30, 2020. If the goal is not reached by that date, a decision must be made to either continue data collection to meet 99 percent completeness in every state (and achieve an acceptable level of accuracy and completeness) or cease data collection. There are risks either way.*

According to several senior Bureau officials, the Bureau will miss the December 31, 2020, deadline if data collection goes beyond September 30, 2020.

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**C. It Was Universally Understood and Undisputed That Truncating The Timeline Would Produce A Flawed and Inaccurate Census, and That It Was “Impossible” To Meet a December 31 Deadline**

- **July 21, 2020**, “Census Bureau Restarts as States Re-Opens,” (KD31, DOC\_7086):

**Restart Cannot Compress Timeline**

The earliest field operations in the continental United States had begun by March 18, 2020. This includes efforts to count rural, remote and special populations, as well as all of the work needed to hire, process and prepare hundreds of thousands of workers needed for later operations.

The original operational timetable for the census required beginning field operations on March 12, 2020, would have enabled the Census Bureau to field its peak workforce by May 15, 2020, and would have made it possible to finish collection of data by July 31, 2020. This entire sequence of dates shifted forward as the Census Bureau suspended operations per Task Force guidance. The work not done during the past eight weeks cannot be appreciably compressed.

The suspension lasted across the entire country until May 4, 2020, per Task Force guidance, and is only now restarting on a phased geographic and operational basis. But even if the White House Task Force guidance permitted the Census Bureau to restart operations in every state and locality tomorrow, the Census Bureau assesses it currently cannot complete 2020 Census field operations in time to deliver apportionment counts by December 31, 2020, and redistricting data by April 1, 2021.

The sequence of completing the 2020 Census is critical to its accuracy: from the creation of the address list, to the invitation to respond, managing the self-response process, the followup and data collection from the approximately 50 million households that do not self-respond, and finally the tabulation of data for state and local population counts which fuel reapportionment and redistricting. The 2020 Census operations are designed to cover specific populations for a complete count of the population. If specific operations are cut or reduced, the effect would be

to miss specific parts of the population lead to an undercount of specific groups. That is why operations like update leave targeting rural populations or group quarters enumeration are critical to full coverage and need to be done in specific orders.

- **April 17, 2020**, “High Level Talking Points” (KR2, DOC\_265):

**Why does post processing take so long?**

As is evident from the description above, post processing activities must, by their nature, occur in a consecutive sequence, and quality assurance needs to be performed at each step of the process. Subject matter expert review is critical to ensuring the quality of the data during this iterative process. It is important to note post processing cannot begin in earnest until all in-field work is completed. We have examined our schedule and compressed it as much as we can without risking significant impacts on data quality. Given the important uses of census data collection processing, it is vital that we not short cut these efforts or quality assurance steps.

- **May 8, 2020, “Operational Timeline V5 Clean,”** (KR17, DOC\_2287)—showing that the Bureau could not meet the statutory deadline as far back as May, given the COVID-19 delays—and that it was fully funded for the extension it sought:

- **If Census Bureau could fully restart today, under ideal conditions:** As a rough calculation: If today, May 8, the Census Bureau could restart Update Leave and NRFU Enumerator Onboarding in every state and locality, which it cannot, NRFU Enumerator on boarding could finish on June 3. However, Update Leave would finish on June 8, so the earliest you could field NRFU enumerators to begin that operation would be the following week, June 15. This means the earliest you could finish NRFU, even with the ability to restart immediately every state, is approximately September 1, 2020. By finishing NRFU on September 1, 2020, apportionment counts could not be delivered until January 31, 2021, already after the statutory deadline. Redistricting information would be provided to states by April 30, 2021, already after the statutory deadline.
- **Based on the initial suspension of field activities in line with OMB guidance, the Census Bureau can no longer meet its statutory deadlines for delivering apportionment and redistricting data, even conducting operations under unrealistically ideal conditions.**
- **Reality of Phased Restarting:** While the Census Bureau is looking to complete field operations as quickly as possible, the reality of the phased, rolling reopening of states is that it will be difficult to expect to start Update Leave and NRFU Enumerator Onboarding in the states that are furthest behind until the middle of June. This puts the Census Bureau closer to the second week of August before NRFU can fully begin.
- **If NRFU begins in its last location by August 14, 2020, it can finish by October 31, 2020. If NRFU is completed by October 31, 2020, apportionment counts can be delivered by April 1, 2021. Redistricting information could be delivered by July 1, 2021. This would require a 90-day extension of the existing statutory deadlines for producing this data.**
- **Due to the unpredictable nature of the COVID-19 pandemic, as well as increased risks of hurricanes affecting the Southeast during NRFU, the Census Bureau in consultation with the Secretary of Commerce proposed a 120-day extension of the statutory deadline, to mitigate this risk and in order to make one single request of Congress and not need to come back for an additional extension.**
- **The Secretary of Commerce and Census Bureau leadership have been conducting considerable outreach to state and local elected officials to promote 2020 Census participation. Multiple Governors have communicated with the Census Bureau or made public statements supporting an extension, including Governor Kay Ivey of Alabama. The Secretary has been calling local elected officials for low responding districts, and has found unanimous support for an extension.**
- **Finally, all of this extension is fully covered by the Census Bureau’s already appropriated contingency budget.**

- **July 23, 2020**, “Elevator Speech” (KR43, DOC\_8021-24; *see also* July 21 version, KR36, DOC\_7323-26) (Shared with GAO, *see* DOC\_0008025-28).

Draft 7-23-2020 v4

### Elevator Speech

**High Level Message:** Curtailing census operations will result in a census that is of unacceptable quality. The Census Bureau needs the full 120 days that the Administration originally requested from Congress to have the best chance to produce high quality, usable census results in this difficult time. Shortening the time period to meet the original statutory deadlines for apportionment and redistricting data will result in a census that has fatal data quality flaws that are unacceptable for a Constitutionally-mandated national activity.

#### I. Shortening field data collection operations will diminish data quality and introduce risk.

- COVID-19 presents an unprecedented challenge to field data collection. While starting NRFU early in select ACOs is a good idea and has provided the Census Bureau a short window to work out any kinks with our systems, the Census Bureau will likely need to conduct staggered operations all over the country from July until the end of October in order to conduct the most complete NRFU possible. Areas that are now low risk for COVID will become high risk and vice versa, and the Census Bureau will need to adapt NRFU on an almost daily basis to conduct data collection using the Administration's gating criteria.
- The Census Bureau is adapting NRFU for the COVID environment, including development of systems for an outbound telephone operation, increased use of administrative records (is this last one true?), and significantly increasing selections for field positions to compensate for a much higher dropout rate from enumerator training to field deployment. These adaptations are designed to adapt NRFU operations to the COVID environment, not to shorten the operation.
- NRFU is not the only challenge; the Census Bureau is also adapting its operations for counting the group quarters population, college students and the homeless.
- All of these adapted operations are intended to produce the most accurate census possible, and cannot be rushed without diminishing data quality or introducing unacceptable risk to either operations or field staff.

- **July 27, 2020**, Presentation titled “House Committee on Oversight and Reform – Decennial Hearing Prep Materials” (KD 45; DOC\_0008148-58 at 58). As late as a July 27, 2020 hearing before the House Committee on Oversight and Reform, the Bureau's line was still that the statutory deadlines could not be reached:

### Post Processing

The current methodology that has been researched, developed and tested over the decade based on proven processes used in prior Census' and upgraded with improved current technology and processes will not enable us to meet the statutory deadlines based on projected current field completion dates.

**D. The Replan's "Truncated-Census" Directive Was Based on a Contrived Justification Incongruous with the Record, Because Officials Never Considered The Legality Of The COVID-19 Plan To Mandate A Flawed, Erroneous Census**

- April 19, 2020, "Talking Points Re: 2020 Census Extension & Shift in Field Operations" (KR11, DOC\_1687), shows that, in fact, the Census Bureau recognized that the statutory deadline must yield to accuracy and reality:

Are there constitutional concerns with delaying the delivery of the apportionment counts?

- We are dealing an unprecedented situation.
- The reality is that we can't make the deadline as of right now.
- We carefully reviewed the proposal and it went through inter-agency review, including review by the Department of Justice.
- Their view is that there is not a constitutional issue with the proposal.
- We can get back to you with more on those considerations [To my knowledge, we do not have a copy of DOJ comments].
- [NOTE – written prospectively assuming the proposed language is cleared and that any concerns raised were addressed]

- April 23, 2020, edited version of talking points, (KR12, DOC\_1973):

Are there constitutional concerns with delaying the delivery of the apportionment counts?

- The proposal complies with the Constitution and will assist the Census Bureau in fulfilling its constitutional requirement to conduct an enumeration. [This sentence is suggested by OGC.]

- April 28, 2020, call notes/agenda for "Call with Representative Jamie Raskin," (KD15, DOC\_2222-2230):

Is delaying the apportionment data constitutional?

- The proposal underwent a constitutional review, and we believe it is constitutional and that the adjusted schedule will help us fulfill the constitutional requirement of a complete and accurate census.
- The 12/31 deadline is in statute.
- In history, especially for the many of the earlier censuses, data collection and reporting the counts shifted beyond the zero year.

- August 2, 2020, "Slides" email between Bureau personnel, showing that implementation of the July 21, 2020 PM was a priority while the Bureau struggled to truncate overall Census operations. (KD104, **DOC-0013288-920**):

A team has been established and is tasked with deriving the best feasible methodology (in both terms of statistical methods and operational feasibility) to achieve the goals of directives from Secretary Ross regarding implementation of the PM.

- **No documents:** Plaintiffs also must briefly note the absence of any documents in one key respect: no documentary evidence showing any belief, or even discussion, that the Bureau was compelled to produce an inaccurate or erroneous Census, solely in order to meet any statutory deadline. There was similarly no evidence that the preexisting COVID-19 Plan would somehow become unlawful and must be halted if the statutory deadline were not extended.

Dated: September 22, 2020

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**ATTESTATION**

I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

Dated: September 22, 2020

**LATHAM & WATKINS** LLP

By: /s/ Sadik Huseny

Sadik Huseny

# **ATTACHMENT**

**April 13, 2020 – Mid-July 2020**

- In this time period, the Bureau operated under the COVID-19 Plan, planning to conduct data collecting field operations through October 31, 2020. During this time, the Bureau also noted that the statutory deadlines for delivering apportionment and redistricting information would need to be extended and assumed that would happen. *See, e.g.*, DOC\_0000222 (from April 13, 2020 according to privilege log). In late March, the Bureau began to consider “[r]equesting relief” from the Census Act’s “unforgiving deadline of December 31, 2020” to account for COVID-19-related delays. DOC\_0001175.
- The COVID-19 plan allowed the Bureau to keep the original, pre-COVID timelines for the various phases of field operations and backend processing in place. *See, e.g.*, DOC\_0000222 (table comparing original “Planned Schedule” and the COVID-19 “NEW SCHEDULE”).
- President Trump stated, at the outset, that he did not think statutory deadlines mattered vis-à-vis the Census Bureau doing its job: “I don’t know that you even have to ask [Congress]. This is called an act of God. This is called a situation that has to be. They have to give it. I think 120 days isn’t nearly enough.” PI Reply Ex. 30 at 3.
- The longer the Bureau operated under the COVID-19 Plan in this time period, the more the Bureau recognized it could not adhere to statutory deadlines. The Bureau continually noted during this timeframe how necessary it was to extend data collection to October 31, 2020 and to extend data processing out beyond the December 31, 2020 deadline to ensure the completeness and accuracy of the 2020 Census, without regard for meeting the statutory deadlines because those deadlines already could not be met.
  - In preparing talking points regarding data processing activities and timelines on April 17, the Bureau noted only that it “will produce apportionment counts by 4/30/2021 and the redistricting data by 7/31/2021,” without reference to the statutory deadlines. DOC\_0001603. The Bureau also noted that, under the COVID-19 Plan, the Bureau had already compressed the data processing schedule “as much as we can without risking significant impacts on data quality.” *Id.*
  - Preparing similar talking points on April 18 and 19 for an upcoming briefing with the House Oversight and Reform Committee to discuss the COVID-19 Plan and statutory extension (*see* DOC\_0001685, DOC\_0001605), the Bureau noted that “[t]he reality is that we can’t make the deadline as of right now.” DOC\_0001687 at 92. “Based on the shift in field operations to when they can be conducted safely, the Census Bureau will need an extension of the deadline to deliver apportionment data and redistricting data.” *Id.* at 87.
    - By this point, the Bureau had been told by the Department of Justice “that there is not a constitutional issue with the [COVID-19] proposal” with respect to delaying delivery of apportionment counts. *Id.* at 92. In similar talking points, the Bureau noted that historically, “data collection and

reporting the counts shifted beyond the zero year,” meaning past the December 31, 2020 deadline for this census, but recognizing “[t]he 12/31 deadlines is in statute.” DOC\_0002224 at 28.

- On May 8, in preparing an explanation of the operational timeline for members of Congress, Bureau staff stated that even if they “could snap restart everywhere,” which was not possible due to COVID-19 closures in various states, the Bureau “would still need a legislative fix.” DOC\_0000365; *see also* DOC\_0000364.
- Bullet points shared with Secretary Ross on May 8 (*see* DOC\_0002286) noted that “legislation extending certain deadlines is still necessary given the sequential nature of the decennial operations” because even if the Bureau could restart operations on May 8, “which it cannot,” “apportionment counts could not be delivered until January 31, 2021.” DOC\_0002287.
- On May 26, Timothy Olson, Associate Director for Field Operations at the Census Bureau, stated “[W]e have passed the point where we could even meet the current legislative requirement of December 31. We can’t do that anymore.” PI Reply Ex. 29 at 3.
- As indicated in preparation materials for a July 8, 2020 Operational Press Briefing, the Bureau was still operating under the COVID-19 Plan without regard for statutory deadlines. *See* DOC\_0006282 at 86 (noting October 31 end of NRFU and self-response), 88 (noting April 30, 2021 delivery of apportionment counts without reference to statutory deadlines).

### **Mid-July – July 28, 2020**

- “By mid-July 2020, several events occurred that led Bureau officials to believe that executive and legislative branch support for a statutory extension may be in doubt. First, the Department began asking Bureau personnel questions about speeding up field operations .... Second, the Bureau did not see continued movement in Congress to extend the statutory deadline. Third, the Office of Management and Budget (OMB) informed the Bureau that OMB was requesting supplemental appropriations from Congress for the Bureau, in part to ‘maintain timely delivery.’ Fourth, the President issued ‘Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census’ on July 21, 2020.” OIG Report at 6-7, ECF 189 at 18-19.
- On July 15, Secretary Ross made a “vague and urgent” ask to the Bureau staff for information about NRFU. DOC\_0006664. And on July 16, Jarmin sent an email to Bureau officials with the subject “2020 processing acceleration,” noting, “We’re being asked again.” DOC\_0006742.
- On July 21, 2020, President Trump issued his “Presidential Memorandum” or “Apportionment Exclusion Order” seeking to exclude “illegal aliens” from the apportionment base. That same day Bureau staff had a 5:00 p.m. meeting (*see* DOC\_0007320), after which they shared an “Elevator Speech” summary. *See*

DOC\_0007323. The “High Level Message” from the Bureau staff was that “[c]urtailing census operations will result in a census that is of unacceptable quality. The Census Bureau needs the full 120 days that the Administration originally requested from Congress to have the best chance to produce high quality, usable census results in this difficult time.” *Id.* The “Elevator Speech” warned that “[s]hortening field data collection operations will diminish data quality and introduce risk” and that “[s]hortening post processing operations will diminish data quality and introduce risk.” *Id.* The “Elevator Speech” noted that “[t]he Administration already requested 120 days and Census officials have repeatedly said we need this time.” *Id.* at 24.

- Around July 22, the Administration requested additional funding for the Census to “maintain timely delivery of quality data.” DOC\_0007335; *see also* DOC\_0007334; DOC\_0008037.
- On July 23, Bureau staff understood that they “need[ed] to sound the alarm to realities on the ground,” which showed that “it is ludicrous to think we can complete 100% of the nation’s data collection earlier than 10/31 and any thinking person who would believe we can deliver apportionment by 12/31 has either a mental deficiency or a political motivation.” DOC\_0007737. Bureau staff seemed to understand that there were outside “reasons we know about” that were “push[ing] to complete NRFU asap.” *Id.* at 38.
- Just an hour later (*see* DOC\_0007802), the “Elevator Speech” was updated to further highlight that “[s]hortening the time period to meet the original statutory deadlines for apportionment and redistricting will result in a census that has fatal data quality flaws that are unacceptable for a Constitutionally-mandated national activity.” DOC\_0008021.
- As late as July 26, 2020, Secretary Ross’s staff proposed posts for the Census website that still contained the statement, “[t]he Census Bureau is working toward the plan to complete field data collection by October 31, 2020.” DOC\_0008033.
- A July 27, 2020 draft memorandum from Fontenot to Jarmin laid out how the Bureau “did a thorough review of the post data collection activities” and found that it was not possible to shorten them. DOC\_0008085. That same day, in preparing for the upcoming House Oversight and Reform Committee hearing (*see* DOC\_0008135), Bureau staff noted the following about “Post Processing”: “The current methodology that has been researched, developed and tested over the decade based on proven processes used in prior Census’ and upgraded with improved current technology and processes will not enable us to meet the statutory deadlines based on projected current field completion dates.” DOC\_0008148 at 58.
- Senior officials attributed the Administration’s changed approach to the statutory deadline to the Presidential Memorandum. “As one senior Bureau official told [OIG], ‘I think that the Presidential Memorandum had to have played some role in -- in changing ... what I would say the [A]dministration’s policy is ... on the deadline.’ Another official shared that perspective.” OIG Report at 7, ECF 189 at 19.

**July 29, 2020**

- Internally, the Bureau was still trying to get the message out that meeting the statutory deadline had long been impossible. In another “elevator speech” (*see* DOC\_0008336), Bureau staff noted that “[a]ny effort to concatenate or eliminate processing and review steps to reduce the timeframes will significantly reduce the accuracy of the apportionment counts and the redistricting data products.” DOC\_0008337.
- But at some point that day, the Bureau was “directed” “to present a plan . . . on Monday, August 3, 2020 to accelerate the remaining operations in order to meet the statutory apportionment deadline.” Dkt. 81-1, Fontenot Decl. ¶ 81.

**July 30 – August 2, 2020**

- Senior career Bureau managers gathered “at 8:00 a.m. on Thursday, July 30 . . . to begin to formalize a plan to meet the statutory deadline.” Fontenot Decl. ¶ 81. The Bureau senior staff “divided into various teams to brainstorm how [they] might assemble the elements of this plan, and held a series of meetings from Thursday to Sunday” August 2, 2020. *Id.*
  - By July 30, Bureau staff already recognized that the September 30 date was being mandated, that the “‘acceleration’ essentially has been taking place in the last 12 hours,” and that the September 30 date was already “out” to Regional Directors in the field with “[d]iscussion [] taking place across HQ about a plan to finish data collection by 9/30.” DOC\_0011918. Thus, a decision was already made, even though “[t]he post processing side doesn’t yet know if they can do it in 3 months, and the field side has more to work out before we can commit to this.” *Id.*
- On July 30, one group of Bureau staff worked on how to truncate data processing. *See, e.g.*, DOC\_0008683. They were working with two assumptions (1) “NRFU runs in the field through 9/30/2020, with QC ending shortly (still TBD) after” and (2) “All Self Response and FLD collected data are reconciled and loaded in CDL by 9/30/20.” This group’s output warned that “[a] compressed review period creates risk for serious errors not being discovered in the data – thereby significantly decreasing data quality. Additionally, serious errors discovered in the data may not be fixed – due to lack of time to research and understand the root cause or to be run and re-review one or multiple state files.” DOC\_0008689 at 90.
  - The Bureau staff continued to question if the assumptions were correct, noting the second one “is a real challenge.” DOC\_0008699. There remained unresolved issues where things were not even confirmed to be “feasible.” *Id.*; *see also* DOC\_0009674; DOC\_0009676.
- The data processing group continued work on July 31, discussing “Data quality” throughout the day. DOC\_0008740. While one Bureau staffer’s head was “on the PM,” the July 21 Presidential Memorandum, this staffer’s message about data quality was that “[m]any of the proposed changes to field operations will have negative impacts on the

accuracy and completeness of the census” and that “[t]he changes to the schedule for data processing will have negative impacts on the accuracy of the census.” *Id.* The group revised the message over the course of the day, noting that they “should be as plainspoken as possible” and not sugarcoat things with qualifiers such as “likely” hits to accuracy. *Id.* Desires to further note the “effects on data quality” and “accuracy” continued to be voiced. DOC\_0009101.

- At the same time, another team was working on operational options and created a separate document. *See, e.g.,* DOC\_0008750; DOC\_0008779. This document repeatedly warned of compromised quality due to the suggested changes: “impacts on quality model”; “[c]ases that may have been found occupied with additional visits would be closed as vacant/delete”; “[m]ore proxy data will be collected and will be of less quality”; and “[c]ases that may have been confirmed in the field as occupied will be closed as vacant (data quality).” DOC\_0008779 at 81-88.
- In the afternoon of July 31, the two working documents were merged into one. *See, e.g.,* DOC\_0009463; DOC\_0009465. This first draft warned that “[a]ccelerating the schedule by 30 days introduces significant risk to the accuracy of the census data” and noted that “to achieve an acceptable level of accuracy, atleast [sic] 99% of Housing Units in every state must be resolved.” DOC\_0009465. It also warned that all of the backend processing changes “represent an abbreviated process that is likely to reduce the accuracy of the 2020 Census and threaten the fitness for use.” *Id.* at 69. These are just two examples of many warnings throughout this document. *See generally id.*
- The merged document was later reduced to a presentation deck over the weekend on August 1 and August 2. *See, e.g.,* DOC\_0009915; DOC\_0010066; DOC\_0010183; DOC\_0010275. Over the weekend, Bureau staff expressed the view that the slides should have something right up front “that this is what we’ve been directed to do or that we are presenting these in response to their direction/request. This is not our idea and we shouldn’t have to own it.” DOC\_0010183; *see also* DOC\_0010188; DOC\_0010194. Bureau staff wanted to make sure that the detriments to quality were also clearly messaged. *See* DOC\_0010183. And Bureau staff noted that the Replan would require sending “staff out to all locations (regardless of covid levels) by 8/6.” DOC\_0010787.
  - The documents show that the decision was Secretary Ross’s, and not the Department of Commerce more generally. Given that the Replan was being presented directly to Secretary Ross (*see* Fontenot Decl. ¶ 81), Bureau staff noted that “your” request was more accurate than “Department of Commerce request.” DOC\_0010940.
- After Jarmin met with Commerce officials, two new slides had to be added. *See* DOC\_0011918. “One would say work on the PM [July 21 Presidential Memo] and incorporating that work into the schedule continues. The other would speak to announcing the replanned operational schedule.” *Id.* Jarmin also noted that “the Director and folks from DOC will be briefing the WH [White House] on this tomorrow.” *Id.*

- By August 2 at the latest, Bureau staff had created a draft of Director Dillingham's statement to announce the Replan. *See, e.g.*, DOC\_0013800; DOC\_0013801.

**August 3, 2020**

- Fontenot presented the Replan to Secretary Ross. Fontenot Decl. ¶ 81; *see also* DOC\_0011918; DOC\_0014388; DOC\_0014389.
- Bureau Director Dillingham issued a Press Release announcing the Replan "to accelerate the completion of data collection and apportionment counts," and announcing publicly—for the first time—that the Bureau "will end field data collection by September 30, 2020." DOC\_0000933. The announcement also stated the Bureau "continues its work on meeting the requirements of Executive Order 13880" and the President's Apportionment Exclusion Order. *Id.*

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UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

NATIONAL URBAN LEAGUE et al.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., et al.,

Defendants.

CASE NO. 5:20-cv-05799-LHK

**PLAINTIFFS' REPLY IN SUPPORT OF  
 MOTION FOR TEMPORARY  
 RESTRAINING ORDER**

Date: TBD  
 Time: TBD  
 Place: Courtroom 8  
 Judge: Hon. Lucy H. Koh

**I. INTRODUCTION**

Defendants’ submissions and arguments to this Court against a TRO, and especially the Fontenot Declaration submitted last night, have confirmed that a TRO now is necessary. Mr. Fontenot makes clear that, among other things, September 11 is the date by which critical Census field operations can be deemed “completed” regardless of actual completion percentages—a looming issue for the vast majority of census regions, according to Mr. Fontenot—and that Census field workers are being terminated now. A TRO is thus the only way to ensure the status quo remains in effect until the September 17 PI Hearing. Absent a TRO, Plaintiffs and the public interest will be irreparably harmed by Defendants’ actions.

**II. THE CENSUS COUNT IS IN JEOPARDY AND THE THREAT OF IRREPARABLE INJURY IS CLEAR**

At the August 26, 2020 CMC, Defendants could not provide this Court with even basic information regarding the Bureau’s wind-down operations. Under Court order to do so, on September 2, Defendants provided a three-sentence non-explanation, including that “the Census Bureau has already begun taking steps to conclude field operations” and would do so “throughout September.” Dkt. 63. Alarmed that operations were already being shut down, but without being provided any detail, Plaintiffs felt compelled to file an immediate motion for TRO. And Defendants’ September 4 Opposition to Plaintiffs’ TRO (Dkt. No. 74)—which again provided no specifics, but just-trust-us assertions such as “Closeout for a particular area thus means that a census count in that area is complete—not that the count is being foreshortened”—has only heightened this concern. So, too, has Defendants’ approach during the September 4, 2020 TRO Hearing, where the Court was told field operations were not being shut down until reaching a 85-90% completion rate, and that all would be made clear by Mr. Fontenot’s forthcoming declaration.

Mr. Fontenot’s declaration falls far short of that promise. Most critically, it does not state that the Bureau is following the same closeout procedure that they would have followed had the COVID-19 Plan remained in place. It does not provide details about what qualifies as “complete,” or why San Diego already has a predetermined date for shutting down operations. Nor does it answer many of the other questions this Court posed to Defendants. But Mr. Fontenot’s declaration

1 does make one overarching point clear: that an immediate TRO is vital. As the Court may recall,  
 2 on July 8, Mr. Fontenot stated that the Bureau was “past the window of being able to get those  
 3 counts by those [December 31] dates.” *See* Dkt. 36 at 10:19-22. Through Mr. Fontenot, we now  
 4 have heard for the first time that for the Bureau’s nonresponse follow up (NRFU) operation, (1) as  
 5 of September 3, 2020 roughly only **11%** of CFS [Census Field Supervisor] areas nationwide were  
 6 eligible for the closeout phase, which happens when a CFS area crosses the 85% completion mark,  
 7 yet (2) **all** CFS areas will become eligible for closeout procedures on September 11, regardless of  
 8 completion rate, at which time each regional director can unilaterally decide to move the area into  
 9 closeout to meet the September 30 deadline. Dkt. 81-1, Fontenot Decl. ¶ 95. When Defendants  
 10 said that “closeout for a particular area thus means that a census count in that area is complete—  
 11 not that the count is being foreshortened,” Plaintiffs were right to worry, because as of September  
 12 11, for what may be a vast majority of CFU areas, “complete” means whatever a regional director  
 13 may decide, in light of the mandate to have all field operations cease by September 30. Deemed  
 14 “complete” precisely *because* the time, and therefore count, *has* been foreshortened.

15 Furthermore, what constitutes “complete” for a given household remains unexplained. The  
 16 internal Census Bureau document, only touched on by Mr. Fontenot enough to suggest it came  
 17 from him, *see* Fontenot Decl. ¶ 81, indicates that the Replan has increased reliance on  
 18 administrative records, and reductions in quality assurance operations during NRFU. *See* Dkt. 66-  
 19 3 at 23-24. But use of administrative records or proxies is less accurate than direct enumeration,  
 20 particularly so for immigrants and racial and ethnic minorities. *See* Dkt. 36-2, Thompson Decl. ¶¶  
 21 20-23; Dkt. 36-3, Hillygus Decl. ¶¶ 19-29. Defendants provide no explanation as to what degree  
 22 of accuracy has been sacrificed by the Replan, and Plaintiffs’ experts and the Bureau’s own  
 23 documents make clear that inaccuracies will hit immigrants and racial and ethnic minorities the  
 24 hardest.

25 Mr. Fontenot’s declaration also discusses a number of additional topics reaffirming  
 26 Plaintiffs’ allegations in the Complaint, and therefore likelihood of success on the merits, such as:

- 27 • the well-funded status of the Bureau (¶¶ 15-18);
- 28 • the extended work that went into the original Census operational plan (¶¶ 9-71);

- the necessity of the extended COVID-19 Plan (§§ 77-80);
- the fact that the Bureau was operating under the COVID-19 Plan for many months (§§ 80-81);
- the critical importance of nonprofit organizations and other actors in assisting the Bureau with implementing its timeline and counts, including some of the Plaintiffs here by name (§§ 40-42);
- the sudden truncation of everything in late July 2020, when Mr. Fontenot was forced to prepare and present a “Replan” over a 4-day period (§ 81); and
- the fact that the Replan does compromise the quality of the Census (albeit to an unidentified degree) (§ 82).

Yet perhaps most importantly for the instant motion is Mr. Fontenot’s candid assessment regarding the importance and status of Census field workers:

Lack of field staff would be a barrier to reverting to the COVID Schedule were the Court to rule later in September. The Census Bureau begins terminating staff as operations wind down, even prior to closeout. Based on progress to date, as is standard in prior censuses, we have already begun terminating some of our temporary field staff in areas that have completed their work. It is difficult to bring back field staff once we have terminated their employment. Were the Court to enjoin us tomorrow we would be able to keep more staff on board than were the Court to enjoin us on September 29, at which point we will have terminated many more employees.

Fontenot Decl. § 98. In other words, Mr. Fontenot is telling this Court that being enjoined now rather than later is necessary to keep Census field staff in place. This refreshingly candid statement is a welcome contrast to Defendants’ TRO Opposition, which argued that a TRO will force the Bureau “to replan a massive operation” and that having the Bureau “reshuffle its operations at this late juncture would indeed risk undermining the accuracy Plaintiffs allegedly seek to protect.” Dkt. 74 at 4. Mr. Fontenot also notes that “[i]f our schedule were extended, we would evaluate whether to reschedule” an important quality control operation they presumably removed because of the limited time remaining before September 30. *Id.* § 99. In his words, “[w]e would go through each and every aspect of remaining operations and determine how best to use the remaining time to maximize the accuracy and completeness of the census results.” *Id.*

Thus, according to Mr. Fontenot, if the Court enjoins Defendants immediately, they will have more employees to continue NRFU operations and could comb through operations to maximize the accuracy of the census. Moreover, any burdens or costs seem absorbable into the Bureau’s ample budget, which “represents enough funding to successfully complete the 2020

Census in virtually all possible scenarios.” *Id.* ¶ 15. And to be clear, the relief Plaintiffs are seeking is very limited. The Court would simply be ordering the Bureau not to take any actions inconsistent with the very plan Mr. Fontenot and the experts at the Bureau had themselves adopted and implemented for four months before the 4-day Replan—no more, no less—in the short time before the PI hearing.

With the threat of irreparable injury established—and no countervailing interest against a short TRO—Plaintiffs respectfully submit that maintaining the status quo is paramount.

### **III. DEFENDANTS’ THRESHOLD ARGUMENTS REGARDING JUSTICIABILITY AND STANDING FAIL**

Defendants’ TRO Opposition only briefly touches on various merits-related issues, arguing that this case is essentially not justiciable, and referring the Court to Defendants’ PI Opposition. Plaintiffs will address each of these arguments in detail in their upcoming Reply in support of their PI Motion. But to the extent they factor into the Court’s views on the merits of the TRO at issue here, Plaintiffs will address them briefly here.

*First*, Defendants argue that their decision to promulgate the Replan was compelled by the statutory deadline. As Plaintiffs will explain more fully, it was not: The statutory deadline must, as applied in these extraordinary circumstances, bow to the constitutional duty to conduct an accurate census. More important than the deadline, “the [Census] Act imposes ‘a duty to conduct a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment.’” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2568-69 (2019) (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 819-20 (1992)); *see also Utah v. Evans*, 536 U.S. 452, 478 (2002) (Census Clause of the Constitution carries with it a “strong constitutional interest in accuracy”). Moreover, even if Defendants were correct, that would not free them from the duty to comply with the APA’s standards of reasoned decisionmaking. *See Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1908 (2020) (holding that although DHS rested its decision to rescind DACA “on the conclusion that DACA is unlawful,” the rescission must still be vacated under the APA for failure to consider all relevant aspects of the problem).

1        *Second*, courts have repeatedly rejected the argument that census-related decisions are  
 2 beyond APA review. Indeed, in the citizenship question case, the Supreme Court stated that  
 3 “[t]he taking of the census is not one of those areas traditionally committed to agency discretion”  
 4 and is subject to judicial review under the APA. *Dep’t of Com. v. New York*, 139 S. Ct. 2551,  
 5 2568-69 (2019). Other courts have held similarly. *See, e.g., Carey*, 637 F.2d at 838-39;  
 6 *California v. Ross*, 362 F. Supp. 3d 727, 743-46 (N.D. Cal. 2018); *Kravitz v. Dep’t of Com.*, 336  
 7 F. Supp. 3d 545, 567 & n.14 (D. Md. 2018) (citing cases). Defendants’ promulgation of the  
 8 Replan, like the decision to add a citizenship question, is final agency action. And the political  
 9 question doctrine has been rejected in previous census-related cases as well. *See, e.g., New York*  
 10 *v. U.S. Dep’t of Com.*, 315 F. Supp. 3d 766, 790-91 (S.D.N.Y. 2018). As the *New York* court  
 11 explained,

12                courts, including the Supreme Court and the Second Circuit, have  
 13 entertained challenges to the conduct of the census for decades  
 14 and, more to the point, have consistently rejected application of the  
 15 political question doctrine in such cases. Those courts have  
 16 acknowledged that the text of the Constitution vests Congress with  
 virtually unlimited discretion in conducting the decennial actual  
 Enumeration. Yet, time and again, they have recognized that the  
 judiciary has at least some role to play in reviewing the conduct of  
 the political branches with respect to the decennial census.

17 *Id.* at 791 (internal citations to numerous cases and quotations omitted).

18        *Third*, the harms that Plaintiffs have alleged and described in their PI Motion have been  
 19 firmly upheld as conferring standing in a case like this. *See* Dkt. 36 at 28-33.

20        At bottom, it is telling that Defendants’ primary arguments here are based on threshold  
 21 issues and not the Bureau’s action itself.

#### 22 **IV. CONCLUSION**

23        For the reasons set forth above, and in their motion for a temporary restraining order, in  
 24 the motion for a preliminary injunction and all supporting documents, and at hearing before the  
 25 Court, Plaintiffs request that the Court enter a TRO in accordance with Plaintiffs’ Proposed  
 26 Order, enjoining Defendants from implementing or allowing to be implemented any actions as a  
 27 result of the shortened timelines in the Bureau’s Replan, including but not limited to winding  
 28 down or altering any Census field operations.

1 Dated: September 5, 2020

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10 **ATTESTATION**

11 I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this  
12 document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred  
13 in this filing.

14 Dated: September 5, 2020

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**Sent:** 7/31/2020 3:43:39 PM  
**To:** Albert E Fontenot (CENSUS/ADDC FED) [Albert.E.Fontenot@census.gov]  
**Subject:** U.S. Census Bureau Daily News - Friday, July 31, 2020



## Census Daily News Digest

July 31, 2020

Full Daily Digest

[Click Here](#)

## 2020 Census in the News

### Summary

NPR, Science Magazine, and New York Daily News covered Director Dillingham's testimony on Wednesday before the House Committee on Oversight and Reform's hearing regarding the 2020 Census. Axios reported on how the Census Bureau successfully revamped its digital outreach efforts for the 2020 Census, quoting Stephen Buckner, who noted that online response rates are higher than expected. Colorado Politics quoted Director Dillingham from the Census Bureau's America Counts



### 2020 Census Spotlight

Topeka, KS' CBS affiliate [WIBW-TV] highlighted comments from Reps. Roger Marshall [R-KS], Ron Estes [R-KS], Steve Watkins [R-KS] and Sharice Davids [D-KS] urging their constituents to respond to the census. Cincinnati, OH's City Beat reported that households in Covington, KY can stop by the Census Grill Out & Ice Cream Event on Friday, to complete their 2020 Census, will

story about the 27J School District in suburban Denver to highlight how responding to the census can help a locality determine whether they need to build a new school. [World Journal](#) reported on community efforts to help raise participation rates in Chinatown, New York, through the use of fortune cookies. [Vien Dong Daily](#) reported on community efforts in Orange County, California, to raise awareness of the 2020 Census by holding a parade through communities with low response rates.

### ***National & Top-Tier News***

View today's national [broadcast report](#).

#### When Does Census Counting End? Bureau Sends 'Alarming' Mixed Signals

NPR – Hansi Lo Wang, July 30

The Census Bureau is sending mixed signals about when it plans to finish efforts to count every person living in the U.S. for the 2020 census amid growing concerns among Democrats in Congress that the White House is pressuring the bureau to stop counting soon for political gain.

#### The social media census

Axios – Kim Hart, July 30

The Census Bureau has placed a big bet on digital outreach, especially on social media networks, as it enters the last big push to get people to respond to the 2020 count.

The big picture: Not only is this year the first online census count, it's also a giant experiment in how to reach people virtually in a fragmented media environment during a public health crisis that sidelined in-person field operations.

receive hot dogs, hamburgers, chips and soda to go. [Sing Tao USA](#) reported on the launch of the Mobile Questionnaire Assistance program and how it will help participation rates. [The Korea Times](#) reported on President Trump's memorandum regarding congressional apportionment. [Nguoi Viet](#) reported that the U.S. Census Bureau is sending out reminder postcards for the last time before enumerator visits begin in August.

### ***Census Bureau Spokespeople in the News***

Rochester, NY's CBS affiliate ([WROC-TV](#)) interviewed Michael Cook about the upcoming NRFU operation. [The Philadelphia Inquirer](#) noted that census takers are going door-to-door to increase response rates in Philadelphia, quoting Fernando Armstrong who said the Census Bureau will look for all ways to reach

## Census Data in the News

[As Schools Shut Down, a New Federal Program Eased Child Hunger, Study Finds](#) New York Times

[Initial jobless claims soar for second week, GDP falls by record 33 percent](#) NBC News Online

[More than 50% of US adults live in households that lost income in pandemic](#) CNN

## Regional 2020 Census News

### *Atlanta Region*

View today's [broadcast report](#) for the Atlanta Region.

[County's 2020 census response rate among lowest in the state](#)

Donalsonville News [GA] – Staff Writer, July 30

Seminole County and most counties in Georgia are lagging in the count of the 2020 U.S. Census as outreach workers struggle to reach communities in isolated areas for counting amid the Coronavirus pandemic.

[Opinion: Be counted in Census 2020, Alabama](#)

WVTM-TV [AL] – Susana Schuler, July 30

Here's something everyone can do to have a significant impact that will last 10 years if not more: Complete the 2020 Census. Participating is required by law in all 50 states and the five US Territories. The data you provide will be used over the next decade to allocate federal funds for hospitals, schools, fire, police, roads and other critical infrastructure. Lack of participation could cost Alabama one of its seven US House of Representative seats.

households who have not yet responded. Rock Island, IL's NPR affiliate (WVIK-FM) quoted Marilyn Sanders who said census takers are working to close the gap in 2020 Census response rates, highlighting the impact on federal funding that is distributed to local communities based on census data. Denver's CBS affiliate (KCNC-TV) quoted Dennis Johnson emphasizing the importance of responding to the census now so a census taker doesn't have to visit your household during NRFU. Buffalo, NY's NBC affiliate (WGRZ-TV) interviewed Jeff Behler who talked about Buffalo's self-response rate (49.9%) and noted that this is the first decennial census where people are able to respond online or by phone. [Sing Tao USA](#), [U.S. China Press](#), [Radio Korea](#), [SinoVision](#), [ZW TV](#), and an additional [Sing Tao USA](#) article quoted Census Bureau partnership specialists

Opinion: Fill out your Census, for Florida's sake

South Florida Sun Sentinel [FL] – Mark Adler, July 30

The Census gives a voice to every individual for federal funding of their communities and for fair civic representation. Florida Counts Census 2020 is a coalition of Florida nonprofit organizations, and we are alarmed at the weak self-response rates in Florida for the 2020 Census. We ask our national, state and local government officials to use your influence to help improve census response in your community.

Less than half county residents have responded to Census

The Augusta Chronicle [GA]— Carol McLeod, July 30

Jefferson County's response to Census 2020 is just less than 50 percent. The Census, which is good for 10 years, is the basis for much federal and state funding. Julianne Harper, the chair of the Census committee, said Georgia receives more than \$2,000 per person per year until the Census is taken again, which will be in 2030. Monies received from federal and state sources include funding for services like hospitals and schools.

***Chicago Region***

View today's broadcast report for the Chicago Region.

Editorial: It's critical that everyone stand up and be counted

South Bend Tribune [IN] – Editorial Board, July 31

who spoke at separate press briefings to provide operational updates and provide reminders about the importance of the 2020 Census. Other Census Bureau spokespeople were quoted in the following regions: Chicago (Chicago), Los Angeles (Hawaii), Denver (Texas, Texas), and New York (New York, New York, New York).

**Beltway & Other Online News**

**Beltway & Other Online News** Census director dodges legislators' questions about Trump memo on undocumented residents

Science Magazine – Jeffrey Mervis, July 30

Census Bureau Director Steven Dillingham spent 2 hours yesterday trying not to take sides in a fiercely partisan debate over how the 2020 U.S. census will be used to determine representation in the U.S. House of Representatives. He largely succeeded, but

The coronavirus pandemic has forced adjustments in the way the census has been conducted. But one thing hasn't changed: the importance of getting an accurate count. Even in normal times, getting people to respond to the once-in-a-decade census is a challenge. The new normal has created additional complications, as noted in a recent Tribune report. The pandemic has delayed the census, which ordinarily would be wrapped up. Instead, it has been extended through Oct. 31.

Minnesota census workers reassure the undocumented as Trump memo renews fears

MinnPost [MN]— Tiffany Bui, July 30

Before Mónica Hurtado could persuade anyone to volunteer personal information for the 2020 census, she had to be persuaded herself. And three years ago, she was a big skeptic. "We know how deep is the distrust of BIPOC [Black, Indigenous and people of color] communities of big systems," said Hurtado, the racial justice and health equity organizer at Voices for Racial Justice.

Quad City Census Response Reaches over 60%

WVIK-FM [IL] – Marianna Bacallao, July 30

While over 60% of Illinois and Iowa residents have filled out the 2020 Census, there's still thousands who have not. Marilyn Sanders from the Regional Census Bureau says she's trying to close that gap by mailing reminders and knocking on doors.

Census Workers Starting to Canvas in Peoria

WCBU-FM [IL] – Joe Deacon, July 30

U.S. Census Bureau workers have started going door-to-door in the Peoria area to boost

some Democrats worried the nation's largest statistical agency might pay a high price for his neutrality.

## **Multicultural News**

3 Months to Census Deadline... Visits Begin Next Month

The Korea Times [CA] – Seok Han Hyung, July 29

The 2020 Census response deadline is approaching and the U.S. Census Bureau will begin sending census enumerators to unresponsive households next month. This is an effort to collect accurate data which has been impeded by COVID-19 and is being now further impeded by President Trump's controversial order to exclude undocumented immigrants from being counted in redistricting. This is likely to cause more fear and avoidance to participate among the immigrant community. California has a large immigrant population, especially in the Los Angeles area, and with an already low

participation in the nationwide population count.

#### City Reveals Project to Boost Census Numbers

Lawndale News [IL] – Ashmar Mandou, July 30

The City unveiled a new civic engagement program designed to boost Census participation on Wednesday afternoon. Entitled “Boards of Change,” the project will host an array of events citywide, such as registering to vote, going to the polls, and engaging in public dialogue.

#### Mayors make bet on Census response rates

Texarkana Gazette [AR] – Karl Richter, July 30

The mayors of both Texarkanas challenged each other Tuesday to boost U.S. Census response rates, wagering a week's worth of wardrobe. Arkansas-side Mayor Allen Brown, Texas-side Mayor Bob Bruggeman and teams comprising members of the local Joint Census Committee plan to push for more Census responses from residents.

#### Still time to complete 2020 census

WSAW-TV [WI] – Tony Langfellow, July 30

If you haven't completed the 2020 U.S. Census, the Census Bureau wants to remind everyone to complete it as soon as possible. On Thursday, July 30, the Census Bureau was stationed at Wausau City Hall for its “Wausau Count” event. The event helped provide those in Wausau an opportunity to get questions answered and to complete the survey.

#### Census workers begin door knocks Thursday

WRTV-TV [IN] – Kelsey Anderson, July 30

participation rate, it is important to reach out to the immigrant population and increase their participation. California has also filed a lawsuit over this unconstitutional order. The citizenship question is not included in the survey and how the Trump administration plans to move forward with their plan are unclear since questions about immigration status are not included in the census survey. The U.S. Census Bureau emphasizes the safety and security of personal information and encourages everyone to participate in order to achieve a full and accurate count.

#### Census is Postponed to End of October, New York's Response Rate Only Over 50%, Census Takers will Visit Unresponsive Starting from 8/11

SinoVision [NY] – Ruobing Li, July 28

A telephone press conference was held on Jul. 28, and an update of the next phase of the

Just like everything else in 2020, the 2020 Census deadline was pushed back. Starting Thursday, census enumerators will be going door-to-door to reach out if you didn't mail back the form.

### ***Denver Region***

View today's [broadcast report](#) for the Denver Region.

#### Not Too Late to Avoid In-Person Census Visits

Public News Service [NE] – Eric Galatas, July 31  
Census workers soon will be heading into Nebraska neighborhoods to ensure that people who have not yet responded to the 2020 census are counted in the once-a-decade tally mandated by the U.S. Constitution. Households can avoid in-person visits and save taxpayer dollars by filling out their form online at [my2020census.gov](https://my2020census.gov).

#### 2020 Census: The Effort To Reach The FLDS Community

KUER-FM [UT]– Lexi Peery, July 30

Almost 60% of Iron County residents have completed the U.S. Census, but according to census tract data, less than a quarter of the people in the eastern part of the county have done it. And that's where many Fundamentalist Church of Jesus Christ of Latter-day Saints now live, according to Iron County Commissioner Mike Bleak.

#### Census Bureau highlights Brighton-area school district in reminder to respond to census

Colorado Politics [CO] - Michael Karlik, July 30

The U.S. Census Bureau has pointed to 27J Schools in Brighton to illustrate how census

2020 Census was announced, including the upcoming field operations of census takers in the local community. Chinese Partnership Specialist Robyn Yang emphasized the importance and urgency of responding to the 2020 Census. Ms. Yang emphasized that the 2020 Census data include citizens and non-citizens. From Aug. 11 to Oct. 31, census takers will knock on doors of households who have not completed the form. She added, "Personal information of the 2020 Census is confidential and protected by federal law. Your personal information can only be used to generate statistical data and cannot be used against you. Your census data is safe and reliable." Finally, she urged people to complete the form online, by phone or by mail. Language support includes Mandarin and Cantonese.

Census Takers Will  
Come in August. Have

response can affect planning for new K-12 facilities.

Want To Keep Census Workers From Knocking On Your Door? Fill Out The 2020 Census Now

KCNC-TV [CO] - Jennifer McRae, July 30

Census workers started going door-to-door in Denver, Arvada and other parts of the Denver metro area on Thursday. They're trying to ensure that everyone has filled out their 2020 Census.

Opinion: Want racial justice? Start with filing out your Census

Alamogordo Daily News [NM] - Suzanne McCormick, July 30

Those living in our nation's poor and minority communities have historically gone undercounted in the U.S. Census. For instance, nearly one million Black Americans went uncounted nationwide in the 2010 Census. Fortunately, there's an easy step you can take that will go a long way towards ensuring everyone in our communities gets the representation and resources they deserve.

Marshall urges Kansans to complete Census

WIBW-TV [KS] – Sarah Motter, July 30

Congressman Roger Marshall is urging Kansans to complete the 2020 Census. Congressman Roger Marshall says the Census impacts the number of funding communities receive, how they plan and how representation is determined at State and Federal Levels. "The Census is a small way for Kansans, no matter where they live, to have a big impact in their community," said U.S. Congressman Roger Marshall, M.D.

You Responded to the Questionnaire?

ZW TV [CA] – N/A, July 28

Due to the impact of the epidemic, the 2020 Census was extended through October. Census takers will also visit households who have not yet filled out the questionnaire beginning August. The U.S. Constitution stipulates a decennial census held every ten years in the country. The data will affect the distribution of federal funds, public facilities, etc. Anyone living in the United States must fill it out! Partnership Specialist April Kuan also gave operational updates and urged people to complete the 2020 Census online, by phone or by mail. She emphasized that the 2020 Census data includes citizens and non-citizens.

The Response Rate of the Chinese Community is Low, the Census Bureau Urges to Fill out the Form as Soon as Possible

Crews hit the streets in Loveland to fill gaps in 2020 census

Loveland Reporter-Herald [TX] - Max Levy, July 30

Census workers started field operations on Thursday, visiting Loveland households that had not yet shared information for the nation's 2020 census.

Deadline to fill out U.S. Census extended to October 31

Tyler Morning Telegraph [TX] – Taylor Miller, July 30

The city of Tyler has reached a 57.5% response rate to the 2020 Census, compared to 2010's 66.1% response rate. Tyler residents however are in luck, as the deadline to complete the census has been extended to October 31 due to the COVID-19 pandemic.

Dodge County sees strong census self-response rate

Fremont Tribune [NE] – Noah Johnson, July 30

Dodge County continues to put up strong self-response numbers as the 2020 Census nears the end of its self-response period. The county has experienced a 66.8% self-response rate throughout the period, according to David Drozd, research coordinator for the Center for Public Affairs Research at the University of Nebraska Omaha.

***Los Angeles Region***

View today's broadcast report for the Los Angeles Region.

Census Bureau visiting non-responding households in Whatcom County this week

Sing Tao USA [NY] –  
Jingran Zhou, July 28

The U.S. Census Bureau shared the latest 2020 Census updates to the Chinese media yesterday. The response rate of the Chinese communities in New York City, New Jersey and Boston is low. It is hoped that the Chinese community will fill out their forms as soon as possible, and the Census Bureau is currently recruiting Chinese bilingual part-time jobs in preparation for home visits beginning Aug. 11. Due to the impact of COVID-19, the 2020 Census has been delayed. The original deadline of Jul. 31 was extended to Oct. 31. The Census Bureau is making the best effort to ensure a complete count of the U.S. population. During the conference call, Lewis Liu, a partnership specialist with the Census Bureau, said that the law requires the Census Bureau to protect the census data and keep them strictly confidential. The data

The Bellingham Herald [WA] – Mack Ervin, July 30

If you haven't filled out the 2020 Census yet, you may be visited very soon.

Census takers will start doing follow-up visits with non-responding households on Thursday, July 30, according to the U.S. Census Bureau. The response rate for houses in Whatcom County is 69%, higher than the average response rate for Washington state, at 67.7%, and the country, at 62.3%.

Santa Clara County To Place Census Kiosks At COVID-19 Testing Sites

KPIX-TV [CA] – Staff Writer, July 30

Santa Clara County announced on Wednesday that it will set up Census 2020 kiosks at pop-up COVID-19 testing sites to mitigate the effects of President Donald Trump's claim that he will exclude undocumented immigrants from the counts used in congressional redistricting. The kiosks are part of a larger effort to ensure that all county residents are counted and will provide tablets for people waiting to get tested to fill out the census on the spot.

65.2% of Pasadenans Have Responded to the 2020 Census

Pasadena Now [CA] – Brian Day, June 30

With the 2020 census season more than halfway through, Pasadena officials are urging local residents to make sure they are counted in order to make sure the city and state get their fair share of tax revenue, as well as prevent the state from losing one or more congressional seats for the first time in history.

will be used to allocate the federal funding and the congressional redistricting. He urges people to complete online or by phone as soon as possible.

How the Census Bureau is reaching historically hard-to-count communities for the 2020 Census

La Raza – Staff Writer, July 28

The Census Bureau has been making extraordinary efforts to reach people who are historically undercounted such as immigrants, children under the age of five, black/African American, American Indians, and Alaska Natives.

Lag in census participation in Hispanic areas generates concerns

La Raza – Araceli Martinez Ortega, July 27

The difficulties brought by the coronavirus pandemic, coupled with the interference of the Trump administration, have caused a lag in filling out the 2020

Hawaii below national average when it comes to participation in the US Census

KITV-TV [HI] – Nicole Tam, July 30

The state of Hawaii is below the national average when it comes to participation in the U.S. Census. On Oahu, it's above average. To help raise the numbers on all islands, the Hawaii Census Team wants low-response areas better educated in-person and online. Results of the census determines how much money the state receives from \$675 billion of federal funding over the next 10 years.

### ***New York Region***

View today's broadcast report for the New York Region.

Door to door census to begin

WROC-TV [NY] – Staff Writer, July 31

Census data collectors could be coming to your home this summer. More money has been given to the census bureau to help them spread the word about the nationwide survey. Originally, data collectors would have been knocking on your door by April, but field collection was halted because of the pandemic. But now things are picking back up. At a press conference outside the Rebecca Johnson Elementary School, Galvin and Mayor Domenic J. Sarno were among officials urging all residents to be counted in the census, saying it is necessary for the city to receive its full and fair allotment of federal funds and representation.

Springfield launches door-to-door campaign to boost census response

MassLive [MA] – Peter Goonan, July 30

Census questionnaire in Latino areas across the country.

Census Week of Action kicks off to boost New Yorkers' participation in the 2020 Census

Univision [NY], July 27

The New York Census Bureau hired 35,000 people to visit households that have not completed the questionnaire, as only 53% of habitants have responded. Different activities will be held this week to motivate participation and inform the community about the process.

2020 Census: Not Too Late to Reply! U.S. Census Bureau Encourages Local Communities to Actively Respond

U.S. China Press [CO] – N/A, July 27

A telephone press conference was held on Jul. 24. An update of the next phase of the 2020 Census was announced, including upcoming field operations regarding census takers in the local community. The

City and state officials, including Secretary of the Commonwealth William F. Galvin, launched a door-to-door campaign on Thursday aimed at the “critical” task of boosting the response to the 2020 census.

‘Let me be clear: The president’s directive is unconstitutional’: Maloney denounces Trump’s memo to redraw congressional districts

New York Daily News [NY] – Michael McAuliff, July 30

The director of the U.S. Census did little to reassure Democrats that President Trump is not trying to manipulate America’s population count for political benefit. Oversight Committee Chairwoman Rep. Carolyn Maloney (D-N.Y.) called an emergency hearing on the decennial count after Trump released a memo saying he would exclude undocumented immigrants when the numbers are crunched to carve out new congressional districts.

Jersey City ramps up 2020 census efforts

WPIX-TV [NY] – Andrew Ramos, July 30

In the 2010 census, Jersey City was among the most under-counted cities in the nation. In an effort to avoid that from happening again, officials there hit the ground running Thursday, urging residents to get counted.

Buffalo has 49.9% self-response rate so far in 2020 Census

WGRZ-TV [NY] – Kelly Dudzik, July 30

The 2020 Census is going on right now, and there are many ways you can respond if you haven't already. On Thursday, 2 On Your Side's Kelly Dudzik spoke with the New York Regional Director of the U.S. Census Bureau, Jeff Behler,

Census Bureau also highlighted the response rates in the Denver region, which spans Texas, Arizona, Colorado, New Mexico, Utah, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Montana, and Wyoming. Partnership Specialist Debbie Lee emphasized the importance and urgency of responding to the 2020 Census. "Everyone knows that the 2020 census is still in progress. We must count everyone living in the United States. This includes citizens and non-citizens, infants, adults, the elderly, and everyone living in the same household. The 2020 Census responses are important for our community." Ms. Lee also said, "A very important point: If you do not respond to the 2020 Census as soon as possible, your community may miss out on annual federal funding for the next 10 years. Your response is very important. Every uncounted person will

to get answers to some common questions about the census.

Albany falls behind on 2020 census reporting, Mayor Sheehan pushes for complete count

WTEN-TV [NY] – Mikhaela Singleton, July 30

Albany is trailing behind the nation on filling out the census. There's about 100,000 people living in Albany, but around half of households haven't yet been counted in this year's census.

Reminder: respond and be counted in 2020 Census

WWNY-TV [NY] – Katie Benoit, July 30

Officials are reminding north country residents to respond and be counted in the 2020 U.S. Census. Whether it's on paper, online, or on the phone, U.S. Census officials want you to fill out the 2020 Census.

Brooklyn Trails Other Boroughs In 2020 U.S. Census Response: Data

Patch [NY] – Anna Quinn, July 30

Officials are urging Brooklynites to complete the 2020 U.S. Census as the borough trails the rest of New York City in filling out the essential form. Only 51.4 percent of households in Kings County had filled out the Census as of Thursday, compared to 58.3 percent of households across New York State and nearly 63 percent nationally, according to data from the U.S. Census Bureau.

Officials share census message for military families: 'You count here'

The Day [CT] – Kimberly Drelich, July 30

Lt. Gov. Susan Bysiewicz said census workers are beginning to knock on doors of homes that

make the community lose important funding every year." In addition to providing important field operation announcements, Ms. Lee also answered various common questions about who should be counted, census takers, and COVID-19 safety measures.

Encouraging Census Participation, 13 Million Fortune Cookies Sent to Merchants in Chinatown

World Journal [NY] – Cheng Zhang, July 27

Thirteen million fortune cookies containing a message to encourage 2020 Census

participation were sent to Chinese restaurants in Chinatown on Jul. 27. The slogan, "Don't be left out, you matter" was printed in each fortune cookie. These days, the hot food delivery industry and outdoor restaurants are stimulating the Chinese food industry and sending information to more New Yorkers throughout this industry. Within 100

have not yet responded to the census. At the end of last week, census enumerators, wearing badges, messenger bags with the census logo, and personal protective equipment started in Hartford, Tolland, Windham, and New London counties.

#### Minorities risk being underrepresented in the 2020 census

NJTV-TV [NJ] – Raven Santana, July 30

After a 4-month delay, census workers started knocking on doors to remind Jersey City residents to fill out the form that comes every 10-years so New Jersey can get its fair share of federal funding. While most people in New Jersey are filling out their census, state leaders say the people who need it the most aren't.

#### Reminder: respond and be counted in 2020 Census

WWNY-TV [NY] – Katie Benoit, July 30

Officials are reminding north country residents to respond and be counted in the 2020 U.S. Census.

Whether it's on paper, online, or on the phone, U.S. Census officials want you to fill out the 2020 Census. "There's still time to self respond. It's not too late," said Lisa Moore, assistant regional Census manager.

#### ***Philadelphia Region***

View today's broadcast report for the Philadelphia Region.

#### 2020 Census efforts are targeting Philadelphia area households that haven't responded

The Philadelphia Inquirer [PA] – Michaelle Bond, July 30

days before the end of the 2020 Census, everyone can take five minutes to receive a funding of \$1,000.

#### Caravan of Vehicles to Encourage People to Respond to 2020 Census

Vien Dong Daily [CA] – Thanh Phong, July 27

Every 10 years the Census Bureau will conduct a census count of the population in the U.S. and five U.S. territories. Due to COVID 19, 2020 Census operations and efforts to collect census data have been difficult. So local officials, community leaders, and volunteers came together to coordinate a parade to drive through the City of Garden Grove and Stanton to encourage everyone to respond to the 2020 Census. The parade started at 1 p.m. on Jun. 24 in the City of Stanton. The parade drove through the areas with low response rates with speakers with a message to encourage everyone to respond to the 2020 Census

On Saturday, a caravan of about 20 cars and some bikes will travel through North and West Philadelphia — specifically Strawberry Mansion, Mantua, and Belmont — playing music and encouraging participation in the 2020 Census in neighborhoods that the Census Bureau has historically undercounted and that are trailing in responses.

#### Richmond census response rate falls behind National average

WTVR-TV [VA] – Vernon Freeman Jr., July 30

The Virginia Census response rate has surpassed the National rate, but the numbers in the City of Richmond tell a different story. As of July 19, Richmond has a current self-response rate of 57.2%, falling below the state rate at 66.9% and the national rate of 62.1%, according to the U.S. Census Bureau.

#### Worcester County Census Participation On Target

The Dispatch [MD] - Charlene Sharpe, July 30

Local participation in the 2020 Census is expected to be on target with response rates from previous years. Officials said this week Worcester County's response rates were near what they were in 2010. Kelly Henry, coordinator of Worcester County's Complete Count Committee, said people have until Oct. 31, 2020, to complete their survey.

#### Northern Kentucky's Dari-Crest Giving Away Foot-Longs and Ice Cream to Anyone Who Fills Out the Census

City Beat [OH] – Staff Writer, July 30

A Northern Kentucky city is once again bribing its citizens to fill out their Census form. Last time, Newport was giving away \$50 gift cards

questionnaire in three languages, English, Vietnamese and Spanish. Everyone can still respond to the census online at [www.2020census.gov](http://www.2020census.gov) or call the Vietnamese helpline at 844-461-2020.

#### Trump's order affects census in California, Florida, and Texas

Azteca – Ju Carpy, July 26

If President Donald Trump succeeds in excluding undocumented immigrants living in the United States from being counted to redefine the districts of the U.S. House of Representatives, California, Florida, and Texas will end up with one less congressional seat each if not every resident is counted, according to an analysis performed by a group of experts.

#### Trump sued for memorandum excluding undocumented from census

to anyone who could prove they completed their Census. This time, the Covington Census Committee is heading to Dari-Crest Ice Cream in Latonia to give away swag bags and tasty treats to those who fill out their Census form on Friday night.

Telemundo 47 [NY] –  
Staff Writer, July 24

On Friday, a coalition of states, counties, and cities filed a federal lawsuit against President Donald Trump for his memorandum that bans undocumented immigrants from the process of drawing congressional districts.

Households will receive a final reminder to respond to the census before the rollout of census takers visits begins

La Raza – Staff Writer,  
July 24

The United States Census Bureau will send reminder postcards this week to about 34.3 million households. This will be the final reminder before census takers begin visiting homes that have not responded by mid-August. Responding now minimizes the need for census takers to visit households to collect responses in person.

Census Bureau Sending Out the Last Reminder

Nguoi Viet [DC] – N/A,  
July 24

The Census Bureau is sending the last reminder to about 34.3 million households this coming week. The letter is to remind everyone to respond to the 2020 Census to avoid a census enumerator visit and conserve everyone's time.

According to 2020 Census response rates, more than 92 households, equivalent to 62.3% have responded online, by phone or mail. The Census Bureau strongly encourages everyone to respond on the census website

[www.2020census.gov](http://www.2020census.gov), by phone offered in 12 different languages, or just submit questionnaires sent out to households in March.

2020 Census Launches  
MQA Project

Sing Tao USA [MA] –  
N/A, July 24

Between Jul. 13 and Sept. 18, more than 3,000 Census Bureau employees will begin to

visit communities with the lowest 2020 Census response rates to encourage and assist residents to complete the 2020 Census on their own. This operation, called the Mobile Questionnaire Assistance program (MQA), is different from the census takers who will visit families that have not responded. The Census Bureau will conduct a nationwide Non-Response Follow Up (NRFU) beginning Aug. 11. Before this follow-up operation, MQA is the last effort to encourage residents to complete the 2020 Census questionnaire.

2020 Census Needs  
Korean Participation

Radio Korea [PHL] –  
Hwang Lee, July 23

In a telephone media conference on Jul. 23, the U.S. Census Bureau encouraged the Korean community to participate in the 2020 Census. Partnership Specialist Jiyun Back emphasized the safety and security of participating in the 2020

Census and reminded Koreans of the importance of participation to directly impact the Korean community. Language support services in Korean can also be found for those in need. The 2020 Census deadline has been extended to Oct. 31 and census enumerators will begin visiting homes Aug. 11. They will follow all health guidelines and practice social distancing.

Census Media  
Conference Call: 10  
Minutes Can Bring  
\$18,000 Funding

Sing Tao USA [MA] –  
Qiang Li, July 23

On Jul. 23, a 2020 Census Chinese media conference call was successfully held. Officials of the Census Bureau shared the progress of the 2020 Census and Chinese media representatives shared the various measures taken to encourage the Chinese community in the eastern U.S. to participate in the 2020

Census. Huichun Chang, a Chinese Partnership Specialist of the U.S. Census Bureau, gave detailed operational updates in Mandarin during the conference call. (Note: This story was also reported by Washington Chinese Daily News in Simplified in Traditional Mandarin, Bostonese, and Southern Chinese Daily.)

Census Bureau  
Announcement: Today  
U.S. Population has  
Reached 330 Million

World Journal [CA] –  
N/A, July 23

The U.S. Census Bureau today provided population estimates and predicted that as of 8:02 a.m. Eastern Daylight Time on Jul. 23, the U.S. population has reached a new milestone: 330 million people. The clock shows a net increase of one person every 16 seconds.

The 2020 Census  
Chicago Response Rate  
54.8%; U.S. Census  
Bureau Encourages

Local Communities to Respond

Chicago Chinese Times  
[IL] – N/A, July 22

The U.S. Census Bureau held a Chinese media phone briefing on Jul. 17. At the meeting, a Chinese representative of the Census Bureau provided operational updates for the next phase of the 2020 Census and encouraged completion of the 2020 Census form online or by phone before Aug. 11. Wendy Yang, a Mandarin spokesperson with the Census Bureau, said that the U.S. federal government allocates 675 billion U.S. dollars each year according to the population. Wendy Yang also emphasized that the Census Bureau will send census takers to each community from Aug. 11 to Oct. 31 to knock on doors of households who have not yet completed the 2020 Census questionnaire. All Americans need to be counted in the census. This Chinese media

briefing was hosted by the Y&R team. Edward Chang, the managing director of TDW+Co, the official 2020 Census advertising partner of the Asian American community, said at the meeting that, "Oct. 31 will be the last day that our community can be counted. This statistic is very important, because the data will determine the funding in your community for the next 10 years and the number of public representatives. Whether the community can receive a fair distribution depends on the census data."

USA: Uncertainty after order to exclude undocumented immigrants from the 2020 Census

VOA Noticias – Celia Mendoza, July 22

The 2020 Census will determine the new redistribution of the congressional districts of the United States, which are representative of the population. However,

President Donald Trump's most recent action around those who should not be counted is creating controversy.

A public effort begins to boost 2020 Census participation

Minnesota de Hoy [MN]  
– Staff Writer, July 22

More than 3,000 U.S. Census Bureau staff members will start visiting the communities with the lowest response rates to encourage and assist people to respond to the 2020 Census.

Census takers begin home visits today in select areas that have not yet responded to the census

La Raza – Staff Writer,  
July 22

The United States Census Bureau announced that it will start to follow up with households in selected areas that have not yet responded to the 2020 Census.

## About Census Daily News Digest

Census media monitoring is a daily compendium of articles about the Census Bureau and a representative sampling of the most important and relevant news coverage and commentary. Opinions expressed above do not belong to the Census Bureau, or its staff. English translations, in summary form, have been provided for all in-language articles included in this report.

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This is an official email from the U.S. Census Bureau. If you have any questions or comments, please contact us (<http://www.census.gov/about/contact-us.html>).

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UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., et al.,

Defendants.

CASE NO. 5:20-cv-05799-LHK

**PLAINTIFFS' PRELIMINARY  
 IDENTIFICATION OF POTENTIALLY  
 KEY DOCUMENTS IN DEFENDANTS'  
 SEPTEMBER 18, 2020 PRODUCTION  
 (INTEGRATED THIRD SET)**

Date: TBD  
 Time: TBD  
 Place: Courtroom 8  
 Judge: Hon. Lucy H. Koh

On September 19, 2020, the Court issued an Order To Identify Key Documents in Defendants' September 18, 2020 Production (ECF No. 160). Below is a list of 67 documents that at this time Plaintiffs believe, given the extremely limited information available due to the Government's extensive (and Plaintiffs believe largely unfounded) privilege claims, best support Plaintiffs' case. Plaintiffs intend to address the privilege issues surrounding many of these documents, and like documents, in their privilege objections due this evening.

Plaintiffs previously identified 50 of these documents in their filings yesterday; the third set of additional documents is bolded below, but otherwise integrated in Bates-order for ease of reference. Plaintiffs review is ongoing and to Plaintiffs will expeditiously identify additional documents to the Court if identified later. Pursuant to the Court's order (*see* Dkt. 167 at 1-2), Plaintiffs provide one sentence descriptions for each key document below.

1. **DOC-0001187-90** – redacted emails discussing the implications of the census delay for redistricting compiled by the Redistricting and Voting Rights Data Office
2. **DOC-0001191-92** – entirely withheld attachment to DOC-0001187 “Implication of schedule delays on the PL.docx.”
3. **DOC-0001245-54** – entirely withheld document, titled “2020 Census – Impacts of COVID19.”
4. **DOC-0001350-51** – document titled “120 Day\_DRAFT\_VER 1\_2020.03.24 jcrj.docx”
5. **DOC-0001483-85** – document titled “v2 Operational Adjustments and Activities-Non-Public-Tentative Dates”
6. **DOC-0001603-04** – talking points on the COVID-19 Plan and the Bureau's inability to compress the timeline further without compromising accuracy
7. **DOC-0002224-28** – entirely withheld document, filename “Rep. Raskin-Memo 4.27.2020 draft1(1).docx”
8. **DOC-0006282-97** – talking points for Fontenot for July 8 press briefing describing operations under COVID-19 Plan
9. DOC-0006508-6513 – email chain describing budget reallocations and submission to Appropriations
10. DOC-0006514 – July 15 emails sending two documents that Secretary Ross (SWLR) wants to see
11. DOC-0006515-6532 – entirely withheld document, attachment to DOC-0006514 with filename “Count Imputation Overview 6.9.20 v15.pdf”

12. DOC-0006533-6550 – entirely withheld document, attachment to DOC-0006514 with filename “2. 2020 Nonresponse Followup Overview Presentation 05.18.20.pdf”
13. DOC-0006664-65 – entirely withheld email chain from July 15 with filename “Re\_SWLR ask.pdf” regarding an ask from Secretary Ross
14. DOC-0006724-6725 – entirely withheld excel file with filename “Copy of COVID-19 Replan – Benchmark to Apport.xlsx”
15. **DOC-0006742-44** – July 16 email discussing 2020 processing acceleration
16. DOC-0006745-6763 – July 16 email and attachment containing GAO’s Statement of Facts from which GAO will draft its August written status report to the Hill
17. DOC-0006843-44 – entirely withheld document with filename “2020 Decennial Census Supplemental Funding Re.docx”
18. DOC-0007065-7067 – entirely withheld document with filename “Post Data Collecxtion Narravtive.docx”
19. DOC-0007074 – entirely withheld document with filename “Schedule Impacts due to a delay.xlsx”
20. DOC-0007075-7076 – July 20-21 email chain with subject “Urgent. Call me please” exchanging documents about post collection processing
21. DOC-0007086-7089 – entirely withheld document with filename “2020 Census Timeline Update V2.docx”
22. DOC-0007092-7112 – memorandum to Jarmin from Velkoff and Abowd with subject and contents redacted, but with filename “20200327-Memo on Undocumented-FINAL.pdf”
23. DOC-0007113-7134 – entirely withheld document with filename “Building the Estimate Slides v8 1-27-20.pptx”
24. DOC-0007190-92 – entirely withheld document with filename “Post processing for dummies guide 7-21v2DMS.docx”
25. **DOC-0007323-26** – elevator speech dated July 21 explaining that “[c]urtailing census operations will result in a census that is of unacceptable quality”
26. DOC-0007552 – July 22 email sending documents “explaining to a lay person why we need every minute of the requested schedule extension”
27. DOC-0007553-54 – entirely withheld attachment to DOC-0007552 with filename “apportionment process 072120-1 Ben Page draft.docx”
28. DOC-0007555-58 – entirely withheld attachment to DOC-0007552 with filename “Elevator Speech 7-21 draft v2.docx”
29. **DOC-0007802-04** – July 23 email circulating apportionment processing document and elevator speech document attaching both
30. **DOC-0008019-20** – later version of attachment to DOC-0007802-04 from July 24 describing “Apportionment Data Processing” and noting delay caused by

- 1 COVID-19 “will require additional data processing to ensure people are
- 2 accurately counted”
- 3 31. DOC-0008021-24 – a later draft of DOC-0007555-58, marked “Draft 7-23-2020
- 4 v4” describing why “[c]urtailing census operations will result in a census that is
- 5 of unacceptable quality”
- 6 32. **DOC-0008148-58** – July 27 hearing prep materials noting that current plan for
- 7 post-processing “will not enable us to meet the statutory deadlines based on
- 8 projected current field completion dates”
- 9 33. DOC-0008337 – entirely withheld document with filename “Post Data
- 10 Collection Elevator Speech.docx”
- 11 34. DOC-0008353-60 – July 30 email chain discussing process planning meeting
- 12 where Bureau staff “brainstormed and adjusted the schedule”
- 13 35. DOC-0008364-65 – July 30 email chain about “EMERGENCY MEETING on
- 14 12\_31 Delivery of Appo” based on entry in privilege log and attaching
- 15 document with filename “Delivering Apportionment by 12-31-20 Backend
- 16 Proc.docx”
- 17 36. DOC-0008366 – entirely withheld attachment to DOC-0008364-65 with
- 18 filename “Delivering Apportionment by 12-31-20 Backend Proc.docx”
- 19 37. DOC-0008367-89 – July 30 email chains regarding talking points for the
- 20 Bureau into the next week, with an email from Olson hinting that something is
- 21 coming in the next few days but Bureau has not told field offices yet
- 22 38. DOC-0008623-24 – July 30 Census High-level Summary Status with a redacted
- 23 portion describing issues for which “Census teams are re-planning operational
- 24 schedules to address”
- 25 39. DOC-0008683-88 – July 30 email chain discussing process planning meeting
- 26 where Bureau staff “brainstormed and adjusted the schedule” and participants
- 27 are adding to an attachment with filename “Delivering Apportionment by 12-
- 28 31-20 Backed Proc\_jwr\_DDB-KB\_RWK.docx,” a document that includes

- 1 45. DOC-0009226-31 – July 31 email chain where participants are adding
- 2 comments to the already-consolidated document with filename “Delivering
- 3 Apportionment by 12-31-20 Backend Process (consolidated) LoPresti KB.docx”
- 4 46. DOC-0009463-64 – July 31 email combining various documents from Bureau
- 5 operations and creating and attaching a document with filename “Options to
- 6 meet September 30 v9.docx”
- 7 47. DOC-0009465-71 – entirely withheld attachment to DOC-0009463-64 with
- 8 filename “Options to meet September 30 v9.docx”
- 9 48. DOC-0009533 – entirely withheld document with filename “Data processing
- 10 quality statement.docx”
- 11 49. DOC-0009971-83 – July 31 email chain with subject “Data quality”
- 12 50. DOC-0010044-48 – July 31 email discussing talking points and Q/A with
- 13 reporters during press briefings
- 14 51. DOC-0010061-65 – July 31 email discussing talking points and Q/A with
- 15 reporters during press briefings
- 16 52. DOC-0010066-67 – July 31 email chain indicated the Bureau has finalized the
- 17 Replan
- 18 53. DOC-0010089-101 – July 31 email chain with subject “Data quality”
- 19 54. DOC-0010143-56 – July 31 email chain with subject “Data quality”
- 20 55. DOC-0010275-88 – August 1 draft of the August 3 presentation to Secretary
- 21 Ross noting the “significant risk to the accuracy of the census data” and that “at
- 22 least 99% of Housing Units” need to be resolved “to achieve an acceptable level
- 23 of accuracy”
- 24 56. DOC-0010635-41 – August 1 email chain discussing and making edits to the
- 25 August 3 presentation slides
- 26 57. DOC-0010693-99 – August 1 email chain discussing and making edits to the
- 27 August 3 presentation slides
- 28 58. **DOC-0010787-98** – August 1 email chain discussing and making edits to the
- August 3 presentation slides noting need to send staff to locations “regardless of
- covid levels”
59. DOC-0010988-11003 – August 1 email chain discussing and making edits to
- the August 3 presentation slides
60. DOC-0011918-82 – according to privilege log, emails from Tim Olson’s binder
- discussing Director Dillingham’s forthcoming August 3 statement, changes to
- the August 3 presentation slides (including addition of a Presidential Memo
- slide), and setting the August 3 meeting
61. DOC-0012498 – August 2 email sending current set of August 3 presentation to
- Secretary Ross
62. DOC-0013150 – August 2 email sending meeting information and Jarmin
- sending August 3 presentation to Director Dillingham

63. **DOC-0013288-92** – August 2 email chain entitled “Fwd\_Slides(1)” discussing how to “achieve the goals of directives from Secretary Ross regarding implementation of the PM.”
64. **DOC-0013800** – August 2 email sending draft statement for Director Dillingham
65. **DOC-0013801-02** – entirely withheld attachment to DOC-0013800 with filename “FOR REVIEW- Draft Director Dillingham Statement v 5 clean.docx”
66. DOC-0014765 – August 3 email sending revised draft statement to Director Dillingham
67. DOC-0014766-67 – entirely withheld attachment to DOC-0014765 with filename “FOR REVIEW- Draft Director Dillingham Stateme.docx”

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**ATTESTATION**

I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR STAY OR  
PRELIMINARY INJUNCTION**

Hearing Date: September 17, 2020  
Time: 1:30 p.m.  
Judge: Hon. Lucy H. Koh

## TABLE OF CONTENTS

INTRODUCTION .....	1
BACKGROUND .....	3
I. CONSTITUTIONAL AND STATUTORY AUTHORITY FOR THE CENSUS .....	3
II. 2020 CENSUS PROCEDURES .....	3
ARGUMENT .....	4
I. PLAINTIFFS’ CLAIMS ARE BARRED BY THE POLITICAL QUESTION DOCTRINE .....	4
II. PLAINTIFFS LACK STANDING .....	9
A. Plaintiffs’ Alleged Injuries are Not Redressable by a Court Order .....	9
B. Plaintiffs’ Alleged Injuries are Not Traceable to Defendants’ Actions .....	11
C. Plaintiffs’ Injuries are too Speculative to Confer Standing .....	12
III. PLAINTIFFS FAIL TO ESTABLISH A COGNIZABLE APA CLAIM .....	16
A. The Replan is not final agency action and therefore is not reviewable. ....	16
1. The Replan is not “agency action” under the APA .....	17
2. The Replan is not “final agency action” subject to judicial review .....	19
B. The Bureau’s Choices Regarding How to Meet the Statutory Deadline are Committed to Agency Discretion, and are Therefore Unreviewable .....	21
C. Even Assuming the Replan Were Reviewable, and That Meaningful Standards for Such Review Could Somehow be Ascertained, the Replan Does Not Violate the APA .....	23
IV. PLAINTIFFS’ ENUMERATION CLAUSE ARGUMENTS LACK MERIT .....	28
V. PLAINTIFFS FAIL TO SATISFY THE OTHER INJUNCTION FACTORS .....	31
A. Plaintiffs Cannot Establish Any Imminent and Irreparable Harm .....	32
B. The Remaining Factors Weigh Against an Injunction .....	34
CONCLUSION .....	35

## TABLE OF AUTHORITIES

### CASES

<i>Alaska Dep't of Env't'l Conservation v. EPA,</i> 540 U.S. 461 (2004).....	23
<i>Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris,</i> 729 F.3d 937 (9th Cir. 2013) .....	31
<i>Baker v. Carr,</i> 369 U.S. 186 (1962).....	4
<i>Bennett v. Spear,</i> 520 U.S. 154 (1997).....	16
<i>Biodiversity Legal Found. v. Badgley,</i> 309 F.3d 1166 (9th Cir. 2002) .....	9
<i>California v. Ross,</i> 362 F. Supp. 3d 727 (N.D. Cal. 2018) .....	22
<i>Carey v. Klutznick,</i> 637 F.2d 834 (2d Cir. 1980).....	9
<i>Carey v. Klutznick,</i> 508 F. Supp. 420 (S.D.N.Y. 1980).....	9
<i>Carey v. Klutznick,</i> 653 F.2d 732 (2d Cir. 1981).....	10, 29
<i>Citizens to Preserve Overton Park, Inc. v. Volpe,</i> 401 U.S. 402 (1971).....	21
<i>City of New York v. U.S. Dep't of Commerce,</i> 34 F.3d 1114 (2d Cir. 1994), <i>re 'v sub nom.,</i> <i>Wisconsin v. City of New York,</i> 517 U.S. 1 (1996) .....	29
<i>City of Phila. v. Klutznick,</i> 503 F. Supp. 663 (E.D. Pa. 1980) .....	21
<i>City of Willacoochee v. Baldrige,</i> 556 F. Supp. 551 (S.D. Ga. 1983).....	21
<i>Clapper v. Amnesty Int'l USA,</i> 568 U.S. 398 (2013).....	8, 12, 13, 14

1	<i>Confederacion de la Raza Unida v. Brown,</i>	
2	345 F. Supp. 909 (N.D. Cal. 1972) .....	19
3	<i>Dep't of Commerce v. New York,</i>	
4	139 S. Ct. 2551 (2019).....	<i>passim</i>
5	<i>Dep't of Commerce v. U.S. House of Representatives,</i>	
6	525 U.S. 316 (1999).....	6, 14, 28
7	<i>Department of Homeland Security v. Regents of the University of California,</i>	
8	140 S. Ct. 1891 (2020).....	24, 25
9	<i>Dist. of Columbia v. U.S. Dep't of Commerce,</i>	
10	789 F. Supp. 1179 (1992) .....	22
11	<i>Encino Motorcars, LLC v. Navarro,</i>	
12	136 S. Ct. 2117 (2016).....	23
13	<i>Fed'n for Am. Immigration Reform v. Klutznick,</i>	
14	486 F. Supp. 564 (D.D.C. 1980).....	13
15	<i>Forest Guardians v. Babbitt,</i>	
16	174 F.3d 1178 (10th Cir. 1999) .....	9
17	<i>Franklin v. Massachusetts,</i>	
18	505 U.S. 788 (1992).....	<i>passim</i>
19	<i>Gaffney v. Cummings,</i>	
20	412 U.S. 735 (1973).....	14, 29
21	<i>Garcia v. Google, Inc.,</i>	
22	786 F.3d 733 (9th Cir. 2015) .....	31
23	<i>Gonzalez v. Gorsuch,</i>	
24	688 F.2d 1263 (9th Cir. 1982) .....	9
25	<i>Grand River Enter. Six Nations, Ltd. v. Pryor,</i>	
26	481 F.3d 60 (2d Cir. 2007).....	31, 32
27	<i>Heckler v. Chaney,</i>	
28	470 U.S. 821 (1985).....	20
	<i>Humane Soc. of U.S. v. Locke,</i>	
	626 F.3d 1040 (9th Cir. 2010) .....	23
	<i>Indep. Min. Co. v. Babbitt,</i>	
	105 F.3d 502 (9th Cir. 1997) .....	18

1	<i>Japan Whaling Ass'n v. Am. Cetacean Soc.</i> ,	
2	478 U.S. 221 (1986).....	4, 6
3	<i>Karcher v. Daggett</i> ,	
4	462 U.S. 725 (1983).....	7, 14
5	<i>Klutznick v. Carey</i> ,	
6	449 U.S. 1068 (1980).....	10, 26
7	<i>Lujan v. Defs. of Wildlife</i> ,	
8	504 U.S. 555 (1992).....	8, 10, 11
9	<i>Lujan v. Nat'l Wildlife Fed'n</i> ,	
10	497 U.S. 871 (1990).....	16
11	<i>Mazurek v. Armstrong</i> ,	
12	520 U.S. 968 (1997).....	31, 32
13	<i>McConnell v. FEC</i> ,	
14	540 U.S. 93 (2003), <i>overruled on other grounds by</i>	
15	<i>Citizens United v. FEC</i> , 558 U.S. 310 (2010).....	9
16	<i>Munaf v. Geren</i> ,	
17	553 U.S. 674 (2008).....	30
18	<i>NAACP v. Bureau of Census</i> ,	
19	945 F.3d 183 (4th Cir. 2019) .....	<i>passim</i>
20	<i>NAACP v. Bureau of Census</i> ,	
21	--- F. Supp. 3d ---, 2020 WL 1890531 (D. Md. Apr. 16, 2020).....	30
22	<i>NAACP v. Bureau of the Census</i> ,	
23	399 F. Supp. 3d 406 (D. Md. 2019),	
24	<i>aff'd in part rev'd on other grounds</i> , 945 F.3d 183 (4th Cir. 2019).....	5, 17, 18
25	<i>NAACP v. Bureau of the Census</i> ,	
26	382 F. Supp. 3d 349 (D. Md. 2019) .....	22
27	<i>Nat'l Law Ctr. on Homelessness &amp; Poverty v. Brown</i> ,	
28	CIV. A. 92-2257-LFO, 1994 WL 521334 (D.D.C. Sept. 15, 1994).....	19
	<i>Nat'l Law Ctr. on Homelessness &amp; Poverty v. Kantor</i> ,	
	91 F.3d 178 (D.C. Cir. 1996).....	10, 12
	<i>Nken v. Holder</i> ,	
	556 U.S. 418 (2009).....	32, 33

1	<i>NLRB v. Noel Canning</i> ,	
2	573 U.S. 513 (2014).....	7
3	<i>Norton v. S. Utah Wilderness, All.</i> ,	
4	542 U.S. 55 (2004).....	16, 17
5	<i>Oregon Nat. Desert Ass’n v. U.S. Forest Serv.</i> ,	
6	465 F.3d 977 (9th Cir. 2006) .....	20
7	<i>Pacific Nw. Generating Co-op. v. Bonneville Power Admin.</i> ,	
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9	<i>Park Vill. Apartment Tenants Ass’n v. Mortimer Howard Trust</i> ,	
10	636 F.3d 1150 (9th Cir. 2011) .....	31
11	<i>Raines v. Byrd</i> ,	
12	521 U.S. 811 (1997).....	8
13	<i>Ridge v. Verity</i> ,	
14	715 F. Supp. 1308 (W.D. Pa. 1989).....	12
15	<i>Rucho v. Common Cause</i> ,	
16	139 S. Ct. 2484 (2019).....	4
17	<i>Safe Air for Everyone v. Meyer</i> ,	
18	373 F.3d 1035 (9th Cir. 2004) .....	8
19	<i>San Luis Unit Food Producers v. United States</i> ,	
20	709 F.3d 798 (9th Cir. 2013) .....	16
21	<i>Sharrow v. Brown</i> ,	
22	447 F.2d 94 (2d Cir. 1971).....	13
23	<i>Simon v. E. Ky. Welfare Rights Org.</i> ,	
24	426 U.S. 26 (1976).....	11
25	<i>Spokeo, Inc. v. Robins</i> ,	
26	136 S. Ct. 1540 (2016).....	11
27	<i>State v. U.S. Dep’t of Commerce</i> ,	
28	315 F. Supp. 3d 766 (S.D.N.Y. 2018).....	22
	<i>Summers v. Earth Island Inst.</i> ,	
	555 U.S. 488 (2009).....	11
	<i>Tucker v. U.S. Dep’t of Commerce</i> ,	
	958 F.2d 1411 (7th Cir. 1992) .....	7, 21

1	<i>U.S. Dep’t of Commerce v. Montana</i> ,	
2	503 U.S. 442 (1992).....	6, 12, 28
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4	495 U.S. 385 (1990).....	4
5	<i>Utah v. Evans</i> ,	
6	536 U.S. 452 (2002).....	5, 14, 28, 29
7	<i>Vieth v. Jubelirer</i> ,	
8	541 U.S. 267 (2004).....	4
9	<i>Warth v. Seldin</i> ,	
10	422 U.S. 490 (1975).....	9
11	<i>Wesberry v. Sanders</i> ,	
12	376 U.S. 1 (1964).....	6
13	<i>Wild Fish Conservancy v. Jewell</i> ,	
14	730 F.3d 791 (9th Cir. 2013) .....	16, 20
15	<i>Winter v. Nat. Res. Def. Council, Inc.</i> ,	
16	555 U.S. 7 (2008).....	30, 31, 32
17	<i>Wisconsin v. City of New York</i> ,	
18	517 U.S. 1 (1996).....	<i>passim</i>
19	<i>Zivotofsky ex rel. Zivotofsky v. Clinton</i> ,	
20	566 U.S. 189 (2012).....	4

## STATUTES

21	2 U.S.C. § 2a.....	3, 5, 12, 26
22	5 U.S.C. § 551.....	16
23	5 U.S.C. § 701.....	20
24	13 U.S.C. § 2.....	3
25	13 U.S.C. § 4.....	3
26	13 U.S.C. § 6.....	21
27	13 U.S.C. § 141.....	<i>passim</i>
28	49 U.S.C. § 5305.....	12

1	Consolidated Appropriations Act, 2019,	
2	Pub. L. No. 116-6, 133 Stat. 13 .....	5
3	Census Act of 1790,	
4	1 Stat. 101 .....	5
5	An Act Supplementary to the Act Entitled “An Act Providing for the Taking of the Seventh and	
6	Subsequent Censuses,”	
7	9 Stat. 445 .....	5
8	<b>REGULATIONS</b>	
9	85 Fed. Reg. 44,679 (July 23, 2020).....	34
10	<b>UNITED STATES CONSTITUTION</b>	
11	U.S. Const. art. 1 § 2 .....	<i>passim</i>
12	<b>OTHER AUTHORITIES</b>	
13	13A Charles Alan Wright et al., <i>Federal Practice &amp; Procedure</i> (3d ed. Apr. 2018 update).....	8, 9
14	H.R. 6800, 116th Cong. (2020) .....	3, 6, 8
15	H.R. 7034, 116th Cong. (2020).....	3, 6, 8
16	H.R. 7974, 116th Cong. (2020).....	3, 6, 8
17	S. 4048, 116th Cong. (2020).....	3, 6,

## INTRODUCTION

The Constitution “vests Congress with virtually unlimited discretion in conducting the decennial” census. *Wisconsin v. City of New York*, 517 U.S. 1, 19 (1996). Exercising that discretion, Congress has promulgated a statute that entrusts the Secretary of Commerce with “tak[ing] a decennial census of population . . . in such form and content as he may determine”—but *requires* that the Secretary report results to the President before the census year’s end. 13 U.S.C. § 141(a), (b). At the Commerce Department and Census Bureau’s request, Congress has considered extending the December 31, 2020 deadline in light of the disruptions caused by the COVID-19 pandemic. But Congress has not yet acted. Accordingly, the Secretary, with the Bureau, have developed a plan to meet the end-of-year deadline. And, as senior Bureau officials have assured Congress and the public, the Bureau is confident that, following this plan, it can deliver a full and complete census within the allotted time. Clearly, Plaintiffs harbor concerns about the Bureau’s plan and the timeline, but they should take those concerns to the branch of Government in position to address them: Congress. Contrary to what Plaintiffs may think, the Bureau is not free to disregard a statutory deadline in pursuit of some ethereal notion of a better census. And this Court—a court of limited jurisdiction—should not set aside the Bureau’s entire operational plan for completing the census, a 15.6-billion dollar operation years in the making, on the basis of Plaintiffs’ frustration with Congress’ processes.

Decisions about how and when to complete a census turn on policy choices that are unreviewable political questions. The manner and means of conducting the census is constitutionally committed to Congress, and neither the Constitution nor any other statute sets forth a judicially discoverable or manageable standard for evaluating the Bureau’s complex operational plans for a decennial census. Article III tribunals are simply not equipped to weigh and evaluate the myriad decisions and complicated tradeoffs that define how a census is to be performed—in the midst of a pandemic or otherwise.

Separately, even if disputes about the timing and operation of a census were theoretically justiciable, Plaintiffs’ claims are not cognizable here, because they fail to establish standing. Specifically, because all of their concerns arise from the statutory timeline under which the Bureau

1 must complete the census—a statutory timeline they do not challenge—Plaintiffs fail to establish  
2 concrete, particularized injury that is traceable to the Bureau’s actions, or redressable by a  
3 favorable Court ruling. Absent an extension of the deadline in § 141(b), the Bureau has no choice  
4 but to meet that statutory requirement.

5 Beyond these fatal threshold defects, Plaintiffs’ efforts to shoehorn their policy  
6 disagreements into an Administrative Procedure Act (“APA”) framework fail as a legal matter.  
7 The APA permits review only of final agency action that is circumscribed and discrete; as other  
8 courts have recognized, the Bureau’s general operational plans do not fit that framework. Plaintiffs  
9 thus cannot use the APA to redirect a massive, nationwide effort of enormous complexity. Nor  
10 can Plaintiffs repackage what amounts to a lobbying brief as a legal challenge under the  
11 Enumeration Clause. The Enumeration Clause requires only that the population must be  
12 determined through a person-by-person headcount, rather than through estimates or conjecture.  
13 Despite Plaintiffs’ suggestions otherwise, that Clause does not speak in any way to the degree of  
14 accuracy required in the enumeration that is performed.

15 Separate from the unlikelihood of success on their claims, Plaintiffs also fail to establish  
16 the other elements required for an injunction: irreparable injury or that the harms weigh in their  
17 favor. The balance of harms and public interest instead weigh squarely against forcing the Census  
18 Bureau to replan a massive operation that is designed and run by scientists and statisticians to  
19 achieve the best possible results within Congress’s established parameters. Compelling the Bureau  
20 by mandatory injunction—disfavored relief under any scenario—to reshuffle its operations at this  
21 late juncture would risk undermining the Bureau’s ability to meet its statutory deadline. Plaintiffs  
22 cite no authority for the proposition that a litigant can successfully petition a court to compel a  
23 federal agency to violate its statutory obligations, and so far as Defendants are aware there is none.  
24 Simply put, Plaintiffs are not entitled to an injunction requiring the Bureau to flout the law.

## **BACKGROUND**

### **I. CONSTITUTIONAL AND STATUTORY AUTHORITY FOR THE CENSUS**

The Constitution’s Enumeration Clause requires that an “actual Enumeration” of the population be conducted every ten years and vests Congress with the authority to conduct that census “in such Manner as they shall by Law direct.” U.S. Const. art. I, § 2, cl. 3. Through the Census Act, Congress has delegated to the Secretary of Commerce the responsibility to conduct the decennial census “in such form and content as he may determine.” 13 U.S.C. § 141(a). The Census Bureau assists the Secretary in the performance of this responsibility. *See id.* §§ 2, 4.

Notably, however, Congress has required the Secretary to provide in a report to the President the “tabulation of total population by States . . . within 9 months after the census date,” defined as April 1 of the census year. 13 U.S.C. § 141(b). That is, the Secretary must provide the final census report to the President by December 31 of this year. After receiving the Secretary’s report, the President, under a different statutory provision, calculates “the number of Representatives to which each State would be entitled,” and transmits the resulting information to Congress. 2 U.S.C. § 2a(a).

### **II. 2020 CENSUS PROCEDURES**

As detailed in the declaration submitted by Albert E. Fontenot, Jr., Associate Director for Decennial Census Programs at the Census Bureau (“Fontenot Decl.”), the operational plan for the 2020 Census is a massive undertaking. It entails a budget estimate of \$15.6 billion, Fontenot Decl. ¶ 15, and is tailored to enumerate all persons, and contains components designed to reach hard-to-count populations, *id.* ¶ 12. The latest version of the Bureau’s operational plan is Version 4.0, which was issued in December 2018. *See* ECF No. 37-5.

In March 2020, as the gravity of the COVID-19 pandemic emerged, it became clear to the Census Bureau that it would need to change its operational plans for the census. Fontenot Decl. ¶¶ 77-78. The Bureau accordingly undertook an effort to re-plan operations contingent on obtaining an extension of § 141(b)’s deadline until April 30, 2021. *Id.* ¶ 79. The Secretary and Bureau Director announced, on April 13, 2020, a new schedule for the census and that they were formally requesting scheduling relief from Congress. *Id.* ¶ 80.

Once it became apparent that Congress was not likely to grant an extension, the Census Bureau in late July began replanning census operations so that the end-of-year deadline could be met. *Id.* ¶ 81. The Secretary further directed the Bureau to present a plan for how it could accelerate operations to meet the deadline. *Id.* Senior managers in the Bureau worked to consider how it could effectively replan operations, formalized that plan, and presented that plan to the Secretary on August 3, 2020. *Id.* The Secretary approved the Bureau’s proposal, and Director Dillingham announced the adjusted plan, referred to as the “Replan,” later that afternoon. *Id.* Since that time the Bureau has been working to conduct the census under the Replan, mindful of its need to meet the statutory deadline. *Id.* ¶ 91. In designing the Replan, the Bureau “evaluated the risks and quality implications of each suggested time saving measure and selected those that [it] believed presented the best combination of changes to allow [it] to meet the statutory deadline without compromising quality to an undue degree.” *Id.* ¶ 82. The Bureau “is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline following the Replan Schedule.” *Id.* ¶ 91.

Since the onset of the COVID-19 pandemic, legislation has been introduced to modify the § 141(b) deadline for the 2020 Census. *See* H.R. 6800, 116th Cong. § 70201(a) (2020) (extending deadline for 2020 Census under § 141(b) from December 31, 2020 to April 30, 2021); H.R. 7974, 116th Cong., § 2 (2020) (same); H.R. 7034, 116th Cong., § 2 (2020) (same); S. 4048, 116th Cong., § 2 (2020) (same). None of those proposals has been enacted into law.

## ARGUMENT

### **I. PLAINTIFFS’ CLAIMS ARE BARRED BY THE POLITICAL QUESTION DOCTRINE**

All of the harms Plaintiffs claim in this case rest on their view that the Bureau’s efforts to comply with the statutory deadline in § 141 will lead to an incomplete or inaccurate census. *See, e.g.,* Compl. ¶¶ 1, 4, 245, 264, 271;<sup>1</sup> Mot. for Stay & Prelim. Inj., 26-32, 35, ECF No. 36 (“Mot.”)

<sup>1</sup> Although Plaintiffs have amended their Complaint by adding new parties since filing their preliminary-injunction motion, *see* ECF No. 61, Plaintiffs have stipulated that they “will not rely on the New Parties, including any allegations of harm or injury to the New Parties, in briefing or at the hearing on the [m]otion,” ECF No. 60. Accordingly, for simplicity, Defendants rely on Plaintiffs’ initial Complaint for purposes of this response and argument.

26-32, 35 (arguing that the count will be inaccurate and asking for an injunction that would extend the census schedule). The Court need not—and indeed cannot—entertain the merits of this view. Determining what timeline will ensure sufficient accuracy for the census is an inherently political question committed to the other branches, and not appropriate for judicial review.

“The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch.” *Japan Whaling Ass’n v. Am. Cetacean Soc’y*, 478 U.S. 221, 230 (1986). The doctrine is “primarily a function of the separation of powers,” *Baker v. Carr*, 369 U.S. 186, 210 (1962), and “is designed to restrain the Judiciary from inappropriate interference in the business of the other branches of Government,” *United States v. Munoz-Flores*, 495 U.S. 385, 394 (1990). The Supreme Court has identified several defining hallmarks of non-justiciable political questions. *Id.* Foremost among these are “[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving” the dispute. *Vieth v. Jubelirer*, 541 U.S. 267, 277-78 (2004) (internal citation omitted); *see also Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012); *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019) (finding partisan gerrymandering not justiciable for lack of discernible and administrable standards to apply). When it comes to evaluating the timing and design of census operations, these two factors are inseparable.

As a textual matter, the Enumeration Clause grants Congress the authority to conduct the required “actual Enumeration” “in such Manner as they shall by Law direct.” U.S. Const. art. I, § 2, cl. 3. This language is remarkable in its breadth. As the Supreme Court has recognized, it “vests Congress with virtually unlimited discretion in conducting the decennial ‘actual Enumeration.’” *Wisconsin*, 517 U.S. at 19; *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2567 (2019) (Congress has “broad authority over the census, as informed by long and consistent historical practice”); *see also NAACP v. Bureau of the Census*, 399 F. Supp. 3d 406, 418 (D. Md. 2019) (“[T]he Founders clearly intended Congress to have paramount authority in both the design and execution of the census”) *aff’d in part, rev’d on other grounds*, 945 F.3d 183 (4th Cir. 2019).

1 Congress has historically exercised this authority in a variety of ways from the earliest days of our  
 2 Republic. *See, e.g.*, Census Act of 1790, 1 Stat. 101 (1790) (directing that the census would  
 3 commence on August 2, 1790 and end on May 2, 1791); An Act Supplementary to the Act Entitled  
 4 “An Act Providing for the Taking of the Seventh and Subsequent Censuses,” 9 Stat. 445 (1850).  
 5 And while the Census Act now delegates many aspects of Congress’s “broad authority over the  
 6 census to the Secretary,” *Wisconsin*, 517 U.S. at 5, 19, Congress continues to exercise ultimate  
 7 control over the census by, among other things, setting the level of funding available and the date  
 8 by which the Secretary must report the results, so that it can reapportion House seats and provide  
 9 redistricting information to the States. *See, e.g.*, 13 U.S.C. § 141(b); 2 U.S.C. § 2a; *see also*  
 10 Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, 133 Stat. 13 (appropriating \$3.5 billion  
 11 to the Census Bureau for use through 2021). Congress’s deliberations over whether to extend the  
 12 § 141(b) deadline in light of the COVID-19 pandemic, confirm that Congress knows that the power  
 13 to set a census deadline is its alone to wield. *See* H.R. 6800, § 70201(a) (extending deadline for  
 14 2020 Census under § 141(b) from December 31, 2020 to April 30, 2021); H.R. 7974, § 2 (same);  
 15 H.R. 7034, § 2 (same); S. 4048, § 2 (same).<sup>2</sup>

16 How is a Court to evaluate whether Congress’s decisions about time or funding limits are  
 17 appropriate? There is no evident standard. In prior cases involving the census, courts entertained  
 18 challenges to discrete statistical methodologies or data-collection decisions made by the Secretary.  
 19 *See, e.g., New York*, 139 S. Ct. 2551 (evaluating re-instatement of citizenship question on census  
 20 form); *Utah v. Evans*, 536 U.S. 452, 452 (2002) (holding that “hot-deck imputation”—a process  
 21 which imputes characteristics of households based upon the characteristics of neighbors—does not  
 22 violate the Enumeration Clause); *Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S.  
 23 316 (1999) (holding that statistical sampling violates the Census Act and declining to reach the

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24 <sup>2</sup> As the Chairwoman of the House Committee on Oversight and Reform stated in a letter  
 25 just this week, “it is more urgent than ever that the Senate act.” *See* Letter from Carolyn B.  
 26 Maloney to Mitch McConnell et al. (Sept. 2, 2020), available at  
 27 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2020-09-02.CBM%20to%20%20House%20and%20Senate%20Leadership%20re%20Census.pdf>. That  
 28 letter conspicuously did not chide the Bureau, but rather spurred Congress to take action:  
 “Congress has a solemn responsibility under the Constitution to help ensure an accurate and  
 complete count, and there is bipartisan support in the Senate for extending these deadlines.” *Id.*

Enumeration Clause claim); *Wisconsin v. City of New York*, 517 U.S. 1 (1996) (holding that Secretary did not violate Enumeration Clause by declining to correct a census undercount with data from a post-enumeration survey); *Franklin v. Massachusetts*, 505 U.S. 788 (1992) (confirming that allocating federal employees serving overseas to their home States did not violate Enumeration Clause). Each of those cases involved a discrete policy choice that could, at least, be compared against an alternative: *e.g.*, to omit a citizenship question, to decline the use of statistical sampling or adjustment, to allocate overseas personnel to their home states. And the legality of most of those policy choices could be resolved by looking to whether this or that statistical method constituted a person-by-person enumeration or an impermissible form of statistical estimate.<sup>3</sup> *See, e.g., House of Representatives*, 525 U.S. at 343-44; *Franklin*, 505 U.S. at 806. Not so here.

Like funding decisions, a reporting deadline necessarily limits the possible range of the Bureau's operations—and requires the Bureau to perform careful and complex balancing of numerous considerations such as cost, testing, training, effectiveness, timing, informational need, and accuracy. These tradeoffs are quintessentially “policy choices and value determinations constitutionally committed for resolution to the halls of Congress [and] the confines of the Executive Branch.” *Japan Whaling*, 478 U.S. at 230. A litigant could *always* posit, as Plaintiffs do here, that some alleged deficiency can be cured with more time, staff, money, or by a better design. Positing that, however, does not provide any vehicle by which a court (as opposed to Congress) can evaluate the myriad policy choices and tradeoffs that Congress has made to establish a deadline and the Bureau has made in designing a census to meet that deadline. Nor does it illuminate any constitutional floor or standard which a Court could deem to be violated. *Cf. Tucker v. U.S. Dep't of Commerce*, 958 F.2d 1411, 1418 (7th Cir. 1992) (Plaintiffs seeking statistical adjustment “are asking [courts] to take sides in a dispute among statisticians, demographers, and

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<sup>3</sup> Similarly, the Supreme Court has routinely decided cases involving congressional districting by States on the theory that the Constitution requires “equal representation for equal numbers of people.” *See Wesberry v. Sanders*, 376 U.S. 1, 18 (1964). And, based on those precedents, the Court has similarly decided that challenges to the way in which Congress allocates congressional seats are justiciable. *U.S. Dep't of Commerce v. Montana*, 503 U.S. 442, 459 (1992). But the nature of those controversies provided an easily administrable standard for courts to apply: the number of people in each congressional district. No such standard is available here.

1 census officials concerning the desirability of making a statistical adjustment to the census  
 2 headcount”). As a result, there is no rule or standard that a Court could apply to determine when  
 3 census operations are too limited or too curtailed. Indeed, “you might as well turn [this case] over  
 4 to a panel of statisticians and political scientists and let them make the decision, for all that a court  
 5 could do to add to its rationality or fairness.” *Id.* at 1417-18.

6 Plaintiffs suggest that, pursuant to the Enumeration Clause, decisions about the census can  
 7 be assessed to determine whether they further count accuracy. Mot. 25, 28. But the Supreme  
 8 Court has recently rejected the idea that the Enumeration Clause commands accuracy, *New York*,  
 9 139 S. Ct. at 2565-66, and the argument is likewise nonsensical here.<sup>4</sup> Because no census is ever  
 10 complete or perfect—and every census can, presumably, be made better with more time or  
 11 resources—the setting of *any* deadline can be said to be inimical to Plaintiffs’ purported standard,  
 12 and thus improper. *See, e.g., Wisconsin*, 517 U.S. at 6; *see also Karcher v. Daggett*, 462 U.S. 725,  
 13 732 (1983). Yet, as we noted above, Congress has long set deadlines by which a census should be  
 14 completed, and Defendants are unaware of any case finding those deadlines improper. The Court  
 15 should “decline [Plaintiffs’] invitation to measure the constitutionality” of a census plan “by a  
 16 standard that would seem to render every census since 1790 unconstitutional.” *New York*, 139 S.  
 17 Ct. at 2567; *see also NLRB v. Noel Canning*, 573 U.S. 513, 525 (2014) (noting that the Supreme  
 18 Court has long adhered to James Madison’s view that “a regular course of practice” may “liquidate  
 19 & settle the meaning” of constitutional provisions).

20 Given the explicit textual commitment of the means of conducting the census to Congress  
 21 and the lack of any discernible standards, this Court should not wade into the territory of evaluating  
 22 the propriety of the Replan or the census deadline. Congress itself is considering the issue, but has  
 23 so far declined to grant relief. *See* H.R. 6800, § 70201(a); H.R. 7974, § 2 (same); H.R. 7034, § 2  
 24 (same); S. 4048, § 2. Plaintiffs may well believe that completing the census before the end of the

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25  
 26 <sup>4</sup> The “reasonable relationship” test applied in *Wisconsin*, on which Plaintiffs rely, speaks  
 27 only to the requirement that the census be performed via an actual person-by-person headcount,  
 28 rather than by statistical sampling techniques. 517 U.S. at 20. Whether a method used by the  
 Bureau constitutes a headcount is a justiciable question, with a readily-administrable standard—  
 but that is not the question in this case where no one disputes that the Bureau is, in fact, conducting  
 a headcount. The language in *Wisconsin* identifies no other administrable standard.

year will prove difficult; and they may further believe that § 141, which in its current form has governed the last four censuses, needs to change. But this is a request Plaintiffs should take to Congress. That Congress has declined to alter the deadline is not a basis to enlist the aid of an Article III court ill-equipped to resolve these policy disagreements. Plaintiffs' claims present issues barred by the political question doctrine, and their Motion should therefore be denied.

## II. PLAINTIFFS LACK STANDING

Even if disputes about the timing of census operations were theoretically justiciable, Plaintiffs would still not be entitled to any remedy here, because they have failed to establish standing. The “irreducible constitutional minimum” of standing under Article III has three elements: (1) a concrete and particularized injury-in-fact, either actual or imminent; (2) a causal connection between the injury and defendants' challenged conduct, such that the injury is “fairly trace[able] to the challenged action of the defendant”; and (3) a likelihood that the injury suffered will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). Plaintiffs bear the burden of establishing each of these elements, *id.*, and the Court “may review evidence beyond the complaint” to determine whether Plaintiffs have carried that burden. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). The standing inquiry is “‘especially rigorous when reaching the merits of the dispute would force [the court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional.’” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013) (quoting *Raines v. Byrd*, 521 U.S. 811, 819-20 (1997)). Yet Plaintiffs here fail to meet any of the required elements.

### A. Plaintiffs' Alleged Injuries are Not Redressable by a Court Order

Plaintiffs must establish redressability by demonstrating “that some personal benefit will result from a remedy *that the court is prepared to give*.” 13A Charles Alan Wright et al., *Federal Practice & Procedure* § 3531.6 (3d ed. Apr. 2018 update) (emphasis added). That is, a plaintiff must show that “the court has the power to right or to prevent the claimed injury.” *Gonzalez v. Gorsuch*, 688 F.2d 1263, 1267 (9th Cir. 1982) (Kennedy, J.). Where a plaintiff requests prospective relief in the form of an injunction, the plaintiff must show that “prospective relief will remove the harm” and the plaintiff “personally would benefit in a tangible way from the court's

intervention.” *Warth v. Seldin*, 422 U.S. 490, 505, 508 (1975). If the court cannot order relief that would remedy the plaintiff’s alleged injury, redressability—and thus Article III standing—are lacking. *See McConnell v. FEC*, 540 U.S. 93, 229 (2003) (no redressability because court “has no power to adjudicate a challenge to the [allegedly unconstitutional] FECA limits in this litigation”), *overruled on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010).

Plaintiffs here have not mounted a challenge to § 141, the statutory deadline Congress has established. *See generally* Compl. ¶¶ 330-60; Mot. 2-3, 35. And wisely so. The “virtually unlimited discretion” that the Constitution vests in Congress to “conduct[] the decennial” census, *Wisconsin*, 517 U.S. at 19, includes the power to set a deadline for completion of the census. Indeed, setting such a deadline is part and parcel of establishing the “Manner” of conducting the census, which the Constitution grants Congress the power to “direct.” U.S. Const. art. I, § 2, cl. 3.

It is beyond cavil that, “when Congress by organic statute sets a specific deadline for agency action, neither the agency nor any court has discretion. The agency must act by the deadline.” *Forest Guardians v. Babbitt*, 174 F.3d 1178, 1190 (10th Cir. 1999). Ignoring the statutory deadline, or granting relief that compels the Bureau to miss it, “would be an affront to our tradition of legislative supremacy and constitutionally separated powers.” *Id.*; *see also* *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1177 n.11 (9th Cir. 2002). *Carey v. Klutznick*, 637 F.2d 834, 837-38 (2d Cir. 1980)—a case Plaintiffs proffer for the proposition that the statutory deadline is somehow optional—shows as much. *See* Mot. 23, 34. In *Carey*, the Second Circuit affirmed a district court order—later made permanent—that required the Census Bureau to take actions “to compensate for [a] disproportionate undercount” and declared § 141(b)’s December 31 deadline “directory and not mandatory.” 508 F. Supp. 420, 433 (S.D.N.Y. 1980). Within days, the Supreme Court reinstated the statutory deadline. It stayed that part of the district court order that precluded the Bureau “from certifying to the President the population totals for New York and the state-by-state census tabulations, on December 31, 1980, as mandated by 13 U.S.C. § 141(b).” *Klutznick v. Carey*, 449 U.S. 1068, 1068 (1980). Following the stay order, moreover, the district court’s judgment was reversed on appeal. *Carey v. Klutznick*, 653 F.2d 732,

736 (2d Cir. 1981). *Carey* thus illustrates that § 141(b)’s December 31 mandate is absolute, and cannot be overridden by a judicial remedy.

But given this statutory deadline, it is unclear how Plaintiffs’ broad (albeit speculative) programmatic challenge to ongoing census operations could ever be redressable. For all their criticism of the Bureau’s current plan, Plaintiffs have no alternative proposal—none—for how the Bureau is to complete a better census by the statutory deadline. In fact, they seem to categorically reject the idea. *See, e.g.,* Mot. 22. That alone should be dispositive. *Nat’l Law Ctr. on Homelessness & Poverty v. Kantor*, 91 F.3d 178, 183 (D.C. Cir. 1996) (alleged enumeration injury not redressable where plaintiffs “do not even ask that [] alternative methodologies . . . be employed in a recount” and the court has no basis to find “that a commission of as-yet unnamed persons, using as-yet unidentified methodologies, will devise a better [] count that will redound to appellants’ benefit”). Even were the Court to grant the requested relief and set aside the Replan, the statutory deadline would still exist, and the Bureau would need to meet it. Plaintiffs’ injuries would thus persist, unremedied by the Court—indeed, they would be made worse because, if enjoined, the Bureau could not use what time remains to conduct the census in the manner it has deemed most accurate and efficient.

#### **B. Plaintiffs’ Alleged Injuries are Not Traceable to Defendants’ Actions**

For similar reasons, Plaintiffs fail to establish the requisite “causal connection between” their alleged injury and the Replan they challenge. *Defs. of Wildlife*, 504 U.S. at 560. To establish such a connection, Plaintiffs must show more than that their populations may be undercounted under the plan the Bureau has developed. They must establish that their populations will be “improperly undercounted by [a particular] methodology *as compared to a feasible, alternative methodology*,” *Kantor*, 91 F.3d at 183 (emphasis in original)—and further, that the difference between the two methodologies is sufficiently large to produce some kind of harm, *id.* at 185-86. *See also Franklin*, 505 U.S. at 802 (plurality) (challengers to the allocation of overseas employees among states had “neither alleged nor shown . . . that [they] would have had an additional Representative if the allocation had been done using some other source of ‘more accurate’ data”

1 and accordingly did not have standing “to challenge the accuracy of the data used in making that  
2 allocation”). Plaintiffs have not done so.

3 As noted above, Plaintiffs complain that the current census plan will result in an undercount  
4 of people in their communities, but they have identified *no* other feasible method by which the  
5 Bureau could meet the end-of-year deadline—much less one that can produce a supposedly more-  
6 accurate result. Absent such an alternative, Plaintiffs cannot meaningfully contend that any alleged  
7 undercount of their communities is, in fact, caused by the Bureau’s plan, rather than by an  
8 independent factor, such as the COVID-19 pandemic, the statutory deadline, or both.

9 In fact, all of Plaintiffs’ efforts to extol an alternative plan that *disregards* the statutory  
10 deadline only emphasize that their alleged injuries derive, first and foremost, from *Congress’s*  
11 decision not to extend the census deadline, rather than from the Bureau’s adoption of the Replan.  
12 That is fatal to their standing. *See Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)  
13 (Federal courts have jurisdiction only if the plaintiff’s injury “fairly can be traced to the challenged  
14 [conduct] of the defendant, and [does] not ... result[] from the independent action of some third  
15 party not before the court.”). Since congressional inaction is the source of their injuries, Plaintiffs  
16 should petition Congress, not this Court. Plaintiffs cannot seek redress against the Bureau for  
17 choosing to follow the law.

### 18 **C. Plaintiffs’ Injuries are too Speculative to Confer Standing**

19 Separate from redressability and causation, Article III also requires that Plaintiffs establish  
20 “injury in fact” by showing that they “ha[ve] sustained or [are] immediately in danger of sustaining  
21 a direct injury” as a result of the challenged action. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1552  
22 (2016). The injury must be “concrete and particularized,” *Defs. of Wildlife*, 504 U.S. at 560, and  
23 not “merely ‘conjectural’ or ‘hypothetical’ or otherwise speculative.” *Summers v. Earth Island*  
24 *Inst.*, 555 U.S. 488, 505 (2009). An alleged future injury must be “*certainly impending*” and cannot  
25 rely on a “highly attenuated chain of possibilities”; “[a]llegations of *possible* future injury’ are  
26 not sufficient.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409, 410 (2013) (quoting *Whitmore*  
27 *v. Arkansas*, 495 U.S. 149, 158 (1990)). Yet Plaintiffs’ alleged injuries rest on exactly that kind  
28 of speculative chain.

As detailed in the Fontenot Declaration, the Replan was designed to provide “the best combination of” procedures to allow the Bureau “to meet the statutory deadline without compromising quality to an undue degree.” Fontenot Decl. ¶¶ 82, 86-91. Among other things, the plan “intends to improve the speed of the [non response follow up] operations without sacrificing completeness.” *Id.* ¶ 86. The Bureau “is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline following the” Replan. *Id.* ¶ 91. Plaintiffs appear to disagree with that assessment. But neither they nor their declarants have the same insight into the details and implementation of the Bureau’s Replan that Mr. Fontenot and his colleagues in the Census Bureau do as a result of their development and execution of that Replan. The Bureau is in best position to speak to the likely effects of its operational choices, and generalized assertions to the contrary by Plaintiffs’ declarants must be discounted accordingly.

But even crediting Plaintiffs’ allegations, establishing the likelihood of an undercount would only be the beginning. The number of congressional seats for each geographical area is affected not only by that area’s *own* total population, but also by the population of *every other* area in the country. *See* 2 U.S.C. § 2a(a); <https://www.census.gov/population/apportionment/about/computing.html>; *U.S. Dep’t of Commerce v. Montana*, 503 U.S. 442, 461 (1992). Likewise, the allocation of federal funds is not directly proportional to population; instead, it is a function of multiple factors, often including the populations of *other* states. *See, e.g.*, 49 U.S.C. § 5305(d)(1) (certain transportation funding). An undercount may thus be immaterial if it is replicated elsewhere, or does not exceed a certain threshold. *See, e.g., Kantor*, 91 F.3d at 183. Accordingly, to have standing, Plaintiffs must actually demonstrate that any alleged undercount will be so severe and disproportionate that it will cause them to lose legislative seats or funding. *Id.* at 185 (no standing because court could not determine “what effect any methodology for counting the homeless would have on the federal funding of any particular appellant,” since “if a more accurate count would have enlarged some communities’ shares, it likely would have reduced the shares of other communities”); *Ridge v. Verity*, 715 F. Supp. 1308, 1318 (W.D. Pa. 1989) (no standing because “none of the plaintiffs in this case can show which states would gain and which would lose representation in Congress”); *Fed’n for Am. Immigration Reform v. Klutznick*, 486 F. Supp.

564, 570 (D.D.C. 1980) (no standing because “none of the plaintiffs are able to allege that the weight of his or her vote in the next decade will be affected” since plaintiffs “can do no more than speculate as to which states might gain and which might lose representation,” which depends on “the interplay of all the other population factors which affect apportionment”); *see also Sharrow v. Brown*, 447 F.2d 94, 97 (2d Cir. 1971) (no standing to challenge apportionment method because plaintiff “would have to show, at least approximately, the apportionment his interpretation . . . would yield, not only for New York but *for every other State as well*” (emphasis added)).

Plaintiffs have made no such showing. To the contrary, they contend that the Replan will lead to “lower-quality data across the board,” Mot. 27, implying that all jurisdictions, not just theirs, may be equally affected. And indeed, while Plaintiffs complain of potential undercount in Los Angeles and other cities with allegedly low rates of self-response, Mot. 26-27, Compl. ¶¶ 23-40, their own expert notes that self-response rates are *also* “disproportionately lower . . . in some rural areas.” Decl. of John Thompson ¶ 20, ECF No. 36-2 (“Thompson Decl.”); *see also* Decl. of D. Sunshine Hillygus ¶ 17, ECF No. 36-3 (noting that “[t]he majority of states, counties, cities, districts, tracts, and tribal lands [currently] have lower self-response rates . . . compared to 2010”). In fact, Plaintiffs’ expert notes that (1) those rural areas have a response rate under 35 percent, Thompson Decl. ¶ 20, which is *substantially* lower than the 49.6 to 61 percent range that Plaintiffs identify in their constituent communities, Compl. ¶¶ 295-97, and (2) this exceedingly low response rate is “likely” to result in “increased undercounts” for these rural areas, Thompson Decl. ¶ 20. Yet Plaintiffs completely fail to consider how any potential undercount in such rural communities, or any other communities beyond theirs, could affect Plaintiffs’ share of funding or apportionment of legislative seats. *See* Mot. 29-31 (contending that Plaintiffs’ communities may be undercounted, but offering no evidence regarding how any such undercount may relate to counts in other jurisdictions). As a result, the Court would have to guess whether and how those undercounts could affect Plaintiffs. Such guesswork does not support jurisdiction, much less an injunction. *See Clapper*, 568 U.S. at 414 n.5 (no Article III standing exists if a plaintiff’s theory of injury rests on an “attenuated chain of inferences necessary to find harm”).

To be sure, Plaintiffs contend that the possibility of *any* inaccuracy or undercount in the census is injurious because it (1) decreases the quality of data they use for various purposes, and (2) leads them to “expend additional resources in an attempt to mitigate the undercounting.” Mot. 31; *see also* Compl. ¶¶ 319-29. But Plaintiffs “cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.” *Clapper*, 568 U.S. at 416. And any suggestion that census inaccuracy is a *per se* harm must be rejected. Despite the constitutional significance of the census, “no census is recognized as having been wholly successful in achieving” accuracy. *Wisconsin*, 517 U.S. at 6; *see also Karcher v. Daggett*, 462 U.S. 725, 732 (1983) (recognizing that “census data are not perfect,” and that “population counts for particular localities are outdated long before they are completed”); *Gaffney v. Cummings*, 412 U.S. 735, 745 (1973) (census data “are inherently less than absolutely accurate”). “Despite consistent efforts to improve the quality of the count, errors persist.” *Wisconsin*, 517 U.S. at 6. Indeed, “it is widely acknowledged that each decennial Census inevitably results in an ‘undercount’ of the American public.” *NAACP v. Bureau of the Census*, 945 F.3d 183, 186 (4th Cir. 2019). Under Plaintiffs’ theory, this systemic and persistent undercount would mean that any state, locality, or organization would *always* have standing to challenge the census and its procedures and design.

The Supreme Court has never endorsed such a framework. To the contrary, it has scrutinized claims of harm in census cases to ensure that prospective litigants have demonstrated that whatever methodology they challenge is material to an actual or likely injury. *See, e.g., Utah*, 536 U.S. at 458 (noting that the challenged methodology indisputably changed which state received a Representative); *House of Representatives*, 525 U.S. at 330 (noting that plaintiffs produced evidence showing that under the challenged plan a state would lose a representative compared to the prior method).

The Supreme Court’s recent decision in *New York* demonstrates that fact clearly. 139 S. Ct. at 2565. In evaluating whether the plaintiffs had standing to challenge the reinstatement of a citizenship question on the census form, the Supreme Court noted that evidence at trial showed that several state plaintiffs would “lose out on federal funds” “if noncitizen households [were]

1 undercounted by as little as 2%,” which was less than half of the undercount the district court  
 2 estimated to result from inclusion of the question. *Id.* Here, by contrast, Plaintiffs present no such  
 3 particulars and demonstrate no thresholds. *See* Mot. 30-32; Compl. ¶¶ 294-329. Instead, they  
 4 make generalized allegations that they will be injured by an undercount—seemingly no matter  
 5 how small. That falls far short of the requisite standard.

6 \* \* \*

7 Plaintiffs are not entitled to a judicial remedy merely because they have generalized  
 8 concerns about census accuracy. They are certainly not entitled to a remedy setting aside the  
 9 Replan when their alleged injuries are not traceable to that plan, nor redressable if it were  
 10 invalidated. Because they lack standing, Plaintiffs’ request for an injunction should be rejected on  
 11 threshold jurisdictional grounds.

### 12 **III. PLAINTIFFS FAIL TO ESTABLISH A COGNIZABLE APA CLAIM**

13 Even assuming Plaintiffs could overcome the threshold deficiencies of the political  
 14 question doctrine and a lack of Article III standing, their claims are nonetheless unlikely to succeed  
 15 on the merits. To start, their APA claims likewise suffer from threshold deficiencies, in that  
 16 Plaintiffs have launched a wholesale programmatic attack on the Census Bureau’s plans to  
 17 complete the 2020 Census, which fails both the discreteness and finality requirements for judicial  
 18 review under the APA. And there is furthermore no standard in the Census Act by which the Court  
 19 could determine, for example, whether the decision to close field operations by September 30, as  
 20 opposed to some other day, is contrary to law. Instead, Congress, which the Constitution entrusts  
 21 with the “Manner” of carrying out the decennial census, has delegated to the Secretary the authority  
 22 to ‘take a decennial census of population . . . in such form and content as he may determine.’ 13  
 23 U.S.C. § 141(a). Regardless, even were the merits of Plaintiffs’ claims reviewable, they do not  
 24 show that the Replan fails the APA’s arbitrary-and-capricious standard, particularly given the  
 25 looming end-of-year deadline to complete the count and report results to the President.

#### 26 **A. The Replan is Not Final Agency Action and Therefore Is Not Reviewable.**

27 “To maintain a cause of action under the APA, a plaintiff must challenge ‘agency action’  
 28 that is “final.’” *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800 (9th Cir. 2013) (citing *Norton*

1 *v. S. Utah Wilderness All. (“SUWA”)*, 542 U.S. 55, 61-62 (2004)). Congress defined “agency  
 2 action” to include “the whole or a part of an agency rule, order, license, sanction, relief, or the  
 3 equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13). And “final” agency action  
 4 within the meaning of § 704 of the APA, requires that two conditions be met: “First, the action  
 5 must mark the ‘consummation’ of the agency’s decision-making process—it must not be of a  
 6 merely tentative or interlocutory nature. And second, the action must be one by which ‘rights or  
 7 obligations have been determined,’ or from which ‘legal consequences will flow.’” *Bennett v.*  
 8 *Spear*, 520 U.S. 154, 177-78 (1997). The Replan is neither “agency action” nor, of necessity,  
 9 “final agency action,” and Plaintiffs’ APA claims therefore fail at the outset.

10 *1. The Replan is not “agency action” under the APA.*

11 The Supreme Court has held that, to satisfy the “agency action” requirement, 5 U.S.C.  
 12 § 551(13), the matter at issue must be a “circumscribed, discrete agency action[]” that exhibits a  
 13 “characteristic of discreteness.” *SUWA*, 542 U.S. at 62-63. This statutory limitation, the Court  
 14 explained, “precludes [a] broad programmatic attack” on an agency’s operations. *Id.* at 64. Thus,  
 15 the APA does not permit a plaintiff to attack an agency program “consisting of . . . many individual  
 16 actions” simply by characterizing it as “agency action” under the APA. *Lujan v. Nat’l Wildlife*  
 17 *Fed’n*, 497 U.S. 871, 893 (1990). A plaintiff seeking improvement or changes to an agency  
 18 program must seek it in “the halls of Congress, where programmatic improvements are normally  
 19 made,” rather than by “court decree.” *Id.* at 891; *see also San Luis Unit Food Producers v. United*  
 20 *States*, 709 F.3d 798, 808 (9th Cir. 2013) (holding that “a broad, programmatic challenge to [an  
 21 agency’s] operation and management of [a statutory obligation] . . . [is] not cognizable under the  
 22 APA”).

23 That Plaintiffs have leveled an improper, programmatic attack on the Bureau’s efforts to  
 24 conduct the 2020 Census could not be more obvious. By Plaintiffs’ own account, they challenge  
 25 the Bureau’s choices “in determining how to conduct the census,” Mot. 3, and seek to have this  
 26 Court dictate, according to Plaintiffs’ preferences, how the Bureau carries out and completes the  
 27 census, *see* Compl. ¶ 358 (demanding that Court enjoin Defendants from “unlawfully interfering  
 28 with the COVID-19 Plan”). Like similar attempts to wrest operational control of the census away

1 from the Bureau, Plaintiffs’ requested emergency relief would undoubtedly entail “a sweeping  
 2 overhaul to the [Replan], which exceeds the scope of reviewable ‘agency action.’” *NAACP*, 399  
 3 F. Supp. 3d at 422 (D. Md.), *aff’d in part, rev’d in part on other grounds and remanded*, 945 F.3d  
 4 183 (4th Cir. 2019)

5 In attacking the Replan, Plaintiffs focus primarily on the alleged insufficiency of the  
 6 timeline for completing field operations and non-response follow-up operations and data  
 7 processing. Mot. 17-18. But Plaintiffs’ challenge does not end there, as they further assail  
 8 “reduced staffing,” “increased reliance on administrative records,” “increased use of imputation,”  
 9 “problems with data processing,” and a “shortened processing timeline.” Mot. 19-20. In short,  
 10 Plaintiffs contend that it is both the totality of these asserted insufficiencies, and their  
 11 interrelationship and “exacerbat[ion]” of one another, that, on the whole, “are likely to result in  
 12 reduced quality in the census data and less accurate results.” Mot. 20.

13 The Fourth Circuit recently rejected a strikingly similar challenge to the Census Bureau’s  
 14 operational plan for the 2020 Census because the challenged actions were not “‘circumscribed’  
 15 and ‘discrete.’” *NAACP*, 945 F.3d at 190. The operational plans that the plaintiffs there sought to  
 16 set aside were, the court concluded, not cognizable discrete agency actions because “the various  
 17 ‘design choices’ being challenged expressly are tied to one another.” *Id.* at 191. “‘Setting aside’  
 18 one or more of these ‘choices’ necessarily would impact the efficacy of the others, and inevitably  
 19 would lead to court involvement in ‘hands-on’ management of the Census Bureau’s operations.”  
 20 *Id.* (citing *SUWA*, 542 U.S. at 66-67). That outcome, the court concluded, “is precisely the result  
 21 that the ‘discreteness’ requirement of the APA is designed to avoid.” *Id.* (rejecting the “broad,  
 22 sweeping nature of the allegations that the plaintiffs have elected to assert under the APA”).

23 Precisely the same conclusion is warranted here, particularly where Plaintiffs make no  
 24 effort to reconcile their broadside attack on the Replan with the “agency action” requirement.  
 25 Entertaining Plaintiffs’ challenge to the Replan would embroil the Court not only in difficult—  
 26 indeed, unanswerable—questions concerning what operational and scheduling measures the law  
 27 purportedly requires, but also in potential monitoring of the Bureau’s efforts going forward. *See*  
 28 *Indep. Mining Co. v. Babbitt*, 105 F.3d 502, 506 (9th Cir. 1997) (denying relief “which would

1 require reaching into an agency of the executive branch and dictating the details of its internal  
 2 operations” (quotation omitted)). That is all the more so when Plaintiffs’ action is treated, as it  
 3 could be, as one to *compel* agency action, since Plaintiffs can point to no discrete requirements to  
 4 conduct field operations or data processing for a certain duration, to maintain staffing at certain  
 5 levels, or to rely to some specified degree of in-person enumeration rather than administrative  
 6 records, proxies, or imputation—let alone any requirement to do all of these things. *NAACP*, 399  
 7 F. Supp. 3d at 423 (challenged actions by Census Bureau neither “discrete in character” not  
 8 “required by law” and therefore not proper subjects of APA relief).

9                   2.       *The Replan is not “final agency action” subject to judicial review*

10           Even if all the various facets of the Replan could be considered an “agency action,” it is  
 11 not “final” agency action that is subject to judicial review under § 704. In *Franklin*, the Supreme  
 12 Court held that the Secretary’s transmission of a final census report to the President under 13  
 13 U.S.C. § 141—a report compiled after the execution of the overall census operational plan—is  
 14 *itself* not final agency action. 505 U.S. at 798 (“[T]he ‘decennial census’ still presents a moving  
 15 target, even after the Secretary reports to the President.”). Given this holding, it would make no  
 16 sense to find the Bureau’s antecedent operations, which are still being implemented and will only  
 17 lead to a report sometime in the future, to be judicially reviewable.

18           Indeed, the Replan is nothing more than an interlocutory announcement of how it intends  
 19 to complete the count within the time remaining under the existing statutory deadline. Director  
 20 Dillingham made clear in his August 3 statement that the Bureau was “announcing updates” and  
 21 that it “continues to evaluate its operational plans.” Huseny Decl., Ex. 1 at 1, ECF No. 37-1; *see*  
 22 *id.*, Ex. 2 at 2, ECF No. 37-2 (Bureau noting that it is ‘continually assess[ing] [its] operational  
 23 plans’ and that it remains “ready to adapt to challenges in the environment”). This is not, as  
 24 Plaintiffs summarily put it, a final decisional statement that the elements of the Replan “would  
 25 now govern,” Mot. 15, but instead is an acknowledgment by the Bureau of the need for adaptability  
 26 in the face of the unprecedented challenge of conducting a census during a pandemic when  
 27 congressional relief from the deadline is not forthcoming. That announcement merely confirms  
 28 how interlocutory the Bureau’s operations are.

1 Similarly, Plaintiffs' claim that the Replan affects legal rights and obligations could not be  
 2 more barebones. Mot. 16. (summarily contending that the Replan "directly affected rights and  
 3 obligations"). Spanning two sentences, Plaintiffs advance two unconvincing reasons for this  
 4 summary contention. Initially, they say that the Replan affects legal rights because the self-  
 5 response options now close on September 30, 2020. Mot. 16; Fontenot Decl. ¶ 47 ("The total self-  
 6 response period for the 2020 Census will be longer than the 2010 self-response period"). To begin,  
 7 this argument concerns only the change in the close of field operations, and cannot be used to  
 8 bootstrap finality for the Plaintiffs' more comprehensive attack on the entire Replan. Even then,  
 9 the Bureau's determination that the existing congressional deadline necessitated closing self-  
 10 response options on September 30 does not affect any legal right because a respondent has no  
 11 individualized legal "right" to any particular timetable to respond to the census questionnaire, and  
 12 Plaintiffs identify none. And insofar as Plaintiffs would resort to a more inchoate "right" to be  
 13 counted—although their papers make no such mention—the Bureau fully intends to account for  
 14 non-responding households through imputations, administrative records, or other methods, just as  
 15 it would have done under an October 31 close of self-response. *See Confederacion de la Raza*  
 16 *Unida v. Brown*, 345 F. Supp. 909, 910 (N.D. Cal. 1972) ("Plaintiffs do not contend, and correctly  
 17 so, that they have an absolute right to be counted [in the census]."); *Nat'l Law Ctr. on*  
 18 *Homelessness & Poverty v. Brown*, CIV. A. 92-2257-LFO, 1994 WL 521334, at \*8 (D.D.C. Sept.  
 19 15, 1994) ("The Constitution does not provide individuals with a right to be counted . . .").

20 Plaintiffs' only other claim to finality is in asserting that the Replan has legal consequences  
 21 because, in Plaintiffs' speculative estimation, "the census *results* will affect apportionment,  
 22 funding, and myriad other critical decisions." Mot. 16 (emphasis added). That claim to finality  
 23 fails just as it did in *NAACP*. The *NAACP* plaintiffs argued that the Bureau's operational decisions  
 24 violated the APA because the alleged shortcomings of those decisions, according to the plaintiffs,  
 25 "would create a disproportional impact on undercounted communities." *NAACP*, 945 F.3d at 191.  
 26 The court firmly rejected this argument on finality grounds, holding that such "attenuated  
 27 allegations amount to little more than a 'best guess' regarding the consequences of cancelling the  
 28 tests at issue." *Id.* Indeed, the Supreme Court has held that even the Secretary's census report to

1 the President “serves more like a tentative recommendation than a final and binding determination”  
 2 and therefore “carries no direct consequences for the reapportionment.” *Franklin*, 505 U.S. at 798.  
 3 Finality is no more present in the Replan just because the 2020 Census, like any other, will have  
 4 downstream effects on apportionment and federal funding.

5 In sum, the Replan sets protocols for the Census Bureau’s own internal operations, and  
 6 does not require anyone to do, or not do, anything. See *Wild Fish Conservancy*, 730 F.3d at 801  
 7 (“day-to-day operations that merely implement operational plans” are not final); *Or. Nat. Desert*  
 8 *Ass’n v. U.S. Forest Serv.*, 465 F.3d 977, 987 (9th Cir. 2006) (action can be final if it “has the  
 9 status of law or comparable legal force, and whether immediate compliance with its terms is  
 10 expected”). Final agency action is lacking, and Plaintiffs cannot prevail on their APA claims.

11 **B. The Bureau’s Choices Regarding How to Meet The Statutory Deadline are**  
 12 **Committed to Agency Discretion, and are Therefore Unreviewable**

13 Even assuming a plaintiff has challenged final agency action, APA review is nonetheless  
 14 unavailable when “agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a)(2).  
 15 “An agency action is ‘committed to [its] discretion by law’ where a ‘statute is drawn so that a court  
 16 would have no meaningful standard against which to judge the agency’s exercise of discretion’—  
 17 *i.e.*, where it is ‘drawn in such broad terms that in a given case there is no law to apply.’” *Pac.*  
 18 *Nw. Generating Co-op. v. Bonneville Power Admin.*, 596 F.3d 1065, 1075 n.7 (9th Cir. 2010)  
 19 (quoting *Heckler v. Chaney*, 470 U.S. 821, 830 (1985)). This bar against judicial review applies,  
 20 moreover, even when “the agency gives a ‘reviewable’ reason for otherwise unreviewable action.”  
 21 *ICC v. Bhd. of Locomotive Eng’rs*, 482 U.S. 270, 283 (1987).

22 In the Census Act, Congress directed the Secretary to “take a decennial census of  
 23 population . . . in such form and content as he may determine,” 13 U.S.C. § 141(a), thereby  
 24 providing the Secretary, and in turn the Census Bureau, with abundant discretion in how to carry  
 25 out the census. As the Supreme Court has put it, “Congress has delegated its broad authority over  
 26 the census to the Secretary,” which entails Congress’s “virtually unlimited discretion in conducting  
 27 the decennial ‘actual Enumeration.’” *Wisconsin*, 517 U.S. at 19 (quoting U.S. Const., art. I, § 2,  
 28 cl. 3). Wholly absent from the Census Act or any other statute is a “meaningful standard” against

1 which this Court could assess the legality of the multiple discretionary planning choices by the  
 2 Census Bureau that Plaintiffs challenge here. Neither the Census Act nor any of the Census  
 3 Bureau's or Commerce Department's regulations have anything to say about timetables for field  
 4 operations, data processing requirements, staffing levels, or staff training requirements—and  
 5 Plaintiffs tellingly fail to cite any such provision. It is difficult to imagine a statute that could more  
 6 easily meet the test of being “drawn in such broad terms that . . . there is no law to apply.”  
 7 *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971).

8 Courts considering challenges to the broad operations of census-taking agree. As the  
 9 Seventh Circuit explained, “[i]t might be different if the apportionment clause, the census statutes,  
 10 or the Administrative Procedure Act contained guidelines for an accurate decennial census[.] . . .  
 11 There is nothing of that sort, and the inference is that these enactments do not create justiciable  
 12 rights.” *Tucker*, 958 F.2d at 1417. In fact, the court addressed Plaintiffs’ design-of-the-census  
 13 allegations, explaining that the census statutes simply “specify a timetable, and a procedure for  
 14 translating fractional into whole seats” but “they say nothing about *how to conduct a census* or  
 15 what to do about undercounts.” *Id.* (emphasis added); *see id.* at 1419 (Ripple, J., concurring)  
 16 (stating that the census decision at issue was “committed to agency discretion”). True, the  
 17 Supreme Court in *New York* held the decision to add a citizenship question was *not* committed to  
 18 agency discretion. 139 S. Ct. at 2568-69. But there, the Court relied on specific statutory  
 19 provisions that spoke, for example, to limitations on the Secretary’s power “to collect information  
 20 through direct inquiries when administrative records are available.” *Id.* at 2568 (citing 13 U.S.C.  
 21 § 6(c)). Here, by contrast, there are no provisions that meaningfully constrain or direct the Census  
 22 Bureau on the timing, staffing, or sequencing of census-taking, or the processing of data—except,  
 23 that is, the deadline to deliver the final census report by December 31. Plaintiffs ask the Bureau  
 24 to ignore that deadline, and there is no meaningful standard by which to review that request.

25 Even district courts that found census-related issues reviewable under the APA—like the  
 26 accuracy of the final census count—have recognized that the mechanics of actually conducting the  
 27 census are committed to agency discretion. *See City of Willacoochee v. Baldrige*, 556 F. Supp.  
 28 551, 555 (S.D. Ga. 1983) (noting that the accuracy of the count is not committed to agency

discretion, but that “the grant of discretion in 13 U.S.C. § 141(a) appears to encompass the methods used by the defendants to compile the census”); *City of Phila. v. Klutznick*, 503 F. Supp. 663, 678 (E.D. Pa. 1980) (dismissing a claim that the Census Bureau failed to hire skilled enumerators as committed to agency discretion because “[r]eview of this allegation would involve the [c]ourt in second-guessing the managerial decisions of the Bureau”).<sup>5</sup>

The Court should follow these cases and hold that Plaintiffs’ APA claims are unreviewable because they are committed to agency discretion by law. As the district court in *NAACP* pointed out last year in a challenge to the Bureau’s original Operational Plan, there has never been a lawsuit that “has resulted in the sweeping relief” of a judicially-enforceable directive to conduct the census in a particular manner, which “speaks volumes about the authority (not to mention ability) of courts to second-guess the Secretary’s planning of the decennial census as it is taking place, or the standards under which they might attempt to do so.” *NAACP v. Bureau of the Census*, 382 F. Supp. 3d 349, 373 (D. Md. 2019).

**C. Even Assuming the Replan Were Reviewable, and That Meaningful Standards for Such Review Could Somehow be Ascertained, the Replan Does Not Violate the APA.**

Were the Court to reject these threshold APA limitations on judicial review, emergency injunctive relief would nonetheless be improper because Plaintiffs are unlikely to prevail on the merits of their APA claims. None of their attacks on the Replan suffices to permit the Court to conclude that it is arbitrary and capricious, or that it was undertaken as a “pretext” for some ulterior goal.

At the outset, Plaintiffs appear to have conflated the Replan itself—a set of internal operating protocols for the Bureau to satisfy its statutory obligations under the Census Act—with

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<sup>5</sup> Although other courts have concluded that the APA permits judicial review of certain census-related actions, none of those decisions involved the sweeping nature of Plaintiffs’ request here—to dictate, through a judicial injunction, to the Census Bureau that it cannot exercise its discretion to plan and complete the 2020 Census. *See, e.g., California v. Ross*, 362 F. Supp. 3d 727, 746 (N.D. Cal. 2018) (reviewing addition of citizenship question to 2020 census questionnaire); *State v. U.S. Dep’t of Commerce*, 315 F. Supp. 3d 766, 796 (S.D.N.Y. 2018) (same); *Dist. of Columbia v. U.S. Dep’t of Commerce*, 789 F. Supp. 1179, 1188 n.16 (1992) (reviewing decision to count as in-state residents inmates held in a prison in a different state).

the Director’s August 3 announcement. *See* Mot. 19 (criticizing Director’s August 3 statement for “giv[ing] no hint” of how to meet various minute staffing matters); *id.* at 20-21 (contending that Defendants failed to consider various data processing issues “in the Rush Plan”). It has never been the case, even for reviewable actions under the APA, that the agency’s announcement of a decision must provide a fulsome articulation of the agency’s rationale. Instead, where it applies, the APA requires only that the “agency’s path may reasonably be discerned,” which the Fontenot Declaration is more than sufficient to satisfy.<sup>6</sup> *See Alaska Dep’t of Env’tl. Conservation v. EPA*, 540 U.S. 461, 497 (2004). That Plaintiffs cannot discern from the August 3 statement the answers to the particularized questions they have rushed to pose in this Court does not amount to a violation of the APA.

“*Policy Change*”: Plaintiffs err in supposing that the Replan reflects a change in agency policy. The Census Bureau’s policy remains the same as it was in 2018 when it issued its final operation plan, and just as it is for every decennial census: to “[e]nsure a complete and accurate count of all communities.” Huseny Decl., Ex. 2 at 1; Fontenot Decl. ¶ 91 (“The 2020 Census operational design is tailored to enumerate all persons, including hard-to-count populations.”); *id.* ¶ 104. A modification of operational plans is nothing like the true policy reversals in the cases Plaintiffs cite. The Replan is not, for example, the reversal of a “decades-old” practice of treating automobile service advisors as exempt from FLSA coverage, *see Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2123 (2016), or an agency’s authorization, for the first time, for States to kill otherwise protected sea lions based on increased predation by those animals, *see Humane Soc’y of U.S. v. Locke*, 626 F.3d 1040, 1044 (9th Cir. 2010).

*Express reference to the statutory deadline*: Plaintiffs also err in contending that the Bureau did not give any explanation for the Replan. Director Dillingham stated that the Replan measures would be taken in order to complete “data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of

<sup>6</sup> Because there is no “final agency action,” there is no administrative record for the Replan. Defendants have, however, submitted the Fontenot Declaration to oppose Plaintiffs’ requested relief, and the Court may rely upon it to the extent necessary to consider Plaintiffs’ APA arguments.

Commerce.” Huseny Decl., Ex. 1 at 1. Indeed, the Director’s statement removes any doubt that there was any “policy change.” The Replan, he stated, “reflects our *continued commitment* to conduct a complete count, provide accurate apportionment data, and protect the health and safety of the public and our workforce.” *Id.*<sup>7</sup>

*Staffing and data processing:* Plaintiffs are flatly incorrect that the Bureau failed to consider staffing concerns before issuing the Replan. Fontenot Decl. ¶¶ 82-85. And while Plaintiffs argue that not enough enumerators are on staff for the Bureau to complete its non-response follow-up operations, Mot. 18-19, they cite no legal requirement to have some minimum level of enumerators staffed for this purpose. Plaintiffs also speculate that the Replan will result in a reliance on “a higher level of proxy enumerations, increased reliance on administrative records, and an increased use of imputation,” Mot. 20, but there is nothing unlawful about relying on these methods and resources, nor any maximum “level” of permissible reliance. These methods have been used in past censuses when in-person counting was not possible. *E.g., Utah*, 536 U.S. at 477.

*“Reliance interests”:* Plaintiffs also contend that the Bureau’s statements earlier this year that census responses would be accepted until October 31, 2020 created “reliance interests.” Mot. 21. But the Bureau did consider the public’s expectations. Fontenot Decl. ¶¶ 82-85. And Plaintiffs cite no evidence of any census respondent who, in purported reliance on the October 31 timetable, has arranged their affairs such that it is no longer possible for that person to respond by September 30. And those who might have given self-responses after September 30 can always be accounted for by other methods; for that reason, a close of self-response is necessary in every census. While

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<sup>7</sup> Plaintiffs mischaracterize the Secretary and the Director’s joint statement of April 13, 2020 as stating that “a significant delay (and corresponding extension) in census operations was necessary to [e]nsure a complete and accurate count of all communities.” Mot. 17. Rather, the statement simply acknowledged that congressional relief was necessary to effectuate the COVID-19 Plan, and that the COVID-19 Plan would “ensure the completeness and accuracy of the 2020 Census.” Huseny Decl., Ex. 3 at 2, ECF No. 37-3. The statement never said that an extension was “necessary” to complete the 2020 Census, much less that “a significant delay” was “necessary,” as Plaintiffs erroneously contend, Mot. 17. In any event, any ambiguity is put to rest by Mr. Fontenot’s statement that the Bureau “is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline.” Fontenot Decl. ¶ 91.

1 Plaintiffs rely on *Department of Homeland Security v. Regents of the University of California*, the  
 2 purported reliance interests here pale in comparison to individuals “enroll[ing] in degree programs,  
 3 embark[ing] on careers, start[ing] businesses, purchas[ing] homes, and even marr[ying] and  
 4 ha[ving] children, all in reliance on the DACA program.” 140 S. Ct. 1891, 1914 (2020). Indeed,  
 5 as explained above, the timing of the close of self-response is not for the respondent’s benefit, but  
 6 for the Census Bureau’s, so that it can analyze and compile data for apportionment purposes.  
 7 Respondents have no substantive rights in connection with the timing of the decennial census that  
 8 could conceivably underlie such reliance interests.

9 *Statutory deadline:* Plaintiffs advance the bizarre contention that honoring December 31,  
 10 2020 deadline set forth in § 141(b) amounts to a *per se* APA violation. Mot. 21-25. Perhaps  
 11 unsurprisingly, Plaintiffs have no authority for the novel proposition that an agency somehow  
 12 violates the APA by attempting to comply with the statutory requirements Congress has imposed  
 13 on it. As Mr. Fontenot explains, that statutory deadline was the critical driver of the replanning  
 14 efforts. Fontenot Decl. ¶¶ 81, 84, 91.

15 Plaintiffs’ apparent argument is that the Census Bureau somehow unilaterally waived the  
 16 statutory deadline when it announced a COVID-19 Plan. Mot. 22 (arguing that Defendants were  
 17 “fully aware” of the deadline when the released the COVID-19 Plan). But that makes little sense.  
 18 As Plaintiffs acknowledge, the COVID-19 Plan was issued in connection with the Bureau’s request  
 19 for a deadline extension from Congress. Mot. 22. The Bureau was thus well aware that the  
 20 COVID-19 Plan would be workable *only if* the extension were granted. *See* Fontenot Decl. ¶ 79  
 21 (“This schedule required Congress to provide legislative relief from the statutory deadlines . . . .”);  
 22 Huseny Decl., Ex. 3 at 1 (“Under this plan, the Census Bureau *would* extend the window for field  
 23 data collection and self-response to October 31, 2020 . . . .” (emphasis added)); *see also* Huseny  
 24 Decl., Ex. 8 at 1, ECF NO. 37-8 (requested supplemental “funding *would* allow for supplemental  
 25 hiring, pay incentives, additional outreach and advertising, and replenished contingency funding  
 26 to provide needed flexibility as the Census Bureau conducts its largest component of the field  
 27 operation, Nonresponse Follow-up” (emphasis added)). That the Bureau began to implement the  
 28 COVID-19 Plan on an optimistic view that Congress might grant the extension request, does not

mean that the deadline would no longer apply, or that the Bureau itself assumed authority to change the statutory deadline.<sup>8</sup> There is no authority for this novel view of the APA.

Plaintiffs’ attempt to rehash this same argument under constitutional guise gets them no further. Mot. 22-23. As detailed *infra*, the Replan does not violate the Enumeration Clause as Plaintiffs summarily assume. And *Carey v. Klutznick*, on which Plaintiffs place great weight, not only does not authorize the Bureau to ignore the deadline as Plaintiffs demand, but culminated in the precise opposite outcome. 449 U.S. at 1068. The *Carey* plaintiffs moreover sought relief specific to one State which, in Plaintiffs’ own words, “*might* have caused the Census Bureau to miss the December 31 deadline.” Mot. 23 (emphasis added). By contrast, what Plaintiffs seek to compel is the wholesale forfeiture of the Census Bureau’s duty to deliver the *entire* census by to the statutory deadline, and they further seek to enlist the Court to *mandate* that outcome. That would be an unprecedented step.<sup>9</sup>

“*Pretext*”: Finally, Plaintiffs see something untoward—which in their view is apparently enough to violate the APA—in the “telling” timing of the President’s July 21, 2020 Memorandum, Mot. 24, which requires the Secretary, to the extent feasible, to identify the numbers of illegal aliens counted in the census for potential exclusion from the apportionment base. 85 Fed. Reg. 44,679 (July 21, 2020). But there is nothing amiss with an Administration adopting a policy that it wishes to see implemented within the existing legal framework. That is the ordinary stuff of Government policymaking and the history of the census is replete with policy choices. And Plaintiffs’ allegations of “political chicanery” notwithstanding, Mot. 25, the Bureau must meet a statutory deadline regardless of whether the President had issued the Memorandum. Plaintiffs may

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<sup>8</sup> The fact that the President said “I don’t know that you even have to ask them [Congress]” is entirely irrelevant. Mot. 10. Even if the Court were to indulge Plaintiffs’ interpretation of this remark as some sort of official view that an extension “request was unnecessary,” Mot. 22, such a statement by the President is not sufficient to supersede a statute, as Plaintiffs are no doubt aware.

<sup>9</sup> Plaintiffs also mischaracterize *Franklin* when they contend it licenses treating the December 31 deadline as “non-final.” Mot. 23. *Franklin* concerned not the Secretary’s report to the President, but the actions of the President prior to transmitting the apportionment figures to Congress under 2 U.S.C. § 2a, a separate statutory provision with a separate deadline. 505 U.S. at 797-98. Nothing in *Franklin* remotely suggests that a Court can waive the deadline of § 141(b), as Plaintiffs here demand.

want the Census Bureau to flout the statutory deadline to leave room for the prospect, as Plaintiffs see it, “that the President will no longer be in office when data is provided.” Mot. 24. That politically tinged view of the APA cannot prevail. Just because Plaintiffs dislike the President’s policy announced in the Memorandum does not mean that the Census Bureau *must* ignore the December 31 deadline, as Plaintiffs’ motion demands. Invalidating agency actions under the APA simply because they bear some connection to a policy advanced by a different Government entity or actor—in this case the President—is a theory of liability wholly untethered from the text of the APA or any of its judicial precedents.<sup>10</sup>

#### IV. PLAINTIFFS’ ENUMERATION CLAUSE ARGUMENTS LACK MERIT

If the Court finds it justiciable, Plaintiffs are not likely to succeed on their Enumeration Clause claim either. The Constitution’s reference to “actual Enumeration” is simple: population is to be determined through a person-by-person headcount, rather than through estimates or conjecture. The Replan endeavors to do just that, and spells out no intention to rely on prohibited estimates or guesswork. Plaintiffs tacitly acknowledge as much, and focus not on any alleged violation of the Constitution’s “actual Enumeration” command, but on speculative claims that inadequate field operations will necessitate methodologies entailing the use of administrative records or imputation, which will in turn fall below some unspecified floor of constitutionally mandated accuracy. But no judicial decision has articulated a viable standard by which to assess the constitutional muster of various counting methodologies. Despite Plaintiffs’ protestations that the Replan will “undercut” accuracy, Mot. 25, they fail to establish any meaningful metric governing such accuracy concerns that the Replan fails to meet. That Plaintiffs have subjectively prejudged the 2020 Census to be a failure is not sufficient to prevail on their Enumeration Clause claim.

Initially, Plaintiffs are wrong that the “reasonable relationship” standard applied in *Wisconsin* likewise applies here. The *Wisconsin* Court considered an Enumeration Clause challenge to the Secretary’s decision not to make statistical adjustments following the 1990 census

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<sup>10</sup> Plaintiffs also cannot tar the Census Bureau’s Replan with a “pretextual” rationale simply by referring to a different decision, by Secretary Ross, more than two years ago to add a citizenship question to the questionnaire. Mot. 25.

1 to rectify alleged differential undercounts. 517 U.S. at 10-11. The Court cited the “virtually  
 2 unlimited discretion” the Constitution grants to Congress “in conducting the decennial ‘actual  
 3 Enumeration,’” and explained that Congress had in turn delegated its “broad authority” to the  
 4 Secretary. *Id.* at 19. It then announced that the Secretary’s decision not to adjust the census count  
 5 “need bear only a reasonable relationship to the accomplishment of an actual enumeration of the  
 6 population, keeping in mind the constitutional purpose of the census.” *Id.* at 20. The Court  
 7 observed that a similar standard had been applied in *Montana* and *Franklin*, both of which similarly  
 8 involved Executive Branch decisions to adjust the census counts *after* the census had been  
 9 conducted. *See Franklin*, 505 U.S. at 804 (reviewing the Secretary’s decision to allocate overseas  
 10 federal personnel to their home States); *Montana*, 503 U.S. at 460 (challenge to method used to  
 11 apportion House seats among the States).

12 Last Term, the Court in *New York* confirmed the limited applicability of the “reasonable  
 13 relationship” standard by clarifying that it is to be applied only in cases which “concern[] decisions  
 14 about the population count itself.” 139 S. Ct. at 2566. By “the population count itself” the Court  
 15 referred to census data *already collected* by the Bureau. Were it otherwise, and the “reasonable  
 16 relationship” standard applicable to questions of how the final census count is generated, that  
 17 standard would have been applied in *Utah v. Evans*, which concerned the use of an imputation  
 18 methodology, not to mention in *New York* itself. *See Utah*, 536 U.S. at 464 (foregoing the  
 19 *Wisconsin* standard in determining the constitutionality of imputation); *Dep’t of Commerce v. U.S.*  
 20 *House of Representatives*, 525 U.S. 316, 346-47 (1999) (Scalia, J., concurring in part) (discussing  
 21 the constitutionality of statistical sampling without reference to the *Wisconsin* reasonable-  
 22 relationship standard); *id.* at 363 (Stevens, J., dissenting) (same).

23 Plaintiffs’ Enumeration Clause claim here, by contrast, challenges detailed operational  
 24 aspects of the Census Bureau’s plans to actually *conduct* the census, well before “the population  
 25 count itself” has been determined. Plaintiffs cite no case in which this type of pre-count claim was  
 26 brought and the “reasonable relationship” standard applied. Plaintiffs’ Enumeration Clause claim  
 27 should instead be assessed against Congress’s, and by delegation the Secretary’s, “virtually  
 28

1 unlimited discretion” *Wisconsin*, 517 U.S. at 19, to conduct the census “in such Manner as they  
2 shall by Law direct,” U.S. Const., art. 1, § 2, cl. 3.

3 Measured against that standard, Plaintiffs’ claim is exceedingly unlikely to prevail.  
4 Choices over how, in the face of a pandemic, to allocate resources, conduct data processing, and  
5 manage timetables all in order to meet a statutory deadline are prototypical questions about the  
6 “Manner” in which an actual enumeration should be conducted and fall well within the scope of  
7 the Secretary’s “broad authority over the census.” *Wisconsin*, 517 U.S. at 17. Nowhere do Plaintiff  
8 allege, for example, that Defendants are conducting something other than an “actual Enumeration,”  
9 such as an estimate or conjecture of the population.

10 Plaintiffs’ constitutional argument is not that Defendants are failing to conduct an actual  
11 enumeration, but rather that Defendants aren’t doing a good enough job of it. They argue, for  
12 example, that the Replan will produce “flawed counts” and, specifically, an undercount that  
13 “disproportionately impact[s] hard-to-count groups.” Mot. 26 (asserting that the Replan will lead  
14 to “an exacerbated overcount of the White population”). But the possibility of flaws or an  
15 undercount exists in every census, and does not inherently violate the Enumeration Clause—the  
16 Constitution does not require perfection. *See Utah*, 536 U.S. at 504 (Thomas, J., concurring in  
17 part and dissenting in part) (canvassing the history of census undercounts, including the first  
18 Census in 1790); *Wisconsin*, 517 U.S. at 6 (“Although each [of the 20 past censuses] was designed  
19 with the goal of accomplishing an ‘actual Enumeration’ of the population, no census is recognized  
20 as having been wholly successful in achieving that goal.”); *Gaffney*, 412 U.S. at 745 (census data  
21 “are inherently less than absolutely accurate”). Moreover, Plaintiffs’ declarants acknowledge that  
22 even differential undercounts are commonplace in the census. Thompson Decl. ¶ 21; Hillygus  
23 Decl. ¶ 11; *see City of New York v. U.S. Dep’t of Commerce*, 34 F.3d 1114, 1117 (2d Cir. 1994)  
24 (“This phenomenon, known as the ‘differential undercount,’ has skewed every census since at least  
25 1940. The Census Bureau started measuring the differential undercount in that year.”), *rev’d sub*  
26 *nom. Wisconsin*, 517 U.S. at 1. As long as the Secretary has established pre-census procedures for  
27 individually counting every resident of the United States, any undercount is the constitutionally  
28

permissible result of attempting to enumerate upwards of 330 million people across 3.8 million square miles. *See* <https://www.census.gov/popclock/>.

No matter how much Plaintiffs take issue with the particulars of how Defendants intend to use certain methodologies, none of those methodologies—imputation, administrative records, or proxies—are themselves unlawful, and Plaintiffs rightly do not bother to argue as much. Plaintiffs have not plausibly established that any aspect of the Replan falls outside the bounds of the “Manner” in which the census is to be conducted, and their Enumeration Clause claim is unlikely to succeed.<sup>11</sup>

## V. PLAINTIFFS FAIL TO SATISFY THE OTHER INJUNCTION FACTORS

The Supreme Court has made clear that the “extraordinary remedy” of a preliminary injunction may not be awarded when a plaintiff fails to demonstrate a likelihood of success on the merits. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 32-33 (2008); *see also see Munaf v. Geren*, 553 U.S. 674, 690 (2008) (likelihood of success requires far more than identifying “serious,

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<sup>11</sup> Notably, Plaintiffs’ Enumeration Clause claim would fail even if the Court were to apply the *Wisconsin* standard to ask whether the Bureau’s planned operations bear a “reasonable relationship to the accomplishment of an actual enumeration.” 517 U.S. at 19. Notably, Defendants are aware of no decision finding a violation of that standard, and this should not be the first. *See NAACP v. Bureau of Census*, --- F. Supp. 3d ---, 2020 WL 1890531, at \*6 (D. Md. Apr. 16, 2020) (“I have located no case where a court has found a violation of the *Wisconsin* reasonable relationship standard . . .”).

Plaintiffs principally target the “shortened non-response follow up period,” Mot. 26, but the Bureau reasonably chose to divide what available time remains before the statutory deadline between completing field operations and necessary data processing to ameliorate any consequences of a differential undercount. Fontenot Decl. ¶ 82; Huseny Decl., Ex. 1 at 1 (commencing data processing after September 30 permits “the Census Bureau . . . to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities”). Plaintiffs also claim that the Replan risks “lower-quality data across the board,” Mot. 27, but perfection is not the relevant metric for the decennial census, and in any event, a claim of reduced quality “across the board” cuts against Plaintiffs’ simultaneous contention that they and their constituencies will suffer particularized differential harms. Finally, Plaintiffs’ abstract attack on the perceived “legitimacy” of the Census is no more than speculation about the subjective reaction of unspecified third-parties to a census count that does not yet exist. Moreover, whether certain members of the public may harbor opinions about whether a particular census is “legitimate” or not says nothing about the question of whether a particular counting methodology reasonably relates to conducting the enumeration.

substantial, difficult, and doubtful” questions); *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (“[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” (internal quotes and citations omitted; emphasis in original)). Accordingly, Plaintiffs’ failure to establish a cognizable APA or Enumeration Clause claim—to say nothing of justiciability or jurisdiction—is a basis to deny the injunction request outright. *See, e.g., Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013) (when “a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [*Winter* elements]” (quotation omitted)).

And Plaintiffs’ position grows only more tenuous if the Court proceeds further. Because Plaintiffs are seeking an injunction that would compel the Census Bureau to re-configure and extend its operations, Mot. 35, theirs would be a mandatory injunction. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (injunction is a mandatory one if it requires defendant “to take affirmative action”). Such injunctions are “particularly disfavored,” and require Plaintiffs to meet the “doubly demanding” burden of showing that “the law and facts *clearly favor* [their] position.” *Id.* (emphasis in original); *see also Park Vill. Apartment Tenants Ass’n v. Mortimer Howard Trust*, 636 F.3d 1150, 1160 (9th Cir. 2011) (mandatory injunctions should not issue in “doubtful cases”). Just as they fail to establish a likelihood of success on the merits, Plaintiffs cannot satisfy this demanding standard with respect to the remaining injunction factors: irreparable injury, balance of harms, and the public interest. *See Winter*, 555 U.S. at 20.

#### **A. Plaintiffs Cannot Establish Any Imminent and Irreparable Harm**

Most significantly, Plaintiffs fail to establish that they are “likely to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Plaintiffs cannot “demonstrate that absent a preliminary injunction they 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) (internal quotation marks omitted). Because a preliminary injunction “is one of the most drastic

tools in the arsenal of judicial remedies,” *id.*, Plaintiffs’ burden to show irreparable harm is necessarily higher than what is required to establish standing. *See, e.g., Mazurek*, 520 U.S. at 972.

Here, Plaintiffs fail this test for all the same reasons that they fail to establish standing: they cannot show that they stand to suffer any imminent and certain injury. As explained above, Plaintiffs’ assertions that their communities are likely to be undercounted as a result of the Replan are speculative. They are also inconsistent with the evidence presented by Mr. Fontenot. *See* Fontenot Decl. ¶ 91 (“[T]he Census Bureau is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline following” the Replan).

Even more significant, however, is Plaintiffs’ failure to connect any alleged undercount in their communities to potential undercounts in other jurisdictions. Because Plaintiffs are competing for dollars and legislative seats with other communities in their states and across the country, they can only be injured by inaccuracies that affect their members disproportionately. Unlike in the other cases they cite, there is no evidence in the record here to establish (1) what the undercount in Plaintiffs’ communities will be; (2) how that undercount compares with undercounts in other communities; and (3) how that comparison will result in some appreciable funding or representational loss for Plaintiffs. Absent this evidence, Plaintiffs cannot be said to establish anything more than the abstract “possibility of irreparable injury.” *Nken v. Holder*, 556 U.S. 418, 434 (2009). But, as the Supreme Court has emphasized, the “‘possibility’ standard is too lenient” a basis upon which to issue the drastic remedy of a preliminary injunction. *Winter*, 555 U.S. at 22. Given that irreparable harm is an indispensable element for a preliminary injunction, *id.*, Plaintiffs’ failure to establish anything more than the theoretical possibility of harm is sufficient basis to deny the injunction they seek.

Once again, Plaintiffs appear to suggest that *any* inaccuracy in the census could cause them injury by decreasing the quality of the data they plan to use for various purposes. *See* Mot. 28-32. But, as noted above, such a *per se* rule, which would grant standing to anyone who asks for it, is inconsistent with the Supreme Court’s census precedents. And it is doubly inappropriate in the context of a preliminary injunction, which is reserved for use only as an “extraordinary remedy.” *Winter*, 555 U.S. at 376. Simply put, adopting Plaintiffs’ argument would enable any locality or

1 organization who comes to Court complaining of census operations and the mere prospect of an  
 2 inaccurate undercount, to obtain an injunction as a matter of course. That is not—and cannot be—  
 3 the standard.

#### 4 **B. The Remaining Factors Weigh Against an Injunction**

5 On the other side of the ledger, the harm to the government and to the public interest from  
 6 an injunction would be great, and immediate. *See Nken*, 556 U.S. at 435 (explaining that harm to  
 7 opposing party and weighing the public interest “merge” when relief is sought against the  
 8 government). As a legal matter, a judicial injunction would intrude on Congress’s and the  
 9 Executive’s discretion over the census. *See supra* Section I. And as a practical matter, the  
 10 requested injunction may make it *more* difficult to execute the census. Fontenot Decl. ¶¶ 93-101.

11 There is no denying that the end-of-year statutory deadline for completing the census  
 12 presents a number of challenges. However, were the Court to set aside the Replan, the Bureau  
 13 would have to generate a *new* plan to comply with § 141(b)’s deadline or, if the Court somehow  
 14 deems that statutory provision null, whatever new timelines the Court may choose to impose. *See*  
 15 *id.* This would require re-planning yet again the timing of various operations and staffing  
 16 allocations of a nationwide census whose field operations are nearing completion. *See id.* And all  
 17 of that would presumably have to be done in a matter of a few weeks, if not days, with the  
 18 congressional clock ticking away without relief in sight.

19 Even if the Court were to waive or disregard § 141(b)’s deadline, there is no certainty that  
 20 a compulsory replan would be any better than the Replan at reducing undercount or achieving  
 21 some abstract notion of better accuracy. Indeed, by the logic Plaintiffs apply in this very matter,  
 22 such a plan would be worse. Plaintiffs complain that the Replan was developed too quickly,  
 23 without sufficient input from stakeholders, and did not account for a variety of factors such as  
 24 whether the plan is feasible. *See* Mot. 18-21. What would Plaintiffs and their experts make of a  
 25 plan compiled in *less* time, subject to *more* funding constraints, and focused on achieving  
 26 compliance with a Court decree rather than the Bureau’s longstanding standards and practices?  
 27 The Court should not order the Bureau to find the answer.

1 With “the decennial census [ ] again generat[ing] a number of [ ] controversies,” *Franklin*,  
 2 505 U.S. at 790, and the extraordinary disruption caused by the COVID-19 pandemic, the public  
 3 interest favors allowing the Bureau to complete the census under its current plan—the only plan  
 4 that complies with the congressional deadline. The Bureau is confident that this plan will produce  
 5 the best possible census under the circumstances. Plaintiffs can ask for, and obtain, no more from  
 6 this Court.

### 7 CONCLUSION

8 For these reasons, the Court should deny the Motion for Stay or Preliminary Injunction.

9  
 10 DATED: September 4, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of September, 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing.

/s/ M. Andrew Zee

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**DECLARATION OF  
ALBERT E. FONTENOT, JR.**

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

## **I. Executive Summary**

1. I am the Associate Director for Decennial Census Programs at the U.S. Census Bureau, and I submit this declaration to:

- Explain the magnitude, complexity, and planning involved in the 2020 decennial census, including the tightly integrated nature of census operations and processing;
- Detail the changes made to the original design in light of the COVID-19 pandemic; and
- Discuss the impacts of extending field operations past their current end date of September 30, 2020.

## **II. Qualifications**

2. I am the Associate Director for Decennial Census Programs, in which capacity I serve as adviser to the Director and Deputy Director of the Census Bureau on decennial programs. In this role, I provide counsel as to the scope, quality, management and methodology of the decennial census programs; provide executive and professional leadership to the divisions and central offices of the Decennial Census Programs Directorate; and participate with other executives in the formulation and implementation of broad policies that govern the diverse programs of the Census Bureau. I have served in this capacity since November 12, 2017.

3. I began my career with the Census Bureau after retiring from a successful 40-year career as a senior executive in the private sector with midsize manufacturing companies where I was responsible for providing visionary leadership, developing innovative corporate growth and development strategies. I served as Vice President of Marketing, Vice President of Research and Development, and, for the last 14 years, as President and Chief Executive Officer.

4. In addition to a successful corporate career I served as Adjunct Professor in the MBA program in the Keller Graduate School of Management from 2005–2013 where I taught Leadership and Organizational Development, Marketing Management, Corporate Finance, Statistics, and Marketing. I earned a BA in management and MBA in management and finance

1 from DePaul University and Doctor of Ministry in pastoral ministry from Bethel Theological  
2 Seminary

3 5. I served as a as a commissioned officer in U. S. Army and was decorated in combat  
4 in Vietnam. After leaving active service, I remained in the US Army reserve attaining the rank of  
5 Major.

6 6. After retirement from private sector corporate management, I began my career with  
7 the Census Bureau in 2009 as a Field Operations Supervisor in Southern California for the 2010  
8 Census. I quickly rose through the ranks and managed the Non-response follow-up operations for  
9 the 2010 Census as Area Manager responsible for census activities in Los Angeles County, the  
10 State of Hawaii, San Bernardino County and Riverside County California. After 2010, I served in  
11 positions of increasing responsibility as Survey Supervisor, Senior Supervisory Survey  
12 Statistician, Assistant Regional Director for the Los Angeles Region, and Regional Director for  
13 the Chicago Region. I moved from the field to the Census Bureau headquarters to assume the  
14 position as Chief of the Field Division and subsequently Assistant Director of Field Operations,  
15 Assistant Director for Decennial Census Operations, then Associate Director for the Decennial  
16 Census.

17 7. From 2012–2016, I represented the Field Directorate on the team that developed  
18 and wrote the Operations plan for the 2020 Decennial Census.

19 8. I have in-depth firsthand knowledge about the planning, management, and  
20 execution of Census Bureau field operations and effective mission-oriented leadership. I serve as  
21 the Chairman of the Census Crisis Management Team; I served as a member of the 2020 Census  
22 Design Executive Guidance Group; I am a member of the Census Data Quality Executive  
23 Guidance Group; and I chair the 2020 Census Operations Planning Group. Additionally, I  
24 represent the Decennial Census Program in our engagement with two of the three committees that  
25 advise the Census Bureau: the Census Scientific Advisory Committee and the National Advisory  
26 Committee.

### III. A Complex Design and Budget for the 2020 Census

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

10. The Census Bureau's mandate in conducting the decennial census is to count everyone living in the United States, including the 50 states, the District of Columbia, and the territories of Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and U.S. Virgin Islands. To that end, we expend significant funds, efforts, and resources in capturing an accurate enumeration of the population, including those who are hard to count. In particular, the 2020 Census operational design considers population groups that have historically been hard to count, as well as population groups that may emerge as hard to count.

11. The planning, research, design, development, and execution of a decennial census is a massive undertaking. The 2020 decennial census consists of 35 operations utilizing 52 separate systems. Monitoring the status and progress of the 2020 Census—the operations and systems—is managed in large part using a master schedule, which has over 27,000 separate lines of census activities. Thousands of staff at Census Bureau headquarters and across the country support the development and execution of the 2020 census operational design, systems, and procedures. In addition, the 2020 Census requires the hiring and management of hundreds of thousands of field staff across the country to manage operations and collect data in support of the decennial census.

12. The 2020 Census operational design is tailored to enumerate all persons, including hard-to-count populations. Almost every major operation in the 2020 Census contains components designed to reach hard-to-count populations. This includes: census outreach, census content and forms design, finding addresses for enumeration, field infrastructure, multiple modes for self-response, Non-Response Follow-Up (NRFU) operations that enumerate households that did not self-respond to the census, and other operations designed specifically for the enumeration of population groups that have been historically hard to count. The best explanation of the many integrated operations designed to reach these populations is set forth in Appendix B to Version 4.0

of the 2020 Census Operation Plan, available at <https://www.census.gov/programs-surveys/decennial-census/2020-census/planning-management/planning-docs/operational-plan.html>. Examples include:

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

13. The Census Bureau obtained approval under the Paperwork Reduction Act from the Office of Management and Budget for the data collections involved in the 2020 Census. The Operational Plan is a project management document and, as in prior censuses, we did not obtain clearance for it. We presented information about our plans as we developed them in quarterly public Project Management Reviews, and we obtained input on our plans from both our Census Scientific Advisory Committee and National Advisory Committee. We consulted with other agencies throughout the decade about data security, postal delivery, acquisition of records, and the like, though we did not ask other agencies to review or approve our project management plans.

14. We allocate vast resources to ensure as complete and accurate a count as possible. Research and testing, in addition to the Census Bureau’s collective knowledge and experiences, has resulted in an effective approach to reach all population groups.

15. The complexity and inter-related nature of census operations is echoed in the budget for the 2020 Census. The overall budget estimate for the 2020 Census—covering fiscal

years 2012 to 2023—is \$15.6 billion. This represents enough funding to successfully complete the 2020 Census in virtually all possible scenarios, including the current challenging circumstances. In fact, the Government Accountability Office (GAO) recently reviewed this budget estimate<sup>1</sup> and determined, as of January 2020, that the estimate substantially or fully met GAO’s standards and best practices for a reliable cost estimate in terms of credibility, accuracy, completeness, and documentation quality. It is rare for civilian agencies to be so designated, and we are proud that the Census Bureau has achieved this status.

16. As of this writing, the Census Bureau has been appropriated in aggregate just under \$14 billion to use for the 2020 Census, covering fiscal years 2012 through 2020. This is \$4.4 billion greater in appropriated dollars than the \$9.6 billion actually expended from fiscal years 2002 to 2010 for the 2010 Census.

17. Combined, prior to the COVID-19 pandemic operational adjustments, there remain just over \$2 billion in contingency funds that have been appropriated, but which we have not needed to use. With only minimal exceptions, Congress appropriated these funds to allow us to flexibly and quickly respond to any and all risks to the 2020 Census that might be realized and have an impact on the operations.

18. That is exactly what the Census Bureau has done in these challenging times. We have always planned to exhaust any resources necessary to fulfill the Census Bureau’s mission in counting everyone living in the United States once, only once, and in the right place. In all scenarios, the focus of our resources includes the hard-to-count. We have designed and implemented the 2020 Census to enumerate the most willing and able to respond in our most efficient and cost effective manner, thereby freeing the majority of our resources to reach hard-to-count communities using a bevy of in-person techniques specifically tailored to reach them.

#### **IV. Census Step 1: Locating Every Household in the United States**

19. The first operational step in conducting the 2020 Census was to create a Master Address File (MAF) that represents the universe of addresses and locations to be counted in the

<sup>1</sup> This is known as the 2020 Census Life Cycle Cost Estimate (LCCE) Version 2.0. An executive summary of that estimate is publicly available at [https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/life-cycle-cost-estimate\\_v2.pdf](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/life-cycle-cost-estimate_v2.pdf).

1 2020 Census. This operation constitutes a significant part of the 2020 Census, and our plans to  
2 enumerate every resident once, only once, and in the right place.

3 20. A national repository of geographic data—including addresses, address point  
4 locations, streets, boundaries, and imagery—is stored within the Census Bureau’s Master Address  
5 File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) System. The  
6 MAF/TIGER System provides the foundation for the Census Bureau’s data collection, tabulation,  
7 and dissemination activities. It is used to generate the universe of addresses that will be included  
8 in a decennial census. Those addresses are then invited to respond, typically through an invitation  
9 in the mail. The MAF/TIGER System is used to control responses as they are returned to the  
10 Census Bureau and to generate a list of nonresponding addresses that will be visited in person.  
11 Finally, the MAF/TIGER System is used to ensure that each person is tabulated to the correct  
12 geographic location as the final 2020 Census population and housing counts are prepared.

13 21. For all of these reasons, the Census Bureau implemented a continuous process for  
14 address list development in preparation for the 2020 Census. There are two primary components  
15 to address list development—in-office development and in-field development. In-office  
16 development involves the regular, on-going acquisition and processing of address information  
17 from authoritative sources, such as the U.S. Postal Service (responsible for delivering mail to  
18 addresses on a daily basis), and tribal, state, and local governments (responsible for assignment of  
19 addresses to housing units), while in-field address list development involves individuals traversing  
20 a specified geographic area and validating or updating the address list based on their observations  
21 and, if possible, interaction with residents of the housing units visited.

22 22. Between 2013 and 2019, the Census Bureau accepted nearly 107 million address  
23 records from government partners. Over 99.5 percent of those records matched to addresses  
24 already contained in the MAF, many of which were obtained from the U.S. Postal Services’  
25 Delivery Sequence File (DSF). The remaining 0.5 percent of address records from partner  
26 governments represented new addresses and were used to update the MAF. In addition, partners  
27 submitted over 75 million address points that were either new or enhanced existing address point  
28

1 locations in TIGER. Over 257,000 miles of roads were added to TIGER using data submitted by  
2 partners.

3 23. For the third decade, as mandated by the Census Address List Improvement Act of  
4 1994, the Census Bureau implemented the Local Update of Census Addresses (LUCA) Program  
5 to provide tribal, state, and local governments an opportunity to review and update the Census  
6 Bureau's address list for their respective jurisdictions. In 2018, participants from over 8,300  
7 entities provided 22 million addresses, of which 17.8 million (81 percent) matched to addresses  
8 already in the MAF. The Census Bureau added 3.4 million new addresses to the MAF, nationwide,  
9 as a result of LUCA.

10 24. Between September 2015 and June 2017, the Census Bureau conducted a 100  
11 percent in-office review of every census block in the nation (11,155,486 blocks), using two  
12 different vintages of imagery (one from 2009, which was contemporary with the timing of address  
13 list development and Address Canvassing for the 2010 Census, and one concurrent with the day  
14 on which in-office review occurred) and housing unit counts from the MAF. The 2009-vintage  
15 imagery was acquired from a variety of sources, including the National Agricultural Imagery  
16 Program as well as publicly available imagery from state and local governments. Current imagery  
17 was acquired through the National Geospatial Intelligence Agency's Enhanced View Program,  
18 through which federal agencies can access imagery of sufficiently high quality and resolution to  
19 detect individual housing units and other structures, driveways, roads, and other features on the  
20 landscape.

21 25. During the in-office review, clerical staff had access to publicly available street-  
22 level images through Google Street View and Bing StreetSide, which provided the ability to see  
23 the fronts of structures, as if standing on the sidewalk. The technicians categorized blocks as  
24 passive, active, or on-hold. Passive blocks represented stability, meaning the technician verified  
25 the currency and accuracy of housing data in the office. Active blocks represented evidence of  
26 change and/or coverage issues in the MAF. On-hold blocks represented a lack of clear imagery.  
27 In these latter two instances, In-Field Address Canvassing was required. At the end of the initial  
28

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

3 26. However, since the 2020 Census was still several years away when In-Office  
4 Address Canvassing completed its initial review of the nation, the Census Bureau continued the  
5 in-office review to ensure the MAF was keeping up with changes on the ground. The Census  
6 Bureau used information from the U.S. Postal Services' DSF and partner governments to identify  
7 areas experiencing recent change and triggered these areas for re-review. Between July 2017 and  
8 March 2019, the additional review resulted in the categorization of nearly 87.9 percent of the 11.1  
9 million census blocks as passive, indicating a need for in-field review of only 12.1 percent of  
10 census blocks.

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

18 28. The design for address list development in the decade leading up to the 2020 Census  
19 was the most comprehensive in history. Extensive partnerships with tribal, federal, state, and local  
20 governments provided multiple opportunities to validate and update the MAF using the most  
21 authoritative sources available. This process of continual assessment and update using partner-  
22 provided data created a strong foundation on which to implement the use of satellite imagery to  
23 validate existing addresses or detect change during In-Office Address Canvassing. This suite of  
24 in-office methods allowed the Census Bureau to focus In-Field Address Canvassing resources in  
25 the hardest to validate census blocks.

26 29. The MAF/TIGER System created the foundation for the 2020 Census. The Census  
27 Bureau believes that the Census Bureau's MAF/TIGER System is the most complete and accurate  
28 in history.

**V. Census Step 2: Encouraging Self-response Throughout the 2020 Census**

30. In order to encourage everyone in the United States to self-respond, the Census Bureau designed, tested, and implemented and Integrated Communications Program, the IPC. The two major components of this program are the ICC, the Integrated Communications Contract, and the IPP, the Integrated Partnership Program.

**A. Advertising and Media**

31. The ICC is the major contract that supports all components of the communications campaign for the 2020 Census. For the 2020 Census, the push to educate people and motivate response to the 2020 Census represented the largest advertising campaign in U.S. government history.

32. The budget for the 2020 Integrated Communications Contract is currently funded at a higher level than in the 2010 Census, adjusted for both inflation and population growth. The cost of the 2010 Census Integrated Communications Contract, in 2020 constant dollars, would be \$456 million, while the Census Bureau currently plans to spend approximately \$695 million on the 2020 Census Integrated Communications Contract. The \$695 million spent on the communications program will mean an 18% increase in per-person spending over the 2010 amount.

33. To run the ICC in connection with the Census Bureau, a contract was awarded to VMLY&R, a major legacy-advertising firm with over 80 years of experience. Known as Team Y&R, or TYR, by the Census Bureau, the contracting team includes 13 subcontractors. TYR includes firms with expertise in reaching and working with the major audiences that will receive advertising through the media outlets directed toward their population groups, including the Black/African American, Hispanic/Latino, Asian, American Indian and Alaska Native, and Native Hawaiian and Other Pacific Islander populations. By relying on firms with these individual skill sets, the Census Bureau was able to better tailor the media and messaging toward individual groups and gauge the response before going live with the advertising. It also allowed for more creative risk-taking, and less of a one-size-fits-all approach.

34. Every part of the 2020 Census communications program was grounded in research. Based on the commitment to being a data driven campaign, beginning in 2018, we extensively researched how people perceived the census and what would motivate them to complete it. Models were developed to predict areas and audiences of low response across the country. These models were then translated into “low response scores” that help the Census Bureau anticipate respondent behavior so that messaging, media, and other communications activities could be deployed to maximize impact.

35. As a result of that research, we mounted a media campaign with stories in news media across the country in print, social, and digital media. The campaign was tested in over 120 focus groups across the country, and driven by efforts to reach historically undercounted audiences. More than 1,000 advertisements, in English and 43 other languages, were developed to communicate the importance of responding to the 2020 Census. This compares to roughly 400 separate creative pieces created in 2010. A sample of these creative pieces can be seen on the Census Bureau’s YouTube channel website.

36. On March 29, 2019, the Census Bureau launched 2020census.gov—a key information hub about the census, how to complete it, and how it will affect communities across the country. Three days later, on April 1, 2019, we held a press conference to unveil the campaign platform: “Shape Your Future. START HERE.” On January 14, 2020, we unveiled highlights of the public education and outreach campaign. That same day, we began airing ads to reach 99 percent of the nation’s 140 million households, including historically undercounted audiences and those that are considered hard to reach.

37. The massive multimedia campaign sought to engage stakeholders and partners, support recruitment efforts and the Statistics in Schools program, and communicate the importance of the census through paid advertising, public relations, social media content, and the new web site. This was the first census where we made a significant investment in digital advertising, and spending time and resources targeting online sites including Facebook, Instagram, paid search engines, display ads, and programmatic advertising.

1        38.        The push to have a greater digital presence allowed the Census Bureau to reach a  
2 mobile audience, tailor messages, micro-target, and shift campaign ads and messages as needed.  
3 Online media, particularly search engines and social networking sites, made up a significant  
4 portion of digital connections. Nearly every person living in the United States was reached an  
5 average of 40 times throughout the campaign, from television, radio, newspaper and online ads, as  
6 well as outdoor locations such as billboards and bus stops.

7        39.        The Census Bureau adapted its outreach strategies in response to delayed census  
8 operations due to COVID-19, increasing advertising and outreach to specific areas of the country  
9 with lower response rates. We quickly adjusted our messaging, pivoting from our original  
10 campaign to encourage people to respond online from the safety of their own homes. The use of  
11 micro-targeting allowed the Census Bureau to tailor its messaging, including directing appropriate  
12 messages to hard-to-reach communities and those who distrust government, both of which have  
13 been traditionally undercounted. This targeting continues through NRFU as we encourage the  
14 public to cooperate with enumerators. This targeting has allowed us to make each dollar spent on  
15 the advertising campaign more effective than in any previous census.

16                    **B.        Partnerships with Community Organizations**

17        40.        The second major element of the Integrated Communications Program is  
18 partnerships. There are two prongs to the Partnership Program, the National Partnership Program  
19 that works from Census Bureau headquarters mobilizing national organizations, and the  
20 Community Partnership and Engagement Program, that works through the regions at the local level  
21 to reach organizations that directly touch their communities. The National Partnership Program  
22 and Community Partnership and Engagement Program are more integrated than ever before, and  
23 numbers involved for both programs significantly exceed the totals reached in prior censuses.

24        41.        Census partners include national organizations like the National Urban League, the  
25 Mexican American Legal Defense Fund, the National Association of Latino Elected Officials  
26 (NALEO), the National Association for the Advancement of Colored People (NAACP), and the  
27 U.S. Chambers of Commerce. Major corporations also become census partners. At the local level,  
28

1 partners can be churches, synagogues and mosques, legal aid clinics, grocery stores, universities,  
2 colleges, and schools.

3 42. Partners are the trusted voices in their communities; they have a profound impact  
4 on those who listen when they say the census is important and safe. We depend on our partners to  
5 seal the deal with communities that may be fearful or distrustful of the government. Even with all  
6 the Census Bureau's innovation and improvements to the self-response system, we have learned—  
7 and confirmed through research—that when communities and leaders recognize the importance of  
8 participating in the census, this message is better conveyed to households within those  
9 communities. The best, most trusted information comes from a person of trust.

## 10 **VI. Census Step 3: Self-Response**

11 43. The design of the 2020 Census depends on self-response from the American public.  
12 In an effort to ensure the most efficient process to enumerate households, the Census Bureau  
13 assigns every block in the United States to one specific type of enumeration area (TEA). The TEA  
14 reflects the methodology used to enumerate the households within the block. There are two TEAs  
15 where self-response is the primary enumeration methodology: TEA 1 (Self-Response) and TEA  
16 6 (Update Leave).

17 44. TEA 1 uses a stratified self-response contact strategy to inform and invite the public  
18 to respond to the census, and to remind nonresponding housing units to respond. Invitations,  
19 reminders, and questionnaires will be delivered on a flow basis unless a household responds.  
20 These mailings are divided into two panels, Internet First and Internet Choice. Internet First  
21 emphasizes online response as the primary self-response option. Mailings to the Internet First  
22 panel begin with an invitation letter that alerts the housing unit to the beginning of the 2020 Census  
23 and provides the Census ID,<sup>2</sup> the URL for the online questionnaire, and information for responding  
24 by phone.

25 45. Internet Choice is targeted to areas of the nation that we believe are least likely to  
26 respond online. Historical response rates from other Census Bureau surveys, internet access and

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27 <sup>2</sup> A Census ID is a unique identifier assigned to each address in a decennial census; the  
28 Census ID is used to track whether an address has self-responded or to track the address through  
nonresponse data collection and, ultimately through response processing and data tabulation.

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

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

47. Self-response began in March 2020 and will continue until the end of data collection. The total self-response period for the 2020 Census will be longer than the 2010 self-response period.

## **VII. Census Step 4: Nonresponse Followup (NRFU)**

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

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

50. The 2020 Census NRFU operation is similar to the 2010 Census NRFU operation, but improved. In both the 2010 Census and the 2020 Census, cases in the NRFU workload are

1 subject to six contact attempts. In both the 2010 and 2020 NRFU, the first contact attempt is  
2 primarily an in-person attempt. In the 2010 Census, these six contact attempts could be conducted  
3 as three in-person attempts and three attempts by telephone. By comparison, each contact attempt  
4 in the 2020 Census NRFU will be either a telephone or an in-person contact attempt (however the  
5 vast majority of attempts will be in-person).

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

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

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

21 54. If a knowledgeable person cannot be found to confirm the status of vacant or non-  
22 existent, use of administrative records may provide confirmation of the enumerator's assessment.  
23 The Census Bureau does not rely on a single administrative records source to determine an address  
24 is vacant or non-existent. Rather, multiple sources are necessary to provide the confidence and  
25 corroboration before administrative records are considered for use. When used in combination  
26 with an enumerator's assessment of vacant or non-existent, corroborated administrative records  
27 provide the second confirmation that a nonresponding address is vacant or non-existent.

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

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

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

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

#### 23        **VIII. Census Step 5: Quality Control**

24        59. The Census Bureau is committed to a quality NRFU operation and has in place  
25 several programs to monitor and promote quality, such as the NRFU Reinterview Program, the  
26 Decennial Field Quality Monitoring Operation, and the Coverage Improvement Operation.

27        60. The NRFU Reinterview Program involves contacting a small number of households  
28 to conduct another interview—to help us ensure that enumerators are conducting their jobs

1 correctly and are not falsifying responses. We have streamlined this operation, using information  
2 collected from the mobile devices used by enumerators. The data from these mobile devices tell  
3 us where the enumerators were physically located while they were conducting the interviews, how  
4 long they spent on each question in the interview, time of day of the interview, and other detail  
5 data about the interview process. Having this information—which is new for the 2020 Census—  
6 provides management with information on how the census takers are doing their jobs, and allows  
7 us to select reinterview cases in a targeted fashion.

8         61. A second quality check program, new for the 2020 Census, is the Decennial Field  
9 Quality Monitoring operation. This operation monitors overall adherence to field procedures in  
10 order to identify unusual patterns. We used this near real-time data analysis successfully during  
11 the Address Canvassing operation in 2019, and it is currently active in the NRFU operation. The  
12 goal of the program is to identify and investigate potential quality issues. In this program we  
13 examine data from individual field representatives and larger scale data, scanning for the  
14 possibility of both individual and systemic data quality problems. The program monitors outlier  
15 metrics, and produces reports that we analyze on a daily basis. Management staff use these reports  
16 to investigate suspicious activities and follow up as needed.

17         62. Another quality check operation, the Coverage Improvement Operation, seeks to  
18 resolve erroneous enumerations (people who were counted in the wrong place or counted more  
19 than once) and omissions (people who were missed) from all housing unit data. Coverage  
20 Improvement will attempt to resolve potential coverages issues identified in responses from  
21 the Internet Self-Response, Census Questionnaire Assistance, and NRFU operations, as well as  
22 from the paper questionnaires.

23         63. The Census Bureau believes that these quality programs (Reinterview, Decennial  
24 Field Quality Monitoring, and Coverage Improvement), taken together, provide a robust quality  
25 check for our data collection operations. We believe that our quality program remains an effective  
26 deterrent to poor performance, and an appropriate method to identify enumerators who fail to  
27 follow procedures. None of these programs, to date, reveals a pattern of substandard data  
28 collection.

64. The Census Bureau has also formed a Data Quality Executive Guidance Group that brings together the Census Bureau's experts in the fields of census operations, statistical methodology, acquisition and utilization of administrative records, and in the social, economic and housing subject areas. The group's mission is to provide direction and approvals about quality assessments of changes to the operational plans and of the 2020 Census data during and post data collection. We plan to release Demographic Analysis estimates of the population in December, prior to the release of the apportionment counts, as previously planned.

65. Finally, as noted by the Director in his August 3, 2020 statement, the Census Bureau intends to meet a similar level of household responses as in prior censuses, meaning that we will resolve 99% of the cases in each state. In short, the Census Bureau has robust programs in place to monitor data quality and has no indication that its NRFU operation is collecting "substandard" data.

#### **IX. Census Step 6: Post-data Collection Processing**

66. The next major step in the census, after the completion of data collection operations, is post processing. Post processing refers to the Census Bureau's procedures to summarize the individual and household data that we collect into usable, high quality tabulated data products. Our post processing procedures and systems are meticulously designed, tested and proven to achieve standardized, thoroughly vetted, high quality data products that we can stand behind.

67. Post data collection processing is a particularly complex operation, and the steps of the operation must generally be performed consecutively. It is not possible, e.g., to establish the final collection geography for the nation prior to processing housing units and group quarters that are added or corrected during NRFU. Similarly, it is not possible to unduplicate responses prior to processing all non-ID responses. In this sense, the post data collection activities are like building a house – one cannot apply dry wall before erecting the walls, any more than one could lay floor tile before the floor is constructed. There is an order of steps that must be maintained.

68. As part of developing the Replan Schedule, we looked at the possibility of starting the post data collection processing activities on a flow basis and reaffirmed that there is no opportunity to begin the post data collection processing until data collection operations close

everywhere. For example, we cannot begin processing in one region of the country while another region is still collecting data. This is true because the first post processing step is geographic processing, which cannot begin until the entire universe is determined. Geographic processing is key because we must tabulate census results at the block level and then build to higher levels of geography such as block groups, tracts, counties, and states.

69. The information below provides additional detail about the post data collection activities under the Replan Schedule.

A. Incorporate address updates from the field data collection operations into  
MAF/TIGER

Original Dates: February 10 – August 10, 2020

Replan Dates: February 6– September 24, 2020

During the data collection operations, the census field staff can update address and physical location information and add addresses. These updates are incorporated into our address and geo-spatial MAF/TIGER databases. Once updated, each address must be associated to the correct state, county, tract, block group and block. Since it is critical to associate each address to the correct geography, we verify that the address and geo-spatial updates are incorporated correctly.

B. Produce the Final Collection Geography MAF/TIGER Benchmark

Original Dates: August 14 – September 1, 2020

Replan Dates: September 5 – 25, 2020

In preparation for the producing the final collection geography data files needed for producing the apportionment counts and redistricting data products, we create a benchmark of MAF/TIGER, which is a snapshot of the databases.

C. Produce the Final Collection Address Data Products from MAF/TIGER

Original Dates: September 2 – 14, 2020

Replan Dates: September 26 – Oct 14, 2020

Once the benchmark has been created, the final collection geographic data files are produced and verified.

D. Produce and review the Decennial Response File 1 (DRF1)

Original Dates: September 15 – October 14, 2020

Replan Dates: October 14– November 8, 2020

The verified final collection geography data are integrated with the response data. Integration of these data is also verified to ensure accuracy. The next set of activities involves the standardization of the collected information.

- First we determine the final classification of each address as either a housing units or a group quarters facility. Addresses can change from a housing unit to group quarters and vice versa. Initial status is set at the start of the data collection operations as either a housing unit or group quarters. During the enumeration operations, we collect information that informs us on the classification. For a small number of addresses the classification may change, for example a housing unit may have been turned into a small group home. Based on the information collected we determine the status of every address as either a housing unit or group quarters.
- Next, we identify each unique person on the housing unit returns.
- As part of NRFU operation, we conduct a reinterview of a sample of cases to ensure quality. We incorporate the results of the reinterview.
- As part of the Internet self-response option and telephone operation, respondents can provide their data without their Census Identification Number (ID). These cases are assigned an ID which associates them to the final collection geography.
- Some group quarters will provide the information electronically. These files can contain duplicate records, so we need to remove the duplicates.
- We also determine the population count for all group quarters.

- We collect data in many ways, for example on-line, over the phone, on a paper questionnaire, electronic administrative files, and in person using an electronic questionnaire. As a result, we need to standardize the responses across the modes of collection.
- Finally, for the operations that collect data on a paper questionnaire, some housing units have more people than can fit on one paper questionnaire. The census field staff will use multiple paper questionnaires to enumerate the house. These continuation forms are electronically linked to form one electronic form.

E. Produce and review the Decennial Response File 2 (DRF2)

Original Dates: October 14 – November 4, 2020

Replan Dates: November 9 – 30, 2020

Once the previous step has been verified, we incorporate the results from the Self-Response Quality Assurance operation. As part of the group quarters operations, we enumerate domestic violence shelters. Their locations and data are high sensitive and are handled with special procedures both in the field and in processing. Their data are incorporated at this point in the process. Finally, for a small number of addresses we receive multiple returns, for example where one person in a house completes the form on-line, and other completes the paper questionnaire. For these cases, we select a form that will be used as the enumeration of record.

F. Produce and review the Census Unedited File (CUF)

Original Dates: November 4 – 30, 2020

Replan Dates: December 1 – 14, 2020

Once the previous step has been verified, we incorporate administrative records data as the response data for housing units where we do not have an enumeration and have high quality administrative records data. Next we determine the status

for every housing unit as occupied, vacant or non-existent. Non-existent units are removed from future processing. For every occupied housing unit, the population count is determined. For each person with write-in responses to the race and Hispanic origin questions, we merge in the information from automated and clerical coding operations. The coding operations assign a numerical value to the write-in responses. At this point in the post-data collection activities, for every housing unit and group quarter their location (state, county, tract, block group and block) is assigned, their status (occupied, vacant or non-existent) is determined, and in occupied addresses the number of persons is known. In addition, at the person level the demographic information (relationship, age, date of birth, sex, race and Hispanic origin along with write-in code values) and at the housing unit level housing information (tenure) is determined. For the majority of these items, the respondent provided the information. However, for a small number of people and addresses the information may be missing or inconsistent with other provided information, for example the Person 1's spouse is five years old. The result of these processes is a file that contains records for every housing unit and group quarters along with person records for the people associated with the addresses. Note that some of the demographic information and response to the tenure question may be missing.

G. Produce, review and release the Apportionment Counts

Original Dates: December 1 – 28, 2020

Replan Dates: Dec 15- 31, 2020

Once the CUF has been verified, the process goes down two paths. The first path is to determine the apportionment counts. Since every housing unit and group quarters has a population count and linked to a state, we can tabulation the state level population counts. In addition, we merge in the count of the Federally Affiliated Overseas population and the results of the Enumeration of Transitory Locations for each state. To ensure accuracy in the apportionment numbers, the

state counts including the overseas population and apportionment numbers are verified by multiple independent ways. The results of the independent verifications are compared and reconciled, if necessary.

**X. Census Step 0: Research and Testing of the 2020 Census Design**

70. The operational design of the 2020 Census, discussed above, has been subjected to repeated and rigorous testing. Given the immense effort required to conduct the census, the importance of the results, and the decade of work by thousands of people that goes into planning and conducting the decennial census, the Census Bureau expends a significant amount of effort to evaluate its planning and design to ensure that its operations will be effective in coming as close as possible to a complete count of everyone living in the United States. Design and testing of the 2020 Census was an iterative process: after each test, we revised our plans and assumptions as necessary.

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

**A. 2013 Census Test.** The 2013 Census Test explored methods for using administrative records and third-party data to reduce the NRFU workload.

Key objectives of the 2013 Census Test included:

- i. Evaluate the use of administrative records and third-party data to identify vacant housing units and remove them from the NRFU workload;
- ii. Evaluate the use of administrative records and third-party data to enumerate nonresponding occupied housing units to reduce the NRFU workload;
- iii. Test an adaptive design approach for cases not enumerated with administrative records and third-party data; and
- iv. Test methods for reducing the number of enumeration contact attempts as compared with the 2010 Census.

1           B. **2014 Census Test.** The 2014 Census Test built upon the results from the 2013  
 2           Census Test specific to administrative records and third-party data usage to  
 3           reduce the NRFU workload. Key objectives of the 2014 Census Test  
 4           included:

- 5           i. Testing various self-response modes, including the Internet,
- 6           telephone, and paper, and response without a preassigned census
- 7           identifier;
- 8           ii. Testing the use of mobile devices for NRFU enumeration in the field;
- 9           iii. Continuing to evaluate the use of administrative records and third-
- 10          party data to remove cases (vacant and nonresponding occupied
- 11          housing units) from the NRFU workload;
- 12          iv. Testing the effectiveness of applying adaptive design methodologies
- 13          in managing the way field enumerators are assigned their work; and
- 14          v. Examining reactions to the alternate contacts, response options,
- 15          administrative record use, and privacy or confidentiality concerns
- 16          (including how the Census Bureau might address these concerns
- 17          through micro- or macro-messaging) through focus groups.

18          C. **2014 Human-in-the-Loop Simulation Experiment (SIMEX).** Key findings  
 19          included:

- 20          i. Determination that the field management structure could be
- 21          streamlined and the supervisor-to-enumerator ratios increased;
- 22          ii. Messaging and alerts within the operational control system provided
- 23          real-time and consistent communication; and
- 24          iii. Smartphones were usable by all people—even those with little
- 25          technology experience were able to adjust and adapt.

26          D. **2015 Optimizing Self-Response Test.** The objectives of this test included:

- 27          i. Determining use of digital and target advertising, promotion, and
- 28          outreach to engage and motivate respondents;

- ii. Offering an opportunity to respond without a Census ID (Non-ID Processing) and determine operational feasibility and potential workloads around real-time Non-ID Processing; and
- iii. Determining self-response and Internet response rates.

E. **2015 Census Test.** The 2015 Census Test explored reengineering of the roles, responsibilities, and infrastructure for conducting field data collection. IT also tested the feasibility of fully utilizing the advantages of planned automation and available real-time data to transform the efficiency and effectiveness of data collection operations. The test continued to explore the use of administrative records and third-party data to reduce the NRFU workload. Key objectives included:

- i. Continue testing of fully utilized field operations management system that leverages planned automation and available real-time data, as well as data households have already provided to the government, to transform the efficiency and effectiveness of data collection operations;
- ii. Begin examining how regional offices can remotely manage local office operations in an automated environment, the extent to which enumerator and manager interactions can occur without daily face-to-face meetings, and revised field staffing ratios;
- iii. Reduce NRFU workload and increase productivity with the use of administrative records and third-party data, field reengineering, and adaptive design; and
- iv. Explore reactions to the NRFU contact methods, administrative records and third-party data use, and privacy or confidentiality concerns.

F. **2016 Census Test.** The 2016 Census Test tested different supervisor-to-enumerator staffing ratios and incremental improvements and updates to the

field data collection software that guided an enumerator through interviews. The 2016 Census Test also allowed the continued evaluation of the use of administrative records to reduce the NRFU workload. Key NRFU objectives included:

- i. Refining the reengineered field operations;
- ii. Refining the field management staffing structure;
- iii. Testing enhancements to the Operational Control System and field data collection application; and
- iv. Testing scalability of Internet and Non-ID Processing during self-response using enterprise solutions.

Objectives related to self-response included:

- i. Testing provision of language support to Limited English Proficient populations through partnerships and bilingual questionnaires;
- ii. Testing the ability to reach demographically diverse populations;
- iii. Testing deployment of non-English data collection instruments and contact strategies; and
- iv. Refining Real-Time Non-ID processing methods, including respondent validation.

**G. 2018 End-to-End Census Test.** The 2018 End-to-End Census Test focused on the system and operational integration needed to support the NRFU operation. Nearly all 2020 system solutions supporting the NRFU operation were deployed. The test also allowed continued evaluation of the NRFU contact strategy. The objectives of this test included:

- i. Testing and validating 2020 Census operations, procedures, systems, and field infrastructure together to ensure proper integration and conformance with functional and nonfunctional requirements.

**H. Address Canvassing Test (conducted in the fall of 2016).** The Address Canvassing Test examined the effectiveness of the In-Office Address

Canvassing through the results of the In-Field Address Canvassing. The objectives of the test included:

- i. Implementing all In-Office Address Canvassing processes;
- ii. Evaluating the effectiveness of online training for field staff;
- iii. Measuring the effectiveness of In-Office Address Canvassing through In-Field Address Canvassing; and
- iv. Integrating multiple information technology applications to create one seamless operational data collection, control, and management system.

#### **XI. Current Status of 2020 Census Operations**

72. As of September 2, 2020, over 96 million households, 65 percent of all households in the Nation, have self-responded to the 2020 Census. Combining the households that self-responded with those that field staff have enumerated under NRFU reveals that as of September 1, 2020 the Census Bureau has enumerated 84 percent of the nation's housing units.

73. The Census Bureau is now roughly 3 ½ weeks into the 7 ½ week schedule for conducting the NRFU operation. Under the Replan Schedule, NRFU is scheduled to last 7 ½ weeks, not 6 weeks as some of Plaintiffs' declarations state. As of September 1, 2020, we have completed roughly 60% of the NRFU workload. We were helped in achieving this result by the fact that we got a "head start" on data collection by beginning NRFU at select offices in July at a "soft launch." When we began NRFU in all areas on August 9 we had already enumerated over 3 million households. Additionally, over 80% of the households in 40 states have been enumerated

74. While the number of enumerators hired and deployed has not been at the level anticipated, current progress indicates that we will nonetheless be able to complete NRFU before September 30. We currently have over 235,000 enumerators actively deployed, and we are conducting continuous replacement training sessions to increase that number.

75. The productivity rate for our enumerators thus far is substantially above the planned rate. Our plans assumed a productivity rate of 1.55 cases/hour, and 19 hours/week average hours

1 worked, whereas as of September 1, 2020 we have experienced a productivity rate of  
2 approximately 2.32 cases/hour, and 20.1 hours/week averaged work hours.

3 76. In sum, at our current rate we anticipate being able to conclude NRFU data  
4 collection no later than September 30, 2020.

## 5 **XII. Replanning the Census – Multiple Times**

6 77. The Census Bureau's planning for the 2020 Census was, in my professional  
7 opinion, excellent. Our plan was comprehensive and thoroughly tested. In March 2020, however,  
8 it became clear that COVID-19 was a serious health issue, and we were forced to change our plans  
9 around the time we began our self-response operation.

10 78. On March 18, 2020 the Census Bureau initially announced a two-week suspension  
11 of field operations to protect the health and safety of our employees and the American public  
12 because of the COVID-19 Pandemic. Self-response continued during this period through Internet,  
13 telephone and paper questionnaires. On March 28, 2020 the Census Bureau announced an  
14 additional two week suspension, until April 15, 2020.

15 79. At that time the career professional staff at the Census Bureau undertook the project  
16 of replanning each of the field operations based on our best predictions of when we could safely  
17 begin sending staff into the field to interact with the public. On April 13, 2020 staff finalized the  
18 plan to adjust field operations, and I presented the plan to the Secretary of Commerce and  
19 Department of Commerce management. The plan involved delaying our key high personal contact  
20 operations by 90 days. Update Leave, which had started on March 15 and been stopped because  
21 of COVID-19 on March 17, would resume pursuant to a new schedule beginning on June 13 and  
22 concluding on July 9. In-person Group Quarters operations which had been scheduled from April  
23 2 – June 5 would be rescheduled from July 1 – September 3, and our largest field operation, NRFU,  
24 which was scheduled from May 13- July 31, would be moved to August 11- October 31. We  
25 rescheduled self-response to conclude with the end of Field Operations so instead of ending on  
26 July 31 as indicated in the original plan, it was extended to October 31. This schedule required  
27 Congress to provide legislative relief from the statutory deadlines of December 31, 2020, for the  
28 submission of the Apportionment counts to the President, and March 31, 2021, for the delivery of