

1 redistricting data to the states. A request statutory relief from Congress was made for 120 days to  
2 enable us to complete the field operations and post enumeration processing.

3 80. On April 13, 2020, the Secretary of Commerce and the Director jointly announced  
4 the new Census Schedule and stated that they would seek statutory relief from Congress of 120  
5 additional calendar days. This new schedule set a completion date for field data collection and  
6 self-response of October 31, 2020. For clarity, I will refer to this as “the COVID Schedule.” The  
7 COVID Schedule assumed Congressional action and called for the delivery of apportionment  
8 counts to the President by April 30, 2021 (120 days after the statutory deadline) and redistricting  
9 data files to the states no later than July 31, 2021.

10 81. Once it became apparent that Congress was not likely to grant the requested  
11 statutory relief, in late July the career professional staff of the Census Bureau began to replan the  
12 Census operations to enable Census to deliver the apportionment counts by the Statutory deadline  
13 of December 31, 2020. On July 29, the Deputy Director informed us that the Secretary had directed  
14 us, in light of the absence of an extension to the statutory deadline, to present a plan at our next  
15 weekly meeting on Monday, August 3, 2020 to accelerate the remaining operations in order to  
16 meet the statutory apportionment deadline. I gathered all the senior career Census Bureau  
17 managers responsible for the 2020 Census at 8:00 a.m. on Thursday, July 30 and instructed them  
18 to begin to formalize a plan to meet the statutory deadline. At that time I consulted with the  
19 Associate Director of Communications and we directed that the COVID Schedule be removed  
20 from our website while we replanned. We divided into various teams to brainstorm how we might  
21 assemble the elements of this plan, and held a series of meetings from Thursday to Sunday. We  
22 developed a proposed replan that I presented to the Secretary on Monday August 3.

23 82. In developing the proposed replan we considered a variety of options and evaluated  
24 risk for each suggested time-saving measure. We evaluated the risks and quality implications of  
25 each suggested time-saving measure and selected those that we believed presented the best  
26 combination of changes to allow us to meet the statutory deadline without compromising quality  
27 to an undue degree. The challenge was to shorten the field data collection operation by 30 days,  
28 and to conclude the post processing operation in only 3 months, as opposed to 5 months in prior

1 schedules. We began with a review of the status of all field outreach operations, and assessed the  
2 impacts of possible revisions on the Census Bureau's ability to complete those operations within  
3 the compressed timeline. The six million housing units in the Update Leave Operation (which  
4 provides Census invitations to housing units that do not receive regular US mail) had been  
5 completed in early July, and we had received over two million self-responses and the remaining  
6 housing units would be moved into the NRFU operation to be visited by enumerators for personal  
7 interviewing. The Group Quarters enumeration operation which had begun on July 1st was on  
8 track to be completed on schedule by September 3, 2020 and would not be negatively affected by  
9 compressing the balance of the Field Schedule. The enumeration of persons staying in transitory  
10 locations (Campgrounds, RV parks, marinas and hotels without a home elsewhere) was scheduled  
11 to be conducted from September 3 – September 28. That operation could be conducted as planned  
12 within the replan schedule timeline.

13 83. The COVID-19 pandemic had precluded the Census Bureau from sending staff to  
14 conduct our Service Based Enumeration (SBE) operation. SBE is conducted at emergency and  
15 transitional shelters, soup kitchens and regularly scheduled food vans and targeted non-sheltered  
16 outdoor locations (TNSOL), and is designed to insure that people experiencing homelessness are  
17 counted; it was originally scheduled to be conducted March 30-April 2. We had conducted an  
18 extensive consultation in May and early June with a panel of 67 national service providers, federal  
19 and state agencies to determine the best time frame to conduct this operation to best replicate the  
20 weather, migratory behaviors and other factors affecting this population. The overwhelming  
21 consensus of the stakeholders, and the input from Census experts, was that the best time to conduct  
22 this operation would be mid-late September. Based on that stakeholder consultation we selected  
23 September 22-24 to conduct the SBE and TNSOL operations with appointments made with service  
24 providers in early September. A review of this operation indicated that we could conducted it in  
25 the replan as currently scheduled without disruption.

26 84. We also reviewed NRFU, our largest and most critical operation. The Census  
27 Bureau had conducted soft launches of all our major operations (during a soft launch a small  
28 portion of the operation starts early to insure that all the planned and tested systems work as

designed under real field conditions with real respondents and actual newly hired temporary employees). The NRFU Soft Launch was planned with six offices that could be safely started based on COVID risk profiles (developed using CDC, HHS, State and Local health guidance), availability of staff, and provisioning of Personal Protective Equipment. The original plan was to begin the operation in one office from each of our six regions starting on July 16th (Cycle 1a) and to follow on July 23rd (Cycle 1b - one week later) with six additional offices picked from coastal areas that would be prone to Hurricane risk. As the plan developed we were unable to take offices from all of the areas in the original plan because of high COVID risk and state and local stay at home orders, however we were able to select 6 offices for each cycle and these offices commenced NRFU field operations without incident on the planned dates. In early to mid July, as the pandemic controls began to be lifted, and our concerns grew over lack of action on a waiver of the December 31, 2020 apportionment statutory deadline, we decided to expand NRFU operations to all offices that could meet the safety, health, and staffing requirements – to start those offices in advance of the initial planned start date of August 11, 2020. We deployed NRFU operations in 35 additional offices on July 30, 2020 and 39 additional offices on August 6, 2020. We then made the decision to pull forward all remaining offices from August 11 to August 9. All ACOs had begun NRFU operations by August 9 and we had enumerated over 7.4 million housing units before the Replan Schedule's official start date of August 11.

85. Concurrent with the early start of NRFU operations, we observed higher levels of overall staff productivity resulting from the efficiency of the Optimizer (a software program that both schedules work for our enumerators and then routes them in the most effective routing). The increased productivity that we observed during the soft launch period was a factor in our ability to design the replanned field operations to end by September 30, 2020. The bonus plan to increase hours also contributed to our ability to create a replan to meet this deadline. We presented the Replan Schedule to the Secretary on August 3, he accepted it, and the Director announced it that same afternoon. For clarity, I will refer to this schedule as “the Replan Schedule.”

86. The Replan Schedule intends to improve the speed of the NRFU operations without sacrificing completeness. Under the Replan Schedule, the Census Bureau has responded to the

1 shortened calendar period for NRFU operations by taking steps to increase the ability of its  
2 employees in the field to work as efficiently as possible. This involves increased hours of work  
3 per enumerator, spread across the total workforce, to get the same work hours as would have been  
4 done under the original time frame. We incentivize this behavior by providing monetary bonuses  
5 to enumerators in who maximize hours worked, and retention bonuses to those who continue on  
6 staff for multiple successive weeks. Successful completion of NRFU is dependent on hours  
7 worked, not days worked.

8 87. We have aimed to improve the effectiveness of our count by continuing to maintain  
9 an optimal number of active field enumerators by conducting additional training sessions, and  
10 keeping phone and tablet computer devices for enumeration in use for the maximum time possible,  
11 thereby decreasing the inefficiency created by training new enumerators.

12 88. The Census Bureau was able to adopt the Replan Schedule because the design of  
13 the 2020 Census allows a more efficient and accurate data collection operation in a shorter  
14 timeframe than was possible in the 2010 Census. Improvements that make this possible include  
15 use of our route and case optimization software, use of handheld devices, and streamlined  
16 processing. Additionally, it is worth noting that largely because of the schedule delays, the self-  
17 response period for the 2020 Census will be longer than the self-response period for the 2010  
18 Census.

19 89. The Replan Schedule also necessitated some changes to the content and timing of  
20 our post processing operation. These changes include:

- 21 • We shortened address processing from 33 to 20 days. This required eliminating 13 days  
22 of processing activities that will be deferred until the creation of the redistricting data  
23 products.
- 24 • We cancelled the internal independent review of the final list of addresses that will be  
25 used to tabulate 2020 Census data (what we call “the MAF Extract”).
- 26 • We eliminated redundant quality control steps, and the multiple file deliveries that  
27 supported those steps, in order to enable a state-by-state flow of deliveries for processing.



(Previous procedures delivered data to the next step only when the entire country had been reviewed by multiple teams).

- We optimized employee assignments to ensure maximum staff resource usage during this shortened production period – i.e., implemented a seven-day/week production schedule.
- We compressed the time allotted for subject matter expert review and software error remediation, cutting 21 days from the schedule.

90. These changes increase the risk the Census Bureau will not identify errors during post processing in time to fix them.

91. Nevertheless, the Census Bureau is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline following the Replan Schedule. The 2020 Census operational design is tailored to enumerate all persons, including hard-to-count populations.

92. The Census Bureau has kept the Office of Management and Budget informed about schedule developments for both the COVID Schedule and the Replan Schedule, and has filed nonsubstantive changes that have been published in the Federal Register. OMB was not required to approve the changes to the operational plan, nor did it. As with the 2018 Operational Plan, we did not ask other agencies to review or approve either the COVID Schedule or Replan Schedule.

### **XIII. Impacts of Granting a Preliminary Injunction**

93. If the Court grants an injunction, the Census Bureau will need to replan the remaining census operations again. We cannot speculate at this point exactly how we will replan the remainder of the census, as the specific actions we take will depend on when the Court rules and the specifics of the ordered actions.

94. The timing of any Court order changing the schedule is particularly important, as stated in our filing on Wednesday, September 2, 2020, where we explained that the Census Bureau has already taken steps to conclude field operations. As I will explain further, the fact that we are concluding field operations in ACOs that have completed their workload is a normal part of the NRFU operation, and is not specific to the Replan Schedule.

1        95.        The Census Bureau manages its nonresponse follow up operation (NRFU) out of  
2 “Census Field Supervisor areas” or “CFS areas” within each of the nation’s 248 ACOs. As of  
3 September 3, 2020, roughly 11% of CFS areas nationwide are eligible for what we call “the  
4 closeout phase,” over 1,220 are actually in the closeout phase, and roughly 50 have actually  
5 reached conclusion. The closeout phase refers to the process of focusing our best enumerators to  
6 resolve the remaining cases in that area. CFS areas are eligible for closeout procedures when they  
7 cross the 85% completion mark. All CFS areas become eligible for closeout procedures on  
8 September 11. This does not mean that all CFS areas will be moved to closeout procedures on  
9 that date, only that regional directors can make this decision. Prior to that date no CFS area can  
10 be moved into closeout procedures until it reaches 85% completion. **The Census Bureau is**  
11 **continuing to work across the nation to obtain responses from all housing units, and has not**  
12 **begun closeout procedures for any CFS area with under 85% completion.**

13        96.        It is a normal and planned part of the NRFU operation for an ACO to move into the  
14 closeout phase and complete operations. We used closeout procedures in NRFU in the 2010  
15 Census and always planned to do the same for the 2020 Census. If we have not wound down in  
16 some areas, it is because we are still counting. Some ACOs have greater initial workload, and some  
17 started earlier than others –therefore, moving to completion varies by ACO and is a reflection of  
18 workload and local conditions and results in the allocation of enumerator resources from areas that  
19 are complete to areas that require more work.

20        97.        We are currently finished with over 64% of the NRFU field work and over 85% of  
21 the total enumeration of all housing units in the nation and those numbers increase daily. More  
22 than 13 states have over 90% of their housing unit enumeration completed, and in 18 additional  
23 states we have completed over 85% of the housing units in those states. As we complete areas,  
24 staff are offered an opportunity to assist by enumerating in other areas that are not yet complete.  
25 Some staff elect that option, others choose not to go outside of their home area, and as their area  
26 is completed, they are released. As we complete more field work, the number of staff that are still  
27 active declines, and our ability to ramp up is severely hampered.

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

8        99.        Were the Court to enjoin us, we would evaluate all of the changes we made for the  
9 Replan Schedule and determine which to reverse or modify. For example, we notified participants  
10 of the cancellation of the Count Review 2 operation, originally scheduled for September 15. If our  
11 schedule were extended, we would evaluate whether to re-schedule this operation. We would go  
12 through each and every aspect of remaining operations and determine how best to use the  
13 remaining time to maximize the accuracy and completeness of the census results.

14        100.       Finally, we wish to be crystal clear that if the Court were to extend the data  
15 collection period past September 30, 2020, the Census Bureau would be unable to meet its statutory  
16 deadlines to produce apportionment counts prior to December 31, 2020 and redistricting data prior  
17 to April 1, 2021. The post processing deadlines for the Replan Schedule are tight, and extending  
18 the data collection deadline would, of necessity, cause the Census Bureau to fail to be able to  
19 process the response data in time to meet its statutory obligations. We have already compressed  
20 the post processing schedule from 5 months to only 3 months. We previously planned and tested  
21 our post processing systems assuming that we would follow a traditional, sequential processing  
22 sequence, and the 3-month schedule necessary for the Replan Schedule has already increased risk.  
23 We simply cannot shorten post processing beyond the already shortened 3-month period.

24        101.       As I have tried to make clear in this Declaration, the decennial census is a massive,  
25 complex, and interrelated endeavor. Particularly troubling is the prospect of continual, conflicting,  
26 and evolving court orders from this this and other courts, including appellate courts. While Census  
27 Bureau staff have demonstrated considerable resilience and flexibility during this difficult year,  
28

1 some certainty as to the amount of time available to conclude data collection and post processing  
2 will increase the likelihood of a successful outcome.

3 **XIV. Commitment to Transparency and High Quality Enumeration**

4 102. In my role as Associate Director, I remain committed to transparency about 2020  
5 Census operations. The Census Bureau has been posting detailed information on its website about  
6 both self-response and NRFU completion progress:

7 <https://2020census.gov/en/response-rates/self-response.html>

8 <https://2020census.gov/en/response-rates/nrfu-completion.html>

9 <https://2020census.gov/en/response-rates/nrfu.html>

10 103. The 2020 Census is the first to post NRFU workload information, which is now  
11 available at the state and ACO level and may be seen at [https://2020census.gov/en/response-](https://2020census.gov/en/response-rates/nrfu-completion.html)  
12 [rates/nrfu-completion.html](https://2020census.gov/en/response-rates/nrfu-completion.html). I have briefed staff for House and Senate leadership every Friday  
13 since April (except for August 7), and I have provided a transcribed briefing to Congress. We  
14 produce a massive amount of documents and other information to the Office of the Inspector  
15 General and the General Accounting Office every week, and these organizations interview Census  
16 Bureau staff on almost a daily basis.

17 104. In my role as the Associate Director, I remain committed to conducting a high-  
18 quality field data collection operation as explained above, and the ultimate goal of a complete and  
19 accurate census.

20  
21  
22  
23 I have read the foregoing and it is all true and correct.

24 DATED this \_\_\_\_ day of September, 2020

25 **Albert E**  
26 **Fontenot**

Digitally signed by Albert E  
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Date: 2020.09.05 00:14:42 -04'00'

27 Albert E. Fontenot, Jr.

28 Associate Director for Decennial Census Programs

DECLARATION OF ALBERT E. FONTENOT, JR.  
Case No. 5:20-cv-05799-LHK

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DECLARATION OF ALBERT E. FONTENOT, JR.  
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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' MEMORANDUM RE:  
 PRIVILEGE DISPUTES**

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

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Pursuant to the Court's September 16, 2020 Order Re: Privilege Disputes at 2 (ECF No. 140), Plaintiffs provide below: (1) a description of the scope of the deliberative process, White House, attorney-client, and attorney work product privileges; (2) examples of documents in this case that may tend to be covered or not covered by each privilege; and (3) a proposal to streamline the privilege objection review process.

Plaintiffs do not provide a response to the requested "glossary of government actors who may be senders, recipients, creators, reviewers or decisionmakers regarding the census," Order Re: Privilege Disputes at 2, as Plaintiffs understand this to be directed at Defendants, who possess the detailed information sought.

# **I. PRIVILEGES AND CATEGORIES OF APPLICABLE DOCUMENTS**

As the Court has noted, Defendants have the burden to justify any assertions of privilege. Order to Produce Inspector General Documents at 9 (Dkt. 132). Under Federal Rule of Civil Procedure 26, a party invoking privilege must "expressly make the claim" and "describe the nature of the documents, communications, or tangible things not produced or disclosed." Fed. R. Civ. P. 26(b)(5); *see also Waymo LLC v. Uber Techs., Inc.*, 319 F.R.D. 284, 292 (N.D. Cal. 2017). The requisite privilege log and, where applicable, declarations must "provide sufficient information to enable other parties to evaluate the applicability of the claimed privilege or protection." *Burlington N. & Santa Fe Ry. Co. v. United States District Court*, 408 F.3d 1142, 1148 (9th Cir. 2005) (citation omitted); *Wainwright v. Wash. Metro. Area Transit Auth.*, 163 F.R.D. 391, 396 (D.D.C. 1995) (assertion of deliberative process privilege requires that documents are "reviewed by the agency head, who must file a formal declaration of privilege describing the withheld materials" (citing *Northrop Corp. v. McDonnell Douglas Corp.*, 751 F.2d 395, 404-05 n.11 (D.C. Cir. 1984))). The materials should include "the purpose in preparing the document, the privilege or privileges asserted with respect to the document, and how each element of the privilege is met as to that document." *Smith v. Dow Chem. Co.*, 173 F.R.D. 54, 57-58 (W.D.N.Y. 1997); *see also Padgett v. City of Monte Sereno*, 2006 WL 8442137, at \*6 (N.D. Cal. Feb. 24, 2006) (to assert deliberative process privilege in the Ninth Circuit, the agency must submit a declaration from the head of the department which has control over the relevant matter).

1           **A.       Executive Privilege**

2           Plaintiffs understand that Defendants plan to invoke two forms of executive privilege:  
3 deliberative process and White House/presidential communications privilege.<sup>1</sup> The deliberative  
4 process privilege protects certain documents reflecting advisory opinions, recommendations, and  
5 deliberations within an agency, whereas the presidential communications privilege protects  
6 communications directly involving and documents actually viewed by the President. *Loving v.*  
7 *Dept. of Def.*, 550 F.3d 32, 37-38 (D.C. Cir. 2008).

8                   **1.       Deliberative Process Privilege**

9                           **a.       Scope of Privilege**

10           To properly assert the deliberative process privilege, the government must provide “(1) a  
11 formal claim of privilege by the head of the department possessing control over the requested  
12 information, (2) an assertion of the privilege based on actual personal consideration by that  
13 official, and (3) a detailed specification of the information for which the privilege is claimed, along  
14 with an explanation of why it properly falls within the scope of the privilege.” *Coleman v.*  
15 *Schwarzenegger*, 2008 WL 2237046, at \*4 (E.D. Cal. May 29, 2008) (quoting *Landry v. FDIC*,  
16 204 F.3d 1125, 1135 (D.C. Cir. 2000)); *see also Martin v. Albany Bus. Journal, Inc.*, 780 F. Supp.  
17 927, 932-33 (N.D.N.Y. 1992) (deliberative process privilege “must satisfy specific, formal  
18 requirements for proper invocation,” and courts impose heightened requirements for asserting  
19 government privileges because “they effectively deny an adversary the opportunity to inquire into  
20 perhaps dispositive areas of fact”).

21           To ensure that deliberative process remains a “narrow privilege,” it must be “invoked only  
22 by the head of the department after actual personal consideration.” *United States v. Rozet*, 183  
23 F.R.D. 662, 665 (N.D. Cal. 1998). The procedural requirements to invoke the privilege “are  
24 designed to ‘ensure that the privilege [is] presented in a deliberate, considered, and reasonably  
25 specific manner.’” *Landry*, 204 F.3d at 1135. Accordingly, the required declaration need not be  
26 from the “head of the *overall* agency or department,” though the declaration should come from an

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28 <sup>1</sup> Defendants referenced the “White House privilege” during the September 15, 2020 Case Management Conference; Plaintiffs understand Defendants to be referring to the presidential communications privilege.

individual “of sufficient rank to achieve the necessary deliberateness” in asserting the privilege. *Id.* at 1136. As noted above, this declaration must contain a “formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer. *Resident Advisory Bd. v. Rizzo*, 97 F.R.D. 749, 752-53 (E.D. Pa. 1983) (quoting *United States v. Reynolds*, 345 U.S. 1, 7-8 (1953)).

The deliberative process privilege is “strictly confined within the narrowest possible limits consistent with the logic of its principles.” *N. Pacifica, LLC v. City of Pacifica*, 274 F. Supp. 2d 1118, 1122 (N.D. Cal. 2003) (citation omitted); *Cal. Native Plant Soc’y v. EPA*, 251 F.R.D. 408, 410 (N.D. Cal. 2008) (“[C]ourts should construe the [deliberative process] privilege narrowly and strictly.”). It covers a limited category of documents reflecting predecisional advisory opinions, recommendations, and deliberations within an agency. *Karnoski v. Trump*, 926 F.3d 1180, 1203 (9th Cir. 2019); *Loving*, 550 F.3d at 37-38.

The deliberative process privilege applies only to materials that are both “predecisional” and “deliberative.” *FTC v. Warner Comm’ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *see also Tax Analysts v. IRS*, 117 F.3d 607, 616 (D.C. Cir. 1997). Materials are considered “predecisional” if “prepared in order to assist an agency decisionmaker in arriving at his decision,” and deliberative if they cover “opinions, recommendations, or advice about agency policies.” *Carter v. U.S. Dept. of Commerce*, 307 F.3d 1084, 1089 (9th Cir. 2002) (internal citation omitted); *Warner Comm’ns*, 742 F.2d at 1161 (emphasis added).

Three limitations on the privilege are particularly relevant here. *First*, “[t]he privilege only applies to significant policy decisions, rather than factual material.” *Dominguez v. Schwarzenegger*, 2010 WL 3341038, at \*5 (N.D. Cal. Aug. 25, 2010) (internal citations omitted). Factual material that does not reveal the decision maker’s predecisional, deliberative mental processes is not protected by the deliberative process privilege and must be segregated and released. *Nat’l Res. Def. Council v. U.S. Dep’t of Def.*, 388 F. Supp. 2d 1086, 1106 (C.D. Cal. 2005); *see also U.S. v. Fernandez*, 231 F.3d 1240, 1247 (9th Cir. 2000) (factual portions of documents covered by the deliberative process privilege must be segregated and disclosed unless they are “so interwoven with the deliberative material that [they are] not [segregable]”). *Second*,

ultimate adoption by the agency obviates any claim of deliberative process privilege. *See Nat'l Res. Def. Council v. U.S. Dep't of Defense*, 388 F. Supp. 2d 1086, 1098 (C.D. Cal. 2005) ("Even if the document is predecisional at the time it is prepared, it can lose that status if it is adopted, formally or informally, as the agency position on an issue or is used by the agency in its dealings with the public." (quoting *Rozet*, 183 F.R.D. at 666). And, *third*, "[a] document that was prepared to support a decision already made is not predecisional." *Fisherman's Finest Inc. v. Gutierrez*, 2008 WL 2782909, at \*2 (W.D. Wash. July 15, 2008). Accordingly, documents that "only reiterate or explain" a decision once it has been made are not predecisional. *Id.* at \*3.

Even if the deliberative process privilege applies, it is not absolute. The proper assertion of privilege can be overcome by a sufficient showing of need outweighing the harm that might result from disclosure. *Warner Commc'ns Inc.*, 742 F. 2d at 1161. The Ninth Circuit has set forth four non-exclusive factors that courts consider in balancing the competing interests: "(1) the relevance of the evidence; (2) the availability of other evidence; (3) the government's role in the litigation; and (4) the extent to which disclosure would hinder frank and independent discussion regarding contemplated policies and decisions." *Id.* (citations omitted).<sup>2</sup>

The availability of comparable evidence from sources other than the government is "perhaps the most important factor in determining whether the deliberative process privilege should be overcome." *N. Pacifica, LLC*, 274 F. Supp. 2d at 1124. This factor imposes a high bar for the government: even if some related evidence may be available elsewhere, the availability of evidence from other sources will not suffice unless the evidence is "comparable." *See Cal. State Foster Parent Assn. v. Wagner*, 2008 WL 2872775, at \*5 (N.D. Cal. July 23, 2008) (finding that this factor "weigh[ed] heavily in favor of disclosure" where plaintiffs claimed the state had violated a statute and sought "detailed analyses completed by . . . the agency responsible for the

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<sup>2</sup> Some district courts in Ninth Circuit have considered additional factors, such as the interest of the litigants and ultimately society in accurate judicial fact-finding, and the seriousness of the issues involved. *See e.g., N. Pacifica, LLC*, 274 F. Supp. 2d at 1122; *United States v. Irvin*, 127 F.R.D. 169, 173 (C.D. Cal. 1989) (enumerating the factors and collecting cases). Other courts also consider the public's interest in government transparency. *See, e.g., Reino De Espana v. Am. Bureau of Shipping*, 2005 WL 1813017, at \*12 (S.D.N.Y. Aug. 1, 2005).

enforcement” of the statute, even though “some of the factual information contained in the analyses” might be available elsewhere).

**b. Application to this case**

As a threshold matter, to properly invoke the deliberative process privilege, Defendants must make a formal claim of privilege (i) from the relevant agency or department head, (ii) based on that individual’s actual, personal consideration, and (iii) accompanied by a detailed specification of the information for which the privilege is claimed and an explanation of why it properly falls within deliberative process privilege. Defendants did not comply with this requirement when purporting to claim privilege over 81 documents from the first production on September 13, 2020. And although Plaintiffs offered them an opportunity to remedy that defect, Defendants have indicated they do not intend to provide any compliant declaration for those documents. Defendants have also indicated that they do not intend to provide any such declaration for new assertions of deliberate process privilege when producing the OIG Document production. Without the requisite declaration, Defendants will be unable to meet their burden to justify any assertions of deliberate process privilege included in the privilege log.

Defendants’ failures to date also make it difficult to articulate which documents are properly subject to the deliberative process privilege and which are not. That said, Plaintiffs believe the following categories of documents are not privileged and should be produced:

- **Category:** Communications, presentations, reports, and other materials dated prior to July 29, 2020 that reflect the Census Bureau’s operations during the COVID-19 pandemic and understanding of the December 31, 2020 statutory deadline as mandating shortened Census operations irrespective of the effects
  - **Reason(s):** Factual in nature (“first,” above)
- **Category:** Communications, presentations, reports, and other materials reflecting implementation of the President’s July 21, 2020 Apportionment Exclusion Order and its effects on Census operations, resources, and timelines
  - **Reason(s):** Factual in nature
- **Category:** Communications, presentations, reports, and other materials reflecting the Replan or any portion of its operational or timeline changes, and the actual and anticipated effects of such changes, including the August 3 Presentation and all versions of it or similar presentations or synopses. *See* August 3 Presentation at 7



(noting that reducing contact attempts from 6 to 3 would reduce attempts for 1.9 million cases; and that eliminating “random [reinterviews]” would “reduce NFRU workload by 800k cases [resulting in] potential reduction in quality of enumerator work”)

- **Reason(s):** Factual in nature; describing the agency action taken (“second,” above)
- **Category:** Communications, presentations, reports, and other materials explaining the impact on Census accuracy and the ultimate count from various potential operational and timeline changes under the Replan. For this category of material in particular, given Defendants’ repeated statements and assertions before this Court and elsewhere that the Replan *will not affect the accuracy of the Census* (i.e., August 3 public announcement), any materials discussing this issue—in addition to being factual in nature and thus not protected—should be provided to Plaintiffs because the need for these materials significantly outweighs the harm that might result from disclosure, and all the factors set forth in *Warner Commc’ns Inc.*, 742 F.2d at 1161 and similar cases (*see supra* Part I.A(1)(a)) strongly weigh in favor of disclosure where Defendants have placed the matter squarely at issue.
  - **Reason(s):** Factual in nature; balancing factors
  - **Category:** Any other “factual material” considered during the Department of Commerce and Census Bureau’s decisionmaking process. For example, if an email among Census Bureau officials includes data regarding rates of 2020 census participation on a particular date, such purely factual material could not be validly withheld under deliberative process privilege and would, at a minimum, need to be segregated from any deliberative material in the same email. *See Carter*, 307 F.3d at 1090 (adjusted data generated in Census 1990 “not deliberative”).
    - **Reason(s):** Factual in nature
    - **Category:** Communications, presentations, reports, and other materials dated after the Secretary of Commerce’s July 29, 2020 directive that the Census Bureau “present a plan ... to accelerate the remaining operations in order to meet the statutory apportionment deadline,” Fontenot Decl. ¶ 81 (Dkt. 81-1)
      - **Reason(s):** Implementing decision already made (“third,” above)
      - **Category:** Communications, presentations, reports, and other materials prior to August 3, 2020 that reflect positions adopted as the Replan
        - **Reason(s):** describing the agency action already taken; not pre-decisional

## 2. Presidential Communications Privilege

### a. Scope of Privilege

The presidential communications privilege solely protects government operations that involve “direct decisionmaking by the President.” *In re Sealed Case*, 121 F.3d 729, 752 (D.C. Cir. 1997). The privilege protects “‘communications directly involving and documents actually viewed by the President,’ as well as documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] ... broad and significant responsibility for investigating and formulating the advice to be given the President.’” *Karnoski v. Trump*, 926 F.3d 1180, 1203 (9th Cir. 2019) (quoting *Loving*, 550 F.3d at 37-38). The privilege encompasses communications made by presidential advisers and their staff, but only when authored, solicited, and received “in the course of performing their function of advising the President on official government matters.” *In re Sealed Case*, 121 F.3d at 752; *see also Electronic Frontier Foundation v. Central Intelligence Agency*, 2013 WL 5443048, at \*18 (N.D. Cal. Sept. 30, 2013).

The presidential communication privilege “is to be narrowly construed.” *Center for Biological Diversity v. OMB*, 2008 WL 5129417, at \*12 (N.D. Cal. Dec. 4, 2008); *In re Sealed Case*, 121 F.3d at 752 (privilege “should be construed as narrowly as it consistent with ensuring that the confidentiality of the President’s decisionmaking process is adequately protected”). The privilege “should not extend to staff outside the White House in executive branch agencies,” and instead should apply only to communications with or by “those members of an immediate White House adviser’s staff who have broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate.” *Id.*; *see also Judicial Watch, Inc. v. DOJ*, 365 F.3d 1108, 1116 (D.C. Cir. 2004) (while “‘communications authored or solicited and received’ by immediate White House advisers in the Office of the President and their staff could qualify under the privilege, communications of staff outside the White House in executive branch agencies that were not solicited and received by such White House advisers could not” (internal citations omitted)). Accordingly, “internal Justice Department documents that never make their way to the Office of the President” do not fall within the scope of the privilege. *Judicial Watch*, 365 F.3d at 1117-18.

1           The presidential communications privilege “is not absolute” and “the court may review the  
 2 documents in camera” if “the privilege is overcome by an adequate showing of need.” *Karnoski*,  
 3 926 F.3d at 1197; *see also In re Sealed Case*, 121 F.3d 729, 743 (D.C. Cir. 1997). A “‘formal  
 4 claim of privilege based on the generalized interest of presidential confidentiality, without more’  
 5 does not ‘work[] an absolute bar to discovery of presidential conversations in civil litigation.’”  
 6 *Committee on Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 73 (D.D.C.  
 7 2008) (quoting *Dellums v. Powell*, 561 F.2d 242, 246 (D.C. Cir. 1977)). The privilege, rooted in  
 8 confidential communications with the President, “has been consistently viewed as presumptive  
 9 only” and courts considering the privilege typically balance “the detrimental effects of disclosure  
 10 against the necessity for production shown.” *Dellums*, 561 F.2d at 246 (internal citations omitted).  
 11 A court assesses the “‘public interests at stake in determining whether the privilege should yield in  
 12 a particular case’ and ‘must specifically consider the need of the party seeking privileged  
 13 evidence.’” *Berman v. CIA*, 378 F. Supp. 2d 1209, 1221 (E.D. Cal. 2005) (quoting *In re Sealed*  
 14 *Case*, 121 F.3d at 746).

15           When plaintiffs seek evidence “that is directly relevant to central issues in the litigation and  
 16 is not available with due diligence elsewhere, Plaintiffs have met their preliminary burden” to seek  
 17 communications involving presidential communications. *Karnoski*, 926 F.3d at 1205. The  
 18 government must then “invoke the privilege formally and make particularized objections to ‘show  
 19 that the interest in secrecy or nondisclosure outweighs the need’ for responsive materials” and “the  
 20 district court must conduct *in camera* review.” *Id.* at 1205 (quoting *Dellums*, 642 F.2d at 1363).

#### 21                           **b.       Application to this case**

22           The privilege log produced with the September 13 production did not assert the presidential  
 23 communications privilege over any of the documents withheld. Without further information from  
 24 Defendants, Plaintiffs have a hard time articulating which documents would be protected by that  
 25 privilege and which ones would not. At this time, Plaintiffs can only speculate about what  
 26 instructions the Secretary of Commerce or the Census Bureau may or may not have received from  
 27 the President about accelerating the 2020 Census, or finishing the count by December 31, 2020.  
 28

1 Accordingly, Plaintiffs will closely analyze Defendants' declaration explaining the basis for any  
2 materials withheld on these grounds and object as appropriate.

### 3 **B. Attorney-Client Privilege and Work Product Protection**

4 When asserting privileges including attorney-client privilege or work product protection,  
5 the asserting party bears the burden and must "(i) expressly make the claim; and (ii) describe the  
6 nature of the documents, communications, or tangible things not produced or disclosed—and do so  
7 in a manner that, without revealing information itself privileged or protected, will enable other  
8 parties to assess the claim." Fed. R. Civ. P. 26(b)(5)(A). *See, e.g., Tornay v. United States*, 840  
9 F.2d 1424, 1426 (9th Cir. 1988).

#### 10 **1. Attorney-Client Privilege**

##### 11 **a. Scope of Privilege**

12 The Ninth Circuit applies an eight-factor test for determining the applicability of attorney-  
13 client privilege: "(1) Where legal advice of any kind is sought (2) from a professional legal  
14 adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in  
15 confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by  
16 himself or by the legal adviser, (8) unless the protection be waived.'" *U.S. v. Ruehle*, 583 F.3d  
17 600, 607 (9th Cir. 2009) (internal citation omitted); *see also FTC v. Qualcomm Inc.*, No. 17-CV-  
18 00220-LHK, 2018 WL 2317835, at \*2-3 (N.D. Cal. May 22, 2018). Disclosing privileged  
19 documents to third parties or making the information in those documents public will destroy the  
20 privilege. *United States v. Sanmina Corp.*, 968 F.3d 1107, 1117-18 (9th Cir. 2020).

21 "Because it impedes full and free discovery of the truth, the attorney-client privilege is  
22 strictly construed." *Ruehle*, 583 F.3d at 607 (quoting *United States v. Martin*, 278 F.3d 988, 999  
23 (9th Cir. 2002)). "The fact that a person is a lawyer does not make all communications with that  
24 person privileged." *Martin*, 278 F.3d at 999 (9th Cir. 2002); *In re CV Therapeutics, Inc. Sec.*  
25 *Litig.*, 2006 WL 1699536, at \*4 (N.D. Cal. June 16, 2006) ("The mere fact that a document was  
26 sent to an attorney does not make it a privileged communication."). Instead, the agency "bears the  
27 burden of showing that the information exchanged [with its attorney] was confidential" and  
28 privileged. *Nat. Res. Def. Council v. U.S. Dep't of Def.*, 388 F. Supp. 2d 1086, 1099. (C.D. Cal.

2005) (citation omitted). “The privilege protects only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege” and “does not exempt a document from disclosure simply because the communication involves the government’s counsel.” *Elec. Privacy Info. Ctr. v. Dept’t of Justice*, 584 F. Supp. 2d 65, 79 (D.D.C. 2008) (internal citations omitted); *see also Hynix Semiconductor Inc. v. Rambus Inc.*, 2008 WL 350641, at \*3 (N.D. Cal. Feb. 2, 2008) (“A vague declaration that states only that the document ‘reflects’ an attorney’s advice is insufficient to demonstrate that the document should be found privileged.”); *In re Application of Republic of Ecuador*, 280 F.R.D. 506, 514 n.5 (N.D. Cal. 2012) (“these communications are not attorney-client privileged, as they contain no communication between client and attorney”), *aff’d, Rep. of Ecuador v. Mackay*, 742 F.3d 360 (9th Cir. 2014).

Moreover, when a client-agency transmits facts from a third party to its counsel, no new or confidential information concerning the agency is imparted and, accordingly, such information does not fall within the scope of attorney-client privilege. *See Schlefer v. U.S.*, 702 F.2d 233, 245 (D.C. Cir. 1983); *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 863 (D.C. Cir. 1980).

#### **b. Application to this case**

Defendants asserted attorney-client privilege for four documents withheld from the September 13 production. The descriptions of the privilege were as follows: (1) “email communication providing legal advice from Department counsel proposed updates to Census schedule” (2 documents); (2) “Draft document reflecting legal analysis proposed updates to Census schedule”; and (3) “Draft document containing communication among agency staff, including counsel, providing legal advice and analysis from counsel draft talking points on proposed Department action/decision/policy.” The following categories of documents would not be covered by attorney-client privilege:

- Communications between the Department of Commerce or Census Bureau and counsel that rely on data or factual information from a third party regarding 2020 census operations or participation. Third parties include state or local government entities, nongovernmental organizations, journalists, individual citizens, and enumerators.

- Communications between the Department of Commerce or Census Bureau and counsel that were not squarely for the purpose of obtaining legal advice. Such communications might include discussion of the Bureau's capacity to complete apportionment by December 31, 2020 in light of the global COVID-19 pandemic and wildfires in the western United States; discussion of the White House's preferences with respect to the timeline for the 2020 census; and discussion of the Bureau's decisions with respect to staffing the data collection process for the 2020 Census.

## 2. Attorney Work Product Protection

### a. Scope of Protection

The work-product doctrine, codified in Federal Rule of Civil Procedure 26(b)(3), is qualified and only protects "certain materials prepared by an attorney acting for his client in anticipation of litigation." *Hernandez v. Tanninen*, 604 F.3d 1095, 1100 (9th Cir. 2010) (quoting *United States v. Nobles*, 422 U.S. 225, 237-38 (1975)); Fed. R. Civ. P. 26(b)(3); *Admiral Ins. Co. v. United States Dist. Ct. for Dist. of Az.*, 881 F.2d 1486, 1494 (9th Cir. 1989) ("The work product rule is not a privilege but a qualified immunity protecting from discovery documents and tangible things prepared by a party or his representative in anticipation of litigation."). Where a document is not prepared exclusively for litigation, Ninth Circuit courts apply the "because of" test, meaning whether the "document was created because of anticipated litigation, and would not have been created in substantially similar form but for the prospect of litigation." *United States v. Richey*, 632 F.3d 559, 568 (9th Cir. 2011) (quoting *In re Grand Jury Subpoena (Mark Torf/Torf Envtl. Mgmt.)*, 357 F.3d 900, 907 (9th Cir. 2004) ("document should be deemed prepared in anticipation of litigation ... if ... the document can be fairly said to have been prepared or obtained because of the prospect of litigation" (citation omitted))).

The work product doctrine "shields both opinion and factual work product from discovery." *Pac. Fisheries, Inc. v. United States*, 539 F.3d 1143, 1148 (9th Cir. 2008).<sup>3</sup> Opinion work product, an attorney's mental impressions, conclusions, opinions or legal theories, is only discoverable when counsel's mental impressions are at issue and there is a compelling need for disclosure. *Holmgren v. State Farm Mut. Auto. Ins. Co.*, 976 F.2d 573, 577 (9th Cir. 1992).

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<sup>3</sup> In contrast, the deliberative process privilege does not shield factual information, which must be segregated and disclosed. *Fernandez*, 231 F.3d at 1247.

1 Factual work product, in contrast, may be ordered upon a showing of “substantial need” and  
 2 “undue hardship” in obtaining “the[] substantial equivalent [of the materials] by other means.”  
 3 Fed. R. Civ. P. 26(b)(3).

4 **b. Application to this case**

5 The privilege log produced with the September 13 production did not seek to protect any of  
 6 the documents as work product. Without further information from Defendants, Plaintiffs have a  
 7 hard time predicting what documents produced to OIG about the accelerated timelines and the  
 8 Replan would have been prepared in anticipation of litigation. Accordingly, Plaintiffs will closely  
 9 analyze Defendants’ declaration explaining the basis for any materials withheld on this ground and  
 10 object as appropriate.

11 **II. STREAMLINING THE PRIVILEGE OBJECTION REVIEW PROCESS**

12 On September 17, 2020, Plaintiffs and Defendants engaged in a meet and confer to discuss  
 13 streamlining the privilege objection review process. As conveyed to Defendants, Plaintiffs agree  
 14 with the Court’s suggestion that Plaintiffs identify high priority objections and will clearly mark  
 15 those objections in their September 19 filing. As Plaintiffs also explained to Defendants, their  
 16 ability to both limit the number of objections overall, and prioritize those that are most important,  
 17 depends to a large extent on the Defendants’ compliance with the case law requiring a declaration  
 18 from the appropriate agency official with the requisite amount of detail. As discussed above,  
 19 Defendants did not comply with that requirement when producing the privilege log on September  
 20 13. *See* September 14, 2020 Case Management Conference Tr. at 49:7-11. But Plaintiffs told  
 21 Defendants that they would essentially excuse the prior non-compliance and give Defendants a  
 22 chance to produce the required declaration for their September 13 production. Plaintiffs also asked  
 23 for assurances that Defendants would do the same for the new OIG Document production. The  
 24 purpose of the proposal was to allow Plaintiffs to quickly and efficiently provide objections to this  
 25 Court—and to avoid the need for a blanket objection based on Defendants’ failure to even properly  
 26 invoke the most relevant privilege (deliberate process privilege).

27 In response, Defendants agreed that Plaintiffs should identify high priority objections, but  
 28 refused to provide the relevant information necessary for Plaintiffs to do so. Specifically,

Defendants insisted that they do not need to provide *any* declaration along with the privilege log (*i.e.*, when they actually invoke the privilege). In their view, the declaration is required only after Plaintiffs file their objections.

Plaintiffs, in turn, explained that the law (as set forth above) makes clear that the declaration must be provided when the agency first invokes the privilege—*i.e.*, when the privilege log is filed—and asked Defendants to provide any case law to the contrary. Defendants provided none.

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Dated: September 18, 2020

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*Attorneys for Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of San Jose, California; Rodney Ellis; Adrian Garcia; and the NAACP*

Dated: September 18, 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 18, 2020

**LATHAM & WATKINS LLP**

15 By: /s/ Sadik Huseny  
16 Sadik Huseny  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO  
ENTERO, et al.,

*Plaintiffs,*

v.

Civil Action No. 8:19-cv-02710-PX

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

*Defendants.*

**PLAINTIFFS' SECOND NOTICE OF INTERVENING DEVELOPMENTS**

In further support of their Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction (ECF No. 112, filed Sept. 1, 2020), Plaintiffs respectfully submit the attached materials, which became available after Plaintiffs filed their reply in support of their Emergency Motion (ECF No. 118, filed Sept. 16, 2020). Exhibits A-E are discovery materials, produced by Defendants and filed on the public docket pursuant to court order in *National Urban League v. Ross*, 20-cv-05799 (N.D. Cal.), on September 18, 2020 or September 22, 2020. Exhibit F reflects data concerning the status of field operations and was released by the Census Bureau on September 21, 2020. Exhibit G is a September 18, 2020 report of the Census Bureau Inspector General. Plaintiffs submit that the attached exhibits bolster their already ample evidentiary showing concerning Defendants' imminent dereliction of their constitutional duty and support granting the emergency relief Plaintiffs have requested.

First, Plaintiffs submit an internal draft of an "Elevator Speech" prepared by Census Bureau officials in response to mounting pressure from the Administration to truncate the Census

schedule (attached hereto as Exhibit A).<sup>1</sup> The document, dated July 23, 2020, concludes that “[s]hortening 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.” Ex. A at 0008021. The document further explains that “[c]urtailing census operation will result in a census that is of unacceptable quality.” *Id.* The Elevator Speech explains that curtailing either field operations or post-processing will “diminish data quality and introduce risk” and undermine “public confidence in the census such that census results would be unusable regardless of quality.” *Id.* at 0008021-22.

Second, Plaintiffs submit a slide deck used to prepare Census Bureau Director Steven Dillingham for testimony on July 29, 2020, before the U.S. House of Representatives Committee on Oversight and Reform (attached hereto as Exhibit B).<sup>2</sup> The slide deck states that the Census Bureau needs more time beyond the statutory deadline, stating: “The current methodology that has been researched, developed and tested over the decade based on proven processes used in prior Census’ [sic] and upgraded with improved current technology and processes **will not enable us to meet the statutory deadlines** based on projected current field completion dates.” Ex. B at 0008123 (emphasis added).

Third, Plaintiffs submit a July 21, 2020 draft Census Bureau document titled “Census Bureau Restarts as States Re-Open” (attached hereto as Ex. C).<sup>3</sup> The document notes that “[t]he sequence of completing the 2020 Census is critical to its accuracy” and “[i]f specific operations

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<sup>1</sup> This document was filed by Defendants in *National Urban League v. Ross*, 20-cv-05799 (N.D. Cal. Sept. 18, 2020) (Dkt. 155-8).

<sup>2</sup> This document was filed by Defendants in *National Urban League v. Ross*, 20-cv-05799 (N.D. Cal. Sept. 18, 2020) (Dkt. 155-8, 155-9).

<sup>3</sup> This document was filed by Defendants in *National Urban League v. Ross*, 20-cv-05799 (N.D. Cal. Sept. 22, 2020) (Dkt. 198-11). As noted by plaintiffs in *National Urban League* (Dkt. 190), the date of the document corresponds to the date indicated in defendants’ privilege log (Dkt. 154-2), rather than the time stamp on the document itself.

are cut or reduced,” as will occur under the truncated Census plan, “the effect would be to miss specific parts of the population [and] 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....” Ex. C at 007086-007087 (emphasis added).

Fourth, Plaintiffs submit an email communication among Census Bureau employees titled “2020 update for Soft Launch at DOC” and dated July 23, 2020 (attached hereto as Exhibit D).<sup>4</sup> This communication contains an email from Census Bureau Associate Director for Field Operations Timothy P. Olson informing Census Bureau officials, including Associate Director for Decennial Census Programs Al Fontenot, that in light of “realities on the ground,” “**it is ludicrous** to think we can complete 100% of the nation’s data collection earlier than 10/31[/20] and any thinking person who would believe we can deliver apportionment by 12/31[/20] has **either a mental deficiency or a political motivation**.” Ex. D at 0007737 (emphasis added).

Fifth, Plaintiffs submit a Census Bureau document titled “Talking Points Re: 2020 Census Extension & Shift in Field Operations” and dated April 19, 2020 (attached hereto as Exhibit E).<sup>5</sup> The document notes that the view of the Department of Justice is that “there is not a constitutional issue with the [Bureau’s] proposal” to extend the delivery deadline through April 2021. Ex. E at 0001692.

Sixth, Plaintiffs submit the Census Bureau’s 2020 Census Housing Unit Enumeration Progress by State updated as of September 21, 2020 (attached hereto as Exhibit F). This document indicates that as of September 21, with only nine days left for field operations under

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<sup>4</sup> This document was filed by Defendants in *National Urban League v. Ross*, 20-cv-05799 (N.D. Cal. Sept. 22, 2020) (Dkt. 198-12).

<sup>5</sup> This document was filed by Defendants in *National Urban League v. Ross*, 20-cv-05799 (N.D. Cal. Sept. 22, 2020) (Dkt. 198-5). The date of the document is drawn from Defendants’ privilege log filed in the *National Urban League* case. *Id.* (Dkt. 154-2).

the truncated Census plan, only *four* states had 99% or more of their housing unit enumeration completed.

Finally, Plaintiffs submit a report by the Commerce Department's Office of Inspector General titled "The Acceleration of the Census Schedule Increases the Risks to a Complete and Accurate 2020 Census" (attached hereto as Exhibit G). The report expresses the Inspector General's concern that the accelerated census schedule "increases the risks to obtaining a complete and accurate 2020 Census." Ex. G at 5. The report describes that the Census Bureau cut back on Non-Response Follow Up activities in order to try to end field operations by September 30, noting, "[o]ther changes to data collection included reducing certain contact attempts from six to one, such as contact attempts to housing units with conflicting information." *Id.* at 8. With respect to the data processing to achieve an accurate count, the report states: "Several senior Bureau officials thought the streamlined data processing portion of the replan posed the greatest risk to the 2020 Census, with one official calling it the Bureau's "biggest concern" and "the most vulnerable to risk." *Id.* at 10. The report also finds that, far from reflecting the judgment of Census Bureau professionals that truncation of the Census was a reasonable means of meeting their constitutional obligation while also complying with the statutory deadline, "[t]he decision to accelerate the Census schedule was not made by the Census Bureau." *Id.* at 1.

Dated: September 24, 2020

Respectfully submitted,

By /s/ Terry Ao Minnis

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**Sent:** 8/6/2020 4:32:59 PM  
**To:** Albert E Fontenot (CENSUS/ADDC FED) [Albert.E.Fontenot@census.gov]  
**Subject:** U.S. Census Bureau Daily News - Thursday, August 6, 2020



## Census Daily News Digest

August 6, 2020

Full Daily Digest

[Click Here](#)

### 2020 Census in the News

#### Summary

The [Pittsburgh Tribune-Review](#) reported that the Better Business Bureau of Western Pennsylvania issued a warning about possible scams related to the 2020 Census, noting that people should beware of scam emails. [KTOE-TV](#) reported on the Census Bureau donating refillable water bottles to Monroe City schools on Wednesday. [The Center Square](#) reported that 41 percent of Florida households have not responded to the census, quoting Marilyn Stephens who said census takers are working



#### 2020 Census Spotlight

Atlanta's [Saporta Report](#) covered a virtual town hall hosted by the Congressional Black Caucus that featured Stacy Abrams and Rep. Hank Johnson who said the census is a matter of social justice and discussed the potential implications of an undercount in Black communities. Monroe, LA's dual ABC/CBS affiliate [\[KNOE-TV\]](#) reported that Census Bureau donated

hard to encourage more people to be counted. New York City's CW affiliate ([WPIX](#)) interviewed Jeff Behler who said that there will 17,000 census workers knocking on doors in the city and that they will operate in communities where they "speak the language" and "know the culture." [New York Amsterdam News](#) quoted Jeff Behler who indicated that self-responding was the best way for people to ensure they are accurately represented and said that it will be mandatory for census workers to wear masks. California's ([KVPR-FM](#)) quoted Donald Bendz who encouraged Fresno households to respond to the census, stating that census data is the best way for communities to get a fair share of funding based on population numbers. The [Gainesville Daily Register](#) quoted a spokesperson who said census takers will begin going door-to-door this weekend and will be wearing PPE. Austin, Texas' NBC affiliate ([KXAN-TV](#)) reported that Latino advocates worry an undercount in Texas could be a result of updated operational timelines, quoting Cathy Lacy who said she is confident that census takers will keep working hard to ensure a complete and accurate count. Tulsa, OK's ABC affiliate ([KTUL-TV](#)) quoted a partnership specialist who highlighted the importance of responding to the census noting the impact on funding for schools, roads, and hospital resources.

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

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

[Opinion: Don't Fall for Trump's Census Bait-and-Switch](#)

The New York Times – Janet Murguía, August 6

refillable water bottles to Monroe City schools on Wednesday.

### **Beltway & Other Online News**

[Trump's New Anti-Immigrant Census Move Could Be Halted Before Count Is Done](#)

Talking Points Memo – Tierney Sneed, August 5

A federal judge in New York wants to move quickly in deciding whether the Trump administration can lawfully implement the President's new anti-immigrant census policy.

[Challenge of Trump Census Change Put on Fast Track](#)

Courthouse News – Adam Klasfield, August 5

New York Attorney General Letitia James, leading a coalition of dozens of states, cities and counties, sued the Trump administration last month over a memo that would change how the U.S. government counted "persons" for the first time in more

Last month, President Trump ordered the Commerce Department to do what it legally could to exclude undocumented immigrants from the census count used to redraw congressional districts. On Monday, Commerce Secretary Wilbur Ross announced that the constitutionally mandated 2020 census would end a month early.

Judge issues tight schedule in district redrawing case

The Associated Press – Mike Schneider, August 5

U.S. District Judge Jesse Furman ordered arguments from plaintiff and government attorneys in two combined lawsuits challenging Trump's order to be filed by the end of August. The combined lawsuits were brought by several states, cities, civil rights groups and immigrant rights groups after Trump issued the memorandum on the apportionment process late last month.

Court hears challenge to Trump's bid to exclude undocumented immigrants from representation

The Washington Post – Fredrick Kunkle, August 5

A federal judge on Wednesday heard challenges filed by several states and civil rights groups against the Trump administration's memorandum to have the Census Bureau exclude undocumented immigrants from being counted in congressional apportionment.

An Incomplete Census Hurts Everyone. Even Trump.

The New York Times – Editorial Board, August 5

than a century and a half.

Judge fast-tracks case challenging Trump on census count, illegal immigrants

The Washington Times – Stephen Dinan, August 5

A federal judge set an exceptionally fast schedule Wednesday in a case challenging President Trump's new executive memo deleting illegal immigrants from the upcoming census apportionment count, saying he fears immigrants may stop replying to the census as long as the order is out there.

President Trump's effort to exclude undocumented immigrants from census is working: NYS attorney general

New York Daily News – Stephen Rex Brown, August 5

President Trump's order that undocumented immigrants not be considered in the census process is

The Census Bureau hasn't offered a clear explanation for its decision this week to bring an early end to the decennial enumeration of the nation's population, but the reason is clear enough: The Trump administration doesn't want a complete count, as the law requires.

## Census Data in the News

Everything at the grocery store is getting more expensive CNN Online

As some states reopen, others shutter amid outbreaks, forecasting July payrolls is guessing game USA Today

Parks In Nonwhite Areas Are Half The Size Of Ones In Majority-White Areas, Study Says NPR

## Regional 2020 Census News

### ***Atlanta Region***

View today's broadcast report for the Atlanta Region.

U.S. Census Bureau donates refillable water bottles to Monroe City schools

KTOE-TV [LA] - Tyler Wann, August 5

The U.S. Census Bureau donated refillable water bottles to Monroe City schools on Wednesday. Monroe School Superintendent Brent Vidrine said these bottles can help prevent the spread of COVID-19. He said, with kids having their own bottle, they won't have to all drink out of the same water fountain.

New census deadline could cost Florida billions in federal funding, third new congressional seat

The Center Square [FL] - John Haughey, August 5

detering New Yorkers from filling out the forms, an attorney in State Attorney General Letitia James's office said Wednesday.

Rachel Maddow: Abrupt census deadline change shows White House doesn't think Trump will get reelected

Washington Examiner—Mike Brest, August 5

MSNBC host Rachel Maddow argued that the White House's abrupt shift on the census is evidence that they don't believe President Trump will be reelected. Maddow, the host of the *Rachel Maddow Show*, said on Tuesday that the administration's decision to cut the census data gathering timetable, even after the deadline was pushed back as requested, shows that it wants to get the president the numbers before the next president is sworn in.

Stealing the census

The U.S. Census Bureau's new deadline to finish the decennial headcount likely ensures census undercounts in Florida that could cost the state billions over the next 10 years and douses its long-shot hopes of picking up a third new congressional seat.

Editorial: Do your part – fill out the Census questionnaire

Union-Recorder [GA] - Editorial Board, August 5

With a swirl of news and events surrounding us, it's easy to overlook the 2020 Census. Later this month, beginning Aug. 11, Census takers will begin door-to-door interviews with households that haven't responded to the 10-year survey either online or by mail.

Statesboro mayor to host virtual town hall to discuss need to fill out 2020 Census

WTOC-TV [GA] – Dal Cannady, August 5

Statesboro's mayor says the city still needs the majority of people in town to fill out the census and help the community get its fair share of state and federal funding.

Census a social justice that Blacks ignore at own peril: Democratic leaders

Saporta Report [GA] – David Pendered, August 5

The Census is a matter of social justice and Black communities will suffer if the historic undercount of Blacks continues in the 2020 Census, according to comments during a virtual town hall Tuesday that featured Georgians Stacy Abrams and U.S. Rep. Hank Johnson.

Moultrie-Colquitt County officials request full participation for 2020 census

Popular Information –  
Judd Legum and Tesnmi Zekeira, August 5

Long after Trump leaves office — whether that is in a few months or a few years — the 2020 Census will have a profound impact on the nation. For the next decade, the Census will determine the distribution of trillions in federal funds and be used to distribute political power at the state and national levels.

California Census Partners with CAIR Radical

The Investigative Project on Terrorism – Steve Emerson, August 5

The California Census seems to have no problem partnering with Hussam Ayloush, executive director of the Council on American-Islamic Relations' (CAIR) Los Angeles office, despite Ayloush harboring ideas a Muslim reformist dismissed as "insane."

WFXL-TV [GA] - Simone Jameson, August 5

The deadline for the 2020 census is quickly approaching, and leaders in Colquitt County are hopeful for full participation.

Census to stop counting on September 30 Get counted today at 2020census.gov

Donalsonville News [GA] – Staff Writer, August 5

The U.S. Census Bureau is ending all counting efforts for the 2020 census on Sept. 30, a month sooner than previously announced, the bureau's director confirmed Monday in a statement. That includes critical door-knocking efforts and collecting responses online, over the phone and by mail.

Census Deadline Moved up to September 30

WWAY-TV [NC]— Randy Aldridge, August 5

The U.S. Census Bureau is ending all counting efforts for the 2020 census on September 30. The change moves the final day to a month sooner than previously announced. Steve Dillingham, the Census Bureau's director said in a statement that all efforts include door-knocking efforts, online responses, over the phone, and by mail.

Alabama children's advocates: Early end to Census count will hurt state's most vulnerable

Alabama Political Reporter [AL] – Eddie Burkhalter, August 5

Stephen Woerner and the staff at his Montgomery nonprofit have spent more than two years preparing to ensure that marginalized people, especially children, get counted in the 2020 census, and all the planning and work blew up when the U.S.

Census Bureau announced Monday that all counting efforts would end a month early.

Alabama urges participation in Census with deadline moved up by a month

WALA-TV [AL] - Staff Writer, August 5

Alabama is reminding people in the state to participate in the 2020 Census now that the deadline has been moved up one month.

Cutoff comes month sooner than planned

Troy Messenger [AL] – Jaine Treadwell, August 5

The U.S. Census Bureau is ending all counting efforts for the 2020 Census on September 30, which is a month sooner than previously announced.

### ***Chicago Region***

View today's broadcast report for the Chicago Region.

Census can 'empower' Asian Illinoisans Illinois Times [IL] – Raymon Troncoso , August 6

Elected officials in Illinois who make up the Asian-American Caucus, along with local community organizations, held Asian-American Census Day July 31 to promote participation in the census among Asian Illinoisans. During a news conference in Chicago's Chinatown Square, Rep. Theresa Mah, D-Chicago, spoke about how the census has benefited the Asian community and why taking part is important.

Census extended through October

Rochelle News-Leader [IL]— Andrew Heiserman, August 5

Beginning in mid-August, census workers will be going door-to-door to homes that have not



yet responded to the 2020 United States Census count. Households that have not responded to the census count can expect census workers to begin showing the week of Aug. 10, between 9 a.m., and 9 p.m., Monday through Friday.

Hitting the pavement: Census workers begin field operations in MN

KMSP-TV [MN] - Staff Reporter, August 5

Those who have not filled out their 2020 Census can expect a knock on the door soon. MN Director of Census Operations Andrew Virden joined the FOX 9 Morning News to talk about what people can expect as census workers hit the streets.

New Census Deadline Concerns Iowa Latino Groups

Iowa Public Radio [IA] - Kassidy Arena, August 5

The U.S. Census will stop surveying door-to-door on Sept. 30 instead of the previously planned Oct. 31. The largest minority group in Iowa is concerned this change will affect the count of their community.

Milwaukee Lags As Wisconsin Ranks No. 2 In Census Response Rate

WUWM-FM [WI] – Joy Power and Jack Hurbanis, August 5

The 2020 Census has faced a lot of hurdles. Aside from the coronavirus pandemic, widespread unrest, and economic turmoil, it was recently announced that the census will be ending all counting efforts a month early.

2020 Census Takers Coming Door-To-Door In Joliet

WJOL-FM [IL]— Staff Writer, August 5

The United States Census Bureau has accelerated the timeline to complete all 2020 Census counting efforts. Starting now, Census takers will visit homes that have not yet responded to the 2020 Census. Census takers will wear masks and follow local public health guidelines when they visit your home.

***Denver Region***

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

[Census Count Lags In NM As Time Is Cut Short](#)

KRWG-FM [NM] – Staff Writer, August 6

The census taken every ten years determines how much federal money goes to New Mexico programs for things like schools, small businesses, health care, food assistance and housing. The U.S. Census Bureau announced Monday that all counting, including door-to-door efforts, will end September 30th – a full month sooner than expected.

[New Census Deadline Could Cost Dallas Millions in Federal Funding, Political Experts Warn](#)

Dallas Observer [TX] – Simone Carter, August 6

The Trump administration announced it would be shaving four weeks off the deadline for people to respond to the 2020 census, effectively ensuring certain minority communities will be undercounted.

[Editorial: The census counts, so it must keep counting](#)

Houston Chronicle [TX] - Editorial Board, August 5

The so-called “Enumeration clause” requires a census of all persons within the U.S. borders to be taken every 10 years to determine the reapportionment of seats in the U.S. House of Representatives and the number of Electoral College votes the state can cast. The count also decides how billions of dollars in federal funding will be sent to the states over the next decade.

Shortened census response period raises fears of undercount in Texas

Caller-Times [TX] - Alex Ura, August 5

Now, the earlier deadline is heightening risks that Texas will be undercounted and that some Texans, particularly those who are low-income or Hispanic, will be missed in the count as the coronavirus pandemic continues to ravage their communities.

Graham, Greenlee residents fall behind statewide Census averages

East Arizona Courier [AZ] — Staff Writer, August 5

The U.S. Census Bureau has begun emailing households in low-responding areas to encourage them to respond to the 2020 Census. Millions of emails were sent last week and will grow in numbers and continue into September. These emails supplement a final campaign reminding people to respond to the 2020 Census on their own, as census takers begin asking households to respond to the census.

Webb last in Census response rate in Texas’ top 20 counties

Laredo Morning Times [TX] - Julia Wallace, Aug 5

Residents of Webb, Hidalgo and Cameron counties are filling out Census forms at the slowest rates this year; and Webb is in last place among the 20 largest counties in the state. Only 45.7% of Laredo area residents have filled out their Census forms, while the state average is 57.9%. A third of Webb County residents have completed the task online.

#### Census Count Lags In NM As Time Is Cut Short

KUNM-FM [NM]— Kaveh Mowahed, August 5

The census taken every ten years determines how much federal money goes to New Mexico programs for things like schools, small businesses, health care, food assistance and housing. The U.S. Census Bureau announced Monday that all counting, including door-to-door efforts, will end September 30th – a full month sooner than expected.

#### 2020 census house calls beginning next week

The Gazette [CO] – Brandon Buchmeier, August 5

If you haven't responded yet to the 2020 census questionnaire by mail, online or by phone, you'll likely be receiving a house call beginning Tuesday. Local census takers wearing masks and trained in social distancing will be going house to house starting next week to try to complete the work of the constitutionally required counting of Americans every 10 years.

#### Bryan, College Station asking residents to complete 2020 Census to help fund critical programs

KXXV-TV [TX] - Halle Jones, August 5

In March, homes across the country received invitations to complete the 2020 Census. The

cities of Bryan and College Station need responses to ensure residents are counted and programs don't lose funding or their voice in government matters.

2020 census takers to start door-knocking in Cooke Co.

Gainesville Daily Register [TX] – Megan Gray-Hatfield, August 5

Heads up, Cooke County. Workers with the U.S. Census Bureau could be knocking on your door soon. Starting Sunday, Aug. 9, workers will be in the area following up with residents who have not already filled out their U.S. Census questionnaire, according to U.S. Census Bureau spokesman Vernon Catron.

Census count cut short by a month, how you could be impacted

KVEO-TV [TX] – Karina Vargas, August 5

The Census Bureau will stop counting people a month earlier than expected. Elected officials say this will have detrimental impact for the Rio Grande Valley. "The rules just say it needs to be done the year of the count which is 2020 so really we should be waiting and counting until the end of the year," said Congressman Vicente Gonzalez representing the 15th Congressional District of Texas.

Census Bureau announces major data collection push

KSAT-TV [TX] – Paul Venema, August 5

As a Sept. 30 deadline to complete the census count approaches, the U.S. Census Bureau will begin canvassing neighborhoods targeting people who have not responded to efforts to collect data. "We need everybody to participate and act now to respond to the

census,” said Vicki Macintyre, deputy director of the Dallas Regional Census Center.

South Texans worry border region will be undercounted with shortened census period

Border Report [TX] – Sandra Sanchez, August 5

The announcement that census workers will shorten by a month the time they go door-to-door to solicit questionnaires has raised serious concerns in South Texas, a region that leaders say will go undercounted and could lose federal representation and millions in federal funding.

Latino advocates fear undercount in Texas as US Census Bureau cuts deadline by a month

KXAN-TV [TX] – Maggie Glynn, August 5

Earlier this week, the U.S. Census Bureau updated its deadline for responses to the 2020 Census. Originally, the count was set to last until October 31, but that has now been pushed up to Sept. 30. So far, 58% of Texas households have responded to the survey without needing to be contacted by Census Bureau field operatives.

US Census Bureau urging Oklahomans to fill out 2020 census form before Sept. 30th deadline

KTUL-TV [OK] – Haley Hughey, August 5

So far, Oklahoma's 2020 Census response rate is significantly lower than 2010. Oklahoma is ranked 42nd in the nation right now for filling out the form. This could severely hurt the state in receiving critical federal funding for schools, hospitals, and natural disaster relief.

***Los Angeles Region***

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

[This Audio Portrait Of The 2020 Census Asks: Whose Voices Really Count?](#)

KPBS-FM [CA] – Neda Ulaby, August 6

When conceptual artist Ekene Ijeoma decided to deconstruct a monument, he picked a song, not a statue. Like a bronze general in a park, "The Star-Spangled Banner" written in 1814, is intended to evoke a sense of national identity and pride. But Ijeoma, an artist who uses data to explore social justice in his work, created an algorithm that erases a certain percentage of notes as the song is being performed.

[Opinion: We have one last chance to get the census right, if the White House lets us](#)

Los Angeles Times [CA] – Daniel Gerson, August 5

The United States has one last chance to get the 2020 census right. It's not looking good. Delayed for months because of COVID-19, census workers will at last venture out in person in Los Angeles starting Tuesday.

[Speeding up the count during a pandemic is a horrible idea](#)

San Diego Union-Tribune [CA] - Editorial Board, August 5

In the waning weeks of an effort supremely complicated by the pandemic, the Trump administration has ordered that the census count be finished by Sept. 30, four weeks early.

[U.S. Census Bureau collects data on pandemic's impact](#)

KTVA-TV [CA] - Liz Raines, August 5

If you find a text message or an email from the U.S. Census Bureau in your inbox, it's not a scam. The agency is collecting data about the pandemic's impact, and it could be asking for your help.

#### 2020 Census Amid Coronavirus

KPIX-TV [CA] - Staff Reporter, August 5

CBSN Bay Area interviews Stephanie Kim, Senior Director of Census 2020 at United Way Bay Area, about the effort to make sure everyone is counted.

#### A census worker was blocked from leaving an Idaho home. Now, her family wants charges

Idaho Statesman [ID] – Jacob Scholl, August 5

An Idaho woman believes charges should be filed against people she said blocked her and her daughter from leaving a Nampa property while working for the U.S. Census Bureau.

#### Coronavirus Prompts Community Census Takers to Get Creative

Voice of Orange County [CA] - Brandon Pho, August 5

A coronavirus pandemic is facing the decennial U.S. Census with new challenges that could impact the accuracy of a population count shaping Orange County communities' funding, public services, and political representation over the course of a decade.

#### Fresno Remains Behind State Average For 2020 Census Response

KVPR-FM [CA] - Madi Bolanos, August 5

The City of Fresno's response rate to the 2020 census is lower than the state average of 63.5%. Right now, 62.3% of households have



responded, but the rate falls below 50% in certain Fresno zip codes.

Salinas behind in 2020 census responses as deadline is shortened

KSBW-TV [CA] - Joel Copitch and Lauren Seaver, August 5

The United States Census Bureau is cutting off its collection one month earlier than scheduled. Anyone living in American has until the end of September to make sure they are counted for the 2020 census.

Accelerated pace of census data collection, as decreed by Trump, intensifies challenges in Kern

KGET-TV [CA] - Robert Price, August 5

President Trump's order directing the U.S. Census Bureau to end its 2020 population count a month earlier than previously planned has raised some questions.

What the shortened Census 2020 means for Oregon

Oregon Public Broadcasting [OR] - Samantha Matsumoto, August 5

The U.S. Census Bureau announced this week that it is ending its count efforts a month earlier than expected. That means, amid delays caused by a historic pandemic, the bureau now has less than two months to reach people of color, rural communities, renters and other historically undercounted groups.

Rose Park Connect: Partnership to provide internet access

KSL-FM [UT] – Todd Fooks, August 5

The statement said there will also be staff from the Census Bureau on-site to answer questions about the 2020 Census. Salt Lake County said they are also coordinating with the County Health Department to have a community health worker present to provide COVID-19 prevention information as well as face masks for those in need.

#### Census Gets Help Of Sitka Volunteers

Daily Sitka Sentinel [AK] – Ariadne Will, August 5

Peterson is chairwoman of Sitka's Complete Count Committee, which the Assembly set up early last year. The committee reflects the importance of an accurate count to the city's economic health and includes representatives from Sitka Tribe of Alaska, the Coast Guard, the Homeless Coalition, Sitka Counseling, the Chamber of Commerce, and Sitka School District.

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

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

Be counted: New Yorkers should sabotage Donald Trump's ongoing sabotage of the census

New York Daily News – Editorial Board, August 6

It's official, and the ramifications are officially scary: The Census Bureau will end its counting of people in the United States on Sept. 30, a month before the coronavirus-extended period was to end. After President Trump tried and failed to add a citizenship question to the once-a-decade, constitutionally mandated survey, after he issued a memo ordering the bureau to

exclude undocumented immigrants from their tally, using who knows what means, the latest move can only be viewed through a lens of profound cynicism.

The Trump Administration Is Weaponizing The Census. This Is How We Fight Back

WBUR-FM [MA] – Ivan Espinoza-Madrigal & Lauren Sampson, August 6

On August 21, 2019, MSNBC's Rachel Maddow made a sharp, startling observation. In a news cycle marked by outrageous statements and outlandish claims, Maddow and other members of the news media are increasingly adopting a new maxim when covering the Trump administration: "Watch what they do, not what they say."

Boston trails other major U.S. cities in 2020 Census response rate

Boston Business Journal [MA] – Staff Writer, August 6

Workers for the 2020 U.S. Census have started going door-to-door in Massachusetts this week to try and boost participation. [Subscription Required.]

New Yorkers need to complete the Census

New York Amsterdam News [NY] – Alexandria Johnson, August 6

Jeff Behler, the director for the Census Bureau's New York Regional Office, concurred with Salvo that self-response is the best way for residents to be accurately represented in order to gain the adequate resources they need from the federal government.

Shortened 2020 Census deadline is 'devastating,' NYC official says

WPIX [NY] – Henry Rosoff, August 5

Local leaders are sounding the alarm about a move the Trump administration made that could pull tens of billions of dollars out of New York's economy, and give the state less power in Congress.

Gillibrand: Dems could use COVID bill to extend Census count

Times-Union [NY] – Emilie Munson, August 5

Democrats are examining legislative options to force the U.S. Census Bureau to reverse its decision to end all counting efforts in September, a month earlier than planned.

Advocates, officials worry about immigrants not being counted in U.S. Census

Albany Times-Union [NY] – Massarah Mikati, August 5

As the deadline to complete the 2020 census rapidly approaches, and with billions of federal dollars at stake, Capital Region officials and immigration advocates are concerned about turnout from historically undercounted populations — particularly undocumented immigrants following a recent memorandum from the federal government.

Census counters hit streets as concerns mount about deadline change

Times-Union [NY] – Kenneth C. Crowe II, August 5

Census counters start their door-to-door campaign for the 2020 Census on Thursday in Albany County, the first wave of a furious push that will build across the region next week. The workers, formally known as enumerators, will try to convince people to complete their

census forms as local officials worry the decision to stop counting the nation's residents on Sept. 30 will result in an undercount that could result in the loss of federal and state aid.

Mass. Officials decry month shorter census count

Eagle-Tribune [MA] - Christian M. Wade,  
August 5

Census takers fanned out across neighborhoods in Massachusetts beginning last week as part of the nation's once-in-a-decade population count, but state officials say a decision by the federal government to cut short the process could leave people uncounted.

### ***Philadelphia Region***

View today's broadcast report for the Philadelphia Region.

District Line Daily: Get Counted

Washington City Paper [DC] – Amanda Michelle Gomez, August 6

This week, the U.S. Census Bureau said it is ending its efforts to count the number of people living in the country a month sooner than previously announced, on Sept. 30. Democratic lawmakers and many census advocates believe the Trump administration is pressuring the bureau to benefit Republicans, while the bureau director has said publicly that it is “to accelerate the completion of data collection” to meet the Dec. 31 statutory deadline.

'They're cutting 30% of the time that we have left': Census outreach goes into overdrive

WHYY-FM [PA] – Ximena Conde, August 6

Census advocates in Philadelphia and Camden are working overtime after learning that their deadline has been moved up by a whole month. Outreach workers, who were already canvassing around the clock in intense summer heat, received another in a long series of blows this week when the U.S. Census Bureau announced it would end all counting efforts by Sept. 30.

Manchin blasts U.S. Census Bureau decision to move up response deadline

Metro News [WV] - Jake Flatley, August 5

On Wednesday's MetroNews 'Talkline,' Manchin (D-W.Va.) questioned the decision announced earlier in the week to move the deadline to respond from October 31 to September 30. The date was originally July 31 but pushed to October 31 due to the COVID-19 pandemic.

With Census timeline cut short, advocates worry many Delawareans will go uncounted

Delaware Public Radio [DE] – Sophia Schmidt, August 5

Earlier this week the U.S. Census Bureau confirmed reports it is cutting short its count of every person living in the U.S. by a month. Local advocates worry not everyone in the First State will get counted. The pandemic, as well as the Trump Administration's failed attempts to add a citizenship question on the 2020 Census, already had advocates for an accurate count worried.

Better Business Bureau issues warning about possible scams related to census

Pittsburgh Tribune-Review [PA] - Megan Tomasic, August 5

The Better Business Bureau of Western Pennsylvania issued a warning regarding potential phishing scams related to the census. The census, which determines how federal funds are distributed along with the number of congressional seats each state is allocated, has been sending emails encouraging people to respond to the once-a-decade survey as well as to participate in Household Pulse Surveys.

### The 2020 US Census Will End A Month Early, and More Than 30 Percent of Virginia Still Hasn't Responded

Our Community Now [VA] - Joe Lanane, August 5

Neither have 37 percent of Americans, according to response rates updated daily by the U.S. Census Bureau, a federal agency. So far, 67.7 percent of Virginia households have responded to the once-every-decade survey, according to early August data.

### Trusted messengers are needed for the final census push

The News & Advance [VA] - Mark Gormus, August 5

One year ago, Gov. Ralph Northam made a significant investment in Virginia's 2020 census efforts. Northam steered \$1.5 million from the state's Economic Contingency Fund toward materials to raise participation in the decennial survey. The money supported the work of the Virginia Complete Count Commission (VCCC), a body of nearly three dozen members created by the governor, representing "constituencies that have historically been considered 'hard-to-count' populations."

### U.S. Census includes names it shouldn't

Norfolk Daily News [VA]— Michael Shannon,  
August 5

A little over a year ago I wrote about another Trump administration immigration policy failure. Trump wanted to add a census question that asked if the respondent was a citizen of the U.S. Adding that question should have been a simple administrative procedure since conducting the census is an executive branch function.

Manchin calls shortening 2020 Census an  
'asinine' decision

WOWK-TV [WV]— Jessica Patterson, August 5

U.S. Senator Joe Manchin, D-WV, is weighing in on the decision to move the deadline for responding to the 2020 Census to September 30.

## 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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**IN THE 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

**DEFENDANTS' SECOND  
SUPPLEMENTAL BRIEF IN  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR A PRELIMINARY  
INJUNCTION**

Two things are now clear in this matter. First, all the briefs and arguments that Plaintiffs have submitted in this case concerning the Replan are wholly irrelevant. The substance and reasonableness of the Replan is beyond the Court’s purview, because *Plaintiffs* have cast aside the Replan as the decision they purport to challenge under the APA, and have further induced this Court to do so to Defendants’ detriment. Second, the decision Plaintiffs *do* now identify as the relevant subject of their challenge is not, and cannot be, final agency action subject to judicial review under the APA. Indeed, a decision to comply with the law—here the December 31 statutory deadline—cannot by definition violate the APA. Thus, even if the Court were to brush past each of the threshold jurisdictional defects that defeat Plaintiffs’ case, Plaintiffs still have no way to prevail on the merits, either on their APA claim or their Enumeration Clause claim. *See* Defs.’ Opp. Br. to Mot. for Prelim. Inj., ECF No. 81 (detailing why Plaintiffs’ challenge in this matter is non-justiciable, why Plaintiffs lack standing, why APA Section 706 review is not available, and why their all their claims fail on the merits in any event). No injunction can issue under these circumstances. The harm to the completion of the census from the Court’s current temporary restraining order need not be extended any more.

#### **I. The Replan Is Now Irrelevant**

Plaintiffs spent the past month complaining about the substance of the Replan, and interrogating the Census Bureau’s implementation efforts in minute operational detail. *See, e.g.*, Am. Compl. ¶¶ 3, 272, 344; Pls. PI Br. at 2, ECF 36; Pls. Reply at 1-10, ECF 130; Pls. TRO Compliance Br., ECF No. 108. They urged this Court to view the Replan as subject to APA review, and, over Defendants’ objections, mired the Court in the process of supervising what was effectively expedited discovery to elucidate the Bureau’s deliberations. As it turns out, that was all for nothing. Plaintiffs have now decided that the relevant event they want this Court to review is not the Secretary of Commerce’s *approval* of the Replan on August 3, 2020—itself not final agency action for all the reasons we have previously detailed, ECF Nos. 74, 81, 176—but rather the Secretary’s *request* on July 29, 2020, that *a* plan be presented to him in the first instance. *See* Pls. Priv. Br. at 2-3, ECF 170 (“Everything after July 29 was mere implementation of the Secretary’s decision[.]”); Pls. Supp. Br. at 1, 3, ECF 178; Tr. 9/18/20, ECF 192 44:20-25 (“[I]f

1 you look at the Fontenot Declaration, it talks about the decision actually being made, it seems, by  
 2 the Secretary on July 29<sup>th</sup>. And what Mr. Fontenot and the other experts at the agency were doing,  
 3 it seems, between July 29 . . . and August 3<sup>rd</sup> is making it happen[.]”).

4 As Defendants previously observed, ECF No. 81 at 17-21, this confusion about what could  
 5 be agency action in this case is not surprising, given that Plaintiffs are trying to stretch the APA  
 6 framework over a broad programmatic attack on the Bureau’s operations, which defies such  
 7 characterization. *See generally Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 893 (1990) (the APA  
 8 does not permit a plaintiff to attack an agency program “consisting of . . . many individual actions”  
 9 simply by characterizing it as “agency action”). But Plaintiffs’ shift is also significant in another  
 10 way. By arguing that the decision they wish to challenge is the Secretary’s July 29 *request* for a  
 11 plan, ECF No. 170 at 2-3, Plaintiffs have succeeded in stripping privilege from an immense volume  
 12 of documents that were generated as part of (and informed) the Replan’s formation. *See Order*,  
 13 ECF 179 (“[W]e find that anything after July 29, 2020, was mere implementation of the Secretary  
 14 of Commerce’s decision and, thus, does not fall within the deliberative process privilege.”).  
 15 Indeed, the Court reproduced *word for word* Plaintiffs’ arguments for why July 29, 2020, was the  
 16 date of the relevant decision, when it found that Plaintiffs were entitled to receive materials  
 17 Defendants identified as subject to the deliberative process privilege, concluding, without even  
 18 assessing the deliberativeness of the documents, that no *relevant* deliberations could have occurred  
 19 after Plaintiffs’ asserted decision date. *Compare* Pls. Priv. Br. at 2:20-3:1, ECF 170 *with* Order at  
 20 6:13-23, ECF 179.

21 There is no going back for Plaintiffs. By litigating and prevailing on the issue to the  
 22 government’s detriment, Plaintiffs are bound to that theory of the case. *See New Hampshire v.*  
 23 *Maine*, 532 U.S. 742, 749 (2001). The doctrine of judicial estoppel “generally prevents a party  
 24 from prevailing in one phase of a case on an argument and then relying on a contradictory argument  
 25 to prevail in another phase.” *Pegram v. Herdrich*, 530 U.S. 211, 227, n. 8 (2000); *see also*  
 26 *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001) (“Judicial estoppel is  
 27 an equitable doctrine that precludes a party from gaining an advantage by asserting one position,  
 28 and then later seeking an advantage by taking a clearly inconsistent position.”). The Ninth Circuit

“invokes judicial estoppel not only to prevent a party from gaining an advantage by taking inconsistent positions, but also because of general considerations of the orderly administration of justice and regard for the dignity of judicial proceedings, and to protect against a litigant playing fast and loose with the courts.” *Id.* (citation and internal quotation and alteration marks omitted). “The doctrine applies to prevent a party from asserting inconsistent positions in different cases, as well as in a single litigation” to the disadvantage of other parties and the Court. *Hannon v. Wells Fargo Bank, N.A.*, No. 14-cv-05381-LHK, 2015 WL 4776305, at \*6 (N.D. Cal. Aug. 13, 2015) (Koh, J.). Plaintiffs here would, incontrovertibly, derive an unjust advantage if they were allowed to point to *one* event—the July 29 request by the Secretary—as final agency action to deprive Defendants’ of their claim of privilege, and then use revealed documents as a basis to challenge *a later* action—the August 3 Replan announcement—which Plaintiffs just disclaimed as relevant. And even if the documents had not been privileged, they nonetheless should never have been made available to Plaintiffs, since post-decisional materials are not part of the administrative record, an axiomatic proposition Plaintiffs themselves have embraced. *See* Tr. Of 9/16 Hr’g at 73:1-5 (Plaintiffs agreeing that “the APA record ends when the [August 3] decision is made”). A clearer case of gamesmanship is hard to imagine.

Under Plaintiffs’ new, controlling, framework, any action or decision made after July 29, 2020, including the development and announcement of the Replan, is now completely irrelevant as a legal matter. *See, e.g., Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800–802 (9th Cir.2013) (agency’s “day-to-day operations that merely implement operational plans” were not themselves reviewable under APA); *Village of Bald Head v. U.S. Army Corps of Eng’rs*, 714 F.3d 186, 193–95 (4th Cir.2013) (same); *WildEarth Guardians v. United States Dep’t of Justice*, 181 F. Supp. 3d 651, 669 (D. Ariz. 2015) (“[A]n agency’s ‘ongoing implementation’ of a prior decision is not itself a discrete ‘final agency action’ reviewable under the APA.” (internal quotes and citations omitted)). The *only* action that can be evaluated at this point in the evolution of the litigation is the Secretary’s request for a plan to meet the statutory deadline in 13 U.S.C. § 141. The substance and reasonableness of the Replan—necessarily formulated after the relevant decision—is not in

dispute.<sup>1</sup> Plaintiffs must take the bitter with the sweet and cannot mix and match decision points and their discovery positions in a way that best suits their objectives.

Plaintiffs' new approach also renders irrelevant any documents that shed light on how the Replan was formulated after July 29—including the documents over which Plaintiffs stripped privilege. A "post-decision bar" blocks the inclusion of such information in the record. *Tri-Valley CAREs v. U.S. Dep't of Energy*, 671 F.3d 1113, 1131 (9th Cir. 2012); *Rybachek v. EPA*, 904 F.2d 1276, 1296 n.25 (9th Cir. 1990) (it is not "appropriate . . . for either party to use post-decision information as a new rationalization either for sustaining or *attacking* the Agency's decision." (emphasis added)). "Parties may not use 'post-decision information as a new rationalization either for sustaining or attacking the Agency's decision.'" *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 450 F.3d 930 at 943 (9th Cir. 2006) (quoting *Ass'n of Pac. Fisheries v. EPA*, 615 F.2d 794, 811–12 (9th Cir. 1980)). Indeed, Plaintiffs conceded as much when they agreed that documents post-dating what they identify as the relevant final agency action need not be produced. Tr. 9/15/20, ECF 126 at 72:22-73:5.

Accordingly, Plaintiff's APA claims now live and die on the pivot point of whether the Secretary's decision to request *a* plan—which could have been any plan—to meet the statutory deadline can be deemed final agency action, such that it would be reviewable under the APA. The correct answer is that Plaintiffs' APA claims perish.

## **II. The Secretary's Decision to Request a Plan for Approval is Not Final Agency Action**

The Replan, with its myriad interconnected programmatic choices, is itself not final agency action subject to APA review. *See generally NAACP v. Bureau of the Census*, 945 F.3d 183, 190–91 (4th Cir. 2019) (finding lack of final agency action in a case challenging the various elements of the census operational plan because "the various 'design choices' being challenged expressly are tied to one another"). But there are many *more* reasons why the Secretary's decision to *request* a plan to evaluate cannot be final agency action.

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<sup>1</sup> We reflect this new formulation of the case in the timeline the Court ordered the parties to produce. Attach A. *See* Order, ECF 194.

1 To be final agency action that is reviewable under the APA, “two conditions must be  
 2 satisfied”: the action “must mark the consummation of the agency’s decision process” *and* the  
 3 action must “must be one by which rights or obligations have been determined, or from which  
 4 legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997); *see also Franklin*  
 5 *v. Massachusetts*, 505 U.S. 788, 797 (1992). These two requirements are designed to avoid judicial  
 6 entanglement in abstract and piecemeal disputes before they concretely affect a party. *See Or.*  
 7 *Nat. Desert Ass’n v. U.S. Forest Serv.*, 465 F.3d 977, 987 (9th Cir. 2006) (action can be final if it  
 8 “has the status of law or comparable legal force, and whether immediate compliance with its terms  
 9 is expected”). And they are robust enough to preclude APA review for one agency’s provisions  
 10 of recommendations to another federal actor who has final decision-making authority. *See, e.g.,*  
 11 *Franklin*, 505 U.S. at 796-799; *Dalton v. Specter*, 511 U.S. 462, 468-71 (1994).

12 On its face, the choice to comply with the law and a request that subordinates generate a  
 13 plan to do so cannot, by definition, be “the consummation” of any process. *Bennett*, 520 U.S. at  
 14 177-78. It is the *initiation* of a process, at most. And the request to devise a plan is self-evidently  
 15 not something that establishes “rights or obligations” for anyone. *Id.* Implementing a request to  
 16 devise a plan subjects no one to any legal consequences; imposes no disability; and in fact carries  
 17 absolutely no legal weight at all. The formation of a plan quite literally “presents a moving target,”  
 18 *Franklin*, 505 U.S. at 798, which cannot be final agency action—and a request to formulate a plan  
 19 is even one step further removed from that. This is especially true given that, regardless of what  
 20 plan is devised, there is no right to be counted in any particular way, or to be counted at all. *See*  
 21 *Confederacion de la Raza Unida v. Brown*, 345 F. Supp. 909, 910 (N.D. Cal. 1972) (“Plaintiffs do  
 22 not contend, and correctly so, that they have an absolute right to be counted [in the census].”);  
 23 *Nat’l Law Ctr. on Homelessness & Poverty v. Brown*, CIV. A. 92-2257-LFO, 1994 WL 521334,  
 24 at \*8 (D.D.C. Sept. 15, 1994) (“The Constitution does not provide individuals with a right to be  
 25 counted . . .”).

26 In *Franklin*, the Supreme Court held that the Secretary’s transmission of a final census  
 27 report to the President under 13 U.S.C. § 141—a report compiled after the execution of the overall  
 28 census operational plan—is *itself* not final agency action. 505 U.S. at 798 (“[T]he ‘decennial

1 census’ still even after the Secretary reports to the President.”). Given this holding, it would make  
2 no sense whatever to find the Secretary’s *logically and temporally prior* interim request that  
3 Bureau officials merely formulate a plan is judicially reviewable.

4 But even if the Court were to review the Secretary’s request to formulate a plan as a discrete  
5 and final agency action, what exactly would render the Secretary’s decision to *request* a plan  
6 unreasonable? By July 29, 2020, it was apparent that Congress was taking no steps to extend the  
7 statutory deadline of 13 U.S.C. § 141 despite the Bureau’s repeated requests. *See, e.g.*,  
8 DOC\_222\_0001 (Secretary’s talking points in Spring, noting that the Bureau needed an extension  
9 of the statutory deadline); DOC\_8037-38 (transmitting to Secretary a newspaper article which  
10 addressed whether Congress would take up the extension); DOC\_8071 (discussing repeated  
11 requests for deadline extension). The statutory deadline was fast approaching. Surely not even  
12 Plaintiffs can chide the Secretary for (1) recognizing that the law requires the Bureau to accomplish  
13 the census by the end of the year, and (2) requesting that his staff provide, for his consideration, a  
14 plan for how to meet that legal requirement. A fortiori, developing a plan to comply with a statute  
15 is action “*in accordance with law*” under the APA. 5 U.S.C. § 706(a)(2). Would Plaintiffs have  
16 the Secretary write a decision memo to justify his decision to explore options? Would they have  
17 him weigh the pros and cons of attempting to comply with the law?

18 To ask these questions is to answer them: even if the Secretary’s decision to request the  
19 Replan were reviewable—and, again, it is not—there is no plausible grounds for concluding that  
20 such a decision is arbitrary, capricious, or not in accordance with law in violation of the APA.

21 Perhaps recognizing their predicament, Plaintiffs use a heads-we-win-tails-you-lose  
22 argument to reimagine a “decision” on August 3. *See* ECF No. 178 at 1, 3 (purporting to challenge  
23 both the “July 29 decision” and the “August 3 final agency action”). But this effort is incoherent  
24 and a shell game. Plaintiffs want to swap from, on the one hand, contending that the July 29  
25 decision by the Secretary is the operative one and everything else is mere implementation of that  
26 decision, ECF 170 at 2-3, to, on the other hand, arguing the very next day that “[t]he August 3  
27 announcement of the Replan is and has always been the final agency action Plaintiffs are  
28 challenging,” ECF No. 178 at 2. Not only does this inability to identify the decision under review

1 make a mockery of the agency action and finality requirements—which demand a cognizable and  
 2 discrete action—it renders the case not susceptible to any principled manner of judicial review at  
 3 all. Plaintiffs chose to upend this case at the eleventh hour by identifying a new date of decision  
 4 in an effort to obtain voluminous (irrelevant) documents. They cannot escape that choice.

### 5 **III. Plaintiffs Have No Plausible Enumeration Clause Claim**

6 In addition to torpedoing their APA claims, Plaintiffs shifting the focus of this case to the  
 7 Secretary’s July 29 request for a plan is also fatal to their Enumeration Clause challenge.

8 As we explained previously, there is no meaningful or cognizable standard under which  
 9 the Court could evaluate *any* Enumeration Clause argument in this matter. *See* ECF 81 at 4–8.  
 10 The Enumeration Clause requires a person-by-person headcount; the Supreme Court has never  
 11 held it to require anything more. *See generally New York*, 139 S. Ct. 2551 (evaluating re-  
 12 instatement of citizenship question on census form); *Utah v. Evans*, 536 U.S. 452, 452 (2002)  
 13 (holding that “hot-deck imputation”—a process which imputes characteristics of households based  
 14 upon the characteristics of neighbors—does not violate the Enumeration Clause); *Dep’t of*  
 15 *Commerce v. U.S. House of Representatives*, 525 U.S. 316 (1999) (holding that statistical sampling  
 16 violates the Census Act and declining to reach the Enumeration Clause claim); *Wisconsin v. City*  
 17 *of New York*, 517 U.S. 1 (1996) (holding that Secretary did not violate Enumeration Clause by  
 18 declining to correct a census undercount with data from a post-enumeration survey); *Franklin*, 505  
 19 U.S. 788 (1992) (confirming that allocating federal employees serving overseas to their home  
 20 States did not violate the Constitution). The clause does not mandate a “reasonable relationship  
 21 to an actual enumeration” in all circumstances, because otherwise that standard would have been  
 22 applied in the census cases post-dated *Wisconsin*. *See Utah*, 536 U.S. at 464 (foregoing the  
 23 *Wisconsin* “reasonable relationship” standard in determining the constitutionality of imputation);  
 24 *see also House of Representatives*, 525 U.S. at 346–47 (Scalia, J., concurring in part) (discussing  
 25 the constitutionality of statistical sampling without reference to the *Wisconsin* reasonable-  
 26 relationship standard); *id.* at 363 (Stevens, J., dissenting) (same). It wasn’t. Indeed, if that standard  
 27 applied, the Court could not have reached the conclusion it reached in *New York*.



But even if the Court were to attempt to apply the *Wisconsin* reasonable-relationship standard here, there is still no way Plaintiffs could establish that the Secretary's request for a plan, or the plan itself, would be impermissible. For one, as noted above, an "actual Enumeration" as referenced in *Wisconsin* simply means a person-by-person headcount. Unlike the *post hoc* statistical adjustment at issue in *Wisconsin*—which implicated the concept of estimation—there is no dispute about that issue here. *Compare* Am. Compl. ¶¶ 3, 272, 344 with *Wisconsin*, 517 U.S. at 24 (examining the Secretary's decision that an "'actual Enumeration' would best be achieved without the [ ] statistical adjustment of the census"). For another, Defendants are aware of no decision finding a violation of the reasonable-relationship test. *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."). Further, even if the *Wisconsin* standard surreptitiously imported some ineffable concept of accuracy, the Secretary's request for a plan in the face of an impending statutory deadline cannot be said to bear upon census accuracy, which is an impossible standard to measure a census in any event. *See Utah*, 536 U.S. at 504 (Thomas, J., concurring in part and dissenting in part) (canvassing the history of census undercounts, including the first Census in 1790); *Wisconsin*, 517 U.S. at 6 ("Although each [of the 20 past censuses] was designed with the goal of accomplishing an 'actual Enumeration' of the population, no census is recognized as having been wholly successful in achieving that goal."). If anything affects accuracy, it is the deadline itself. And it simply cannot be that the Secretary, with all his "broad authority" to conduct the census, somehow lacks the ability to request an operational plan from his subordinates to meet a statutory deadline enacted under Congress's "virtually unlimited discretion" to control the census. *Wisconsin*, 517 U.S. at 19.

#### **IV. The Court Should Dissolve the Temporary Restraining Order and Deny the Preliminary Injunction**

The collapse of Plaintiffs' APA claims and Enumeration Clause claims is sufficient reason to reject their request for a preliminary injunction. *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, 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)). And, with the national completion rate for enumeration topping 95 percent, Plaintiffs’ claims of harm in this matter are rapidly evaporating. *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (“[D]emonstrate 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.” (internal quotation marks omitted)).

Meanwhile, the harm to census operations from continuing to comply with the temporary restraining order is great, and growing by the day. As detailed in the forthcoming supplemental declaration from the Bureau’s Associate Director Albert E. Fontenot, the Bureau remains bound by the December 31, 2020, deadline established in 13 U.S.C. § 141. Fontenot Decl. ¶ 2. Having already compressed data processing operations as much as possible, *id.* ¶ 22, the Bureau needs to *finish* its field operations by September 30, 2020 to enable data processing to begin. *Id.* ¶¶ 16-22 (explaining that data processing must be performed sequentially following the completion of field data gathering). Only by doing so can the deadline set by Congress be met.

The most efficient way to complete these field operations is to permit Area Census Offices, as soon as practically possible, to enter the “closeout phase,” under which they are given greater discretion to move enumerators around and allocate work to the highest performing enumerators; to grant enumerators more autonomy to complete their cases; and to change a multitude of other procedures to focus first and foremost on the raw count, which is generally faster to achieve. *Id.* ¶¶ 4-14. Closeout procedures are a normal part of census operations, and were engrained in the original Operational Plan for the 2020 census. *Id.* ¶ 5. Yet the Court’s Temporary Restraining Order is preventing the Bureau from fully implementing those procedures. *Id.* ¶¶ 6-11.

If the Bureau is unable to finish field operations by September 30, 2020, it will be unable to complete the vast task of post-data collection processing in time to provide the data to the

Secretary in accordance with the statutory deadline. *Id.* ¶ 22. This is no mere hypothetical. The Bureau has *already* compressed this data processing as much as possible. *Id.* Thus, were the Court to enjoin the conclusion of field operations, the Bureau's ability to meet its deadline is in serious doubt. *Id.*

Since the passage of 13 U.S.C. § 141, the Bureau has *never once* missed the deadline to report the census results. This Court should not force Congress to deal with the uncertainty of an untimely census report. Following the 1920 census, Congress could not agree on how to conduct apportionment at all—leaving the apportionment numbers from the 1910 census in place for *two* decades until a new census was conducted in 1930. *See U.S. Dept. of Commerce v. Montana*, 503 U.S. 442, 451-53 (1992) (discussing this history). That is the entire reason Congress enacted both the § 141(b)'s statutory deadline and the automatic apportionment formula based on that deadline. *Id.* Plaintiffs' meddling in the current census threatens to upend that carefully crafted statutory scheme. If the enumeration and apportionment report ultimately delivered to Congress is untimely, there is no telling what Congress would do. It is entirely possible that Congress could, as in 1920, simply disregard the untimely results. Surely, everyone can agree that the next ten years of representation and funding should be based on the most current population data available, not data from a decade ago. Plaintiffs, and this Court, should not force Congress into that position.

This Court should therefore dissolve the Temporary Restraining Order and deny Plaintiffs' motion for a preliminary injunction.

#### **V. If The Court Enters A Preliminary Injunction, It Should Grant a Stay Order Pending Appeal**

As this Court has repeatedly acknowledged, time is of the essence. Defendants respectfully believe that the Court should promptly deny Plaintiffs' motion for a preliminary injunction. If, however, the Court grants Plaintiffs' motion for a preliminary injunction, the Court should indicate in its Order whether it is will stay its order pending a potential appeal. The court's vague Temporary Restraining Order has seriously impeded census operations due to contempt threat, and if that Order continues, the agency will need relief almost immediately to begin closeout operations. Due to the increasing irreparable harm to the need to complete the census by the

1 statutory deadline, we anticipate seeking relief from the court of appeals, if appeal is authorized,  
 2 on September 23, 2020. If this Court takes an action (or no action) to avoid prompt appellate  
 3 review, Census may need to begin taking closeout steps that it has previously held off under a  
 4 cautious reading of this Court's vague Temporary Restraining Order. It is impracticable for the  
 5 agency to return to the Court time and again to get particular actions blessed, and the fact that this  
 6 would be necessary is yet another indication that the Court is not faced with a challenge to final or  
 7 discrete agency action but instead with a dynamic and ongoing process of unconsummated  
 8 administrative decisionmaking.

9 This Court has allowed the parties to submit supplemental briefing in advance of today's  
 10 hearing, pursuant to which this brief—and the accompanying declaration of Mr. Fontenot—is  
 11 being submitted. With this supplemental briefing, Defendants believe that this Court has an  
 12 adequate legal and factual basis to evaluate whether to stay any preliminary injunction it may enter  
 13 pending appeal, which rests on the same factors as the injunction showing Plaintiffs must make.  
 14 *See Nken v. Holder*, 556 U.S. 418, 433-43 (2009) (discussing factors for a stay pending appeal).  
 15 We therefore request a stay pending a determination whether to appeal and, if appeal is authorized,  
 16 a stay pending appeal.

17  
 18  
 19 DATED: September 22, 2020

Respectfully submitted,

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 22 Acting Assistant Attorney General

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of September, 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing.

/s/ Alexander V. Sverdlov  
ALEXANDER V. SVERDLOV

## Attachment A

## Court-Ordered Timeline

July 29, 2020: Secretary Ross directs Census Bureau to develop a plan to comply with statutory deadline in 13 U.S.C. § 141. *See* ECF 81-1 ¶ 81; DOC\_8371-8373

August 3, 2020: Replan is formally announced, and implementation begins. *See* DOC\_0000933. Implementation reflects a myriad of operational decisions and goes through September 5, 2020.

September 5, 2020: Court enters Temporary Restraining Order, ECF 80. Implementation of the Replan halted. *See* ECF 86 Attach. A, B.



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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.**

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

4 **I. Executive Summary**

5 1. I am the Associate Director for Decennial Census Programs at the U.S. Census  
6 Bureau. This supplements my prior declaration in this case. In this declaration I:

- 7 • Explain that the Census Bureau is currently required by statute to produce  
8 apportionment counts by December 31, 2020;
- 9 • Explain the steps that are necessary to conclude field operations by the December 31,  
10 2020 deadline, and identify the ways in which the Temporary Restraining Order  
11 (TRO) in this case is interfering with these steps;
- 12 • Explain the steps in post processing that must occur on the completion of field  
13 operations and reiterate that if these steps do not begin on October 1, 2020, the Census  
14 Bureau may fail to meet its statutory deadline.

15 **II. Statutory Deadline**

16 2. The Census Act 13 U.S.C. Section 141 provides that “the tabulation of total  
17 population by States under subsection (a) of this section as required for the apportionment of  
18 Representatives in Congress among the several States shall be completed within 9 months after  
19 the census date and reported by the Secretary to the President of the United States.” For the 2020  
20 Census, this means that the tabulation must be completed and reported to the President by  
21 December 31, 2020. While various bills have been introduced in Congress to extend this statutory  
22 deadline, as of today the December 31, 2020 deadline remains in effect. The Census Bureau  
23 designed the Replan schedule to allow us to meet this statutory deadline.

24 **III. Steps to Conclude Field Operations**

25 3. I explained in my September 5 declaration in this case that nonresponse follow-up,  
26 NRFU, is the field operation designed to complete enumeration of nonresponding housing unit  
27 addresses and that it involves census field staff (known as enumerators), attempting to contact  
28 nonresponding addresses. I will not repeat the background information about NRFU, but will

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1 attempt to further assist the court's understanding of decennial field operations by explaining in  
2 more detail the steps necessary to conclude field operations.

3 4. Concluding field operations in Area Census Offices (ACOs) as they complete their  
4 workload is a normal part of the NRFU operation, and is not specific to the Replan Schedule. The  
5 Census Bureau manages NRFU out of "Census Field Supervisor areas" or "CFS areas" within each  
6 of the nation's 248 ACOs. CFS areas are supervisory work assignment areas consisting of 4,000-  
7 5,500 housing units. As of September 21, 2020, roughly 70.7% (9,576) of CFS areas nationwide  
8 are eligible for what we call "the closeout phase," 8,682 are actually in the closeout phase, and  
9 roughly 1,578 have actually reached conclusion, meaning that we have zero unresolved addresses  
10 in the CFS area.

11 5. The closeout phase refers to the process of focusing our best enumerators to resolve  
12 the remaining cases in that area. At the time both the COVID-19 Plan and the Replan were decided  
13 upon, CFS areas were eligible for closeout procedures when they crossed the 85% completion  
14 mark, or at the passage of a particular date, whichever occurred first. We increased this percentage  
15 to 90% independent of the Replan to improve accuracy<sup>1</sup>. Under the Replan, all CFS areas would  
16 have become eligible for closeout procedures on September 11. This does not mean that all CFS  
17 areas would have been moved to closeout procedures on that date, only that regional directors  
18 could have made this decision. Under the TRO, we have directed that no CFS area be moved into  
19 closeout procedures until it reaches 90% completion. The Census Bureau is continuing to work  
20 across the nation to obtain responses from all housing units, and has not begun closeout procedures  
21 for any CFS area with under 90% completion.

22 6. On September 5, 2020 this Court enjoined the Census Bureau from "implementing  
23 the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened  
24 timelines in the August 3, 2020 Replan, including but not limited to winding down or altering any  
25 Census field operations." This TRO is preventing the Census Bureau from taking the steps it needs  
26

---

27 <sup>1</sup> In my September 5 declaration in this case I said the threshold for moving to Closeout Procedures was 85%. I was  
28 incorrect. We had initially planned for an 85% threshold, but increased the threshold to 90% on August 17, 2020 as  
a way to increase the quality of the data we collected. As discussed above, under the TRO, the Census Bureau has  
not begun closeout procedures for any CFS area with under 90% completion.

1 to conclude data collection in an efficient and effective manner in time to meet our statutory  
2 deadline, including:

3 Preventing Use of Highest Performing Enumerators. Because of the TRO restriction on  
4 releasing staff, we are unable to execute our strategy of assigning the remaining work in CFS  
5 Areas eligible for the Closeout Phase to our highest performing enumerators. We define our  
6 highest performing enumerators as those who have high case completion rates, are good at  
7 converting refusals, know where to look for proxies, have a lot of available hours to work  
8 cases, and may have a special skill, like a second language, that assists them to complete  
9 cases. This strategy would have ensured that the most difficult NRFU cases were handled  
10 by the highest performing enumerators, which would have improved both data quality and  
11 efficiency. The data quality improvements come from having enumerators who have a  
12 demonstrated ability to work with respondents to get their cooperation completing interviews  
13 handling the final NRFU cases (which are often the most difficult cases to complete). We  
14 gain efficiency because these enumerators achieve higher rates of completion and resolve  
15 cases more quickly.

16 7. The Census Bureau assigns cases using its optimization software. This software is  
17 designed to assign cases, via an assigned smart phone, to all enumerators with available hours in  
18 a given CFS area, based on a variety of factors – geographic proximity, number of case attempts,  
19 best time to contact and other factors. For Closeout, the optimization software – in conjunction  
20 with our effort to keep the highest performers - is designed to stabilize the closeout process by  
21 assigning high performing enumerators a dedicated set of more permanently cases in a CFS Area.  
22 By giving these enumerators more ownership of a set of cases, they can be more strategic in how  
23 they attempt to contact them. For instance, if they get a lead on a proxy one day, they will be able  
24 follow through on that proxy on a subsequent day.

25 Preventing the Movement of CFS Areas into Closeout Before 90%

26 8. The Census Bureau's plan has always involved making all CFS areas eligible for  
27 Closeout Phase when that CFS area either reaches a percentage completion threshold, or on a date  
28 certain, approximately 2 - 3 weeks prior to scheduled conclusion of field operations. The date

1 under the Replan when all CFS areas would have become eligible for Closeout Procedures was  
2 September 11. Without the TRO, all CFS areas would be currently eligible for Closeout Phase.

3 9. Closeout procedures are used in every Census to finalize data collection because  
4 they provide us with a consistent way to finish the census. Every CFS area is treated the same  
5 way, which minimizes variability in how the data is collected. Consistency is an important element  
6 of data quality. We would also be able to finish more effectively using Closeout Procedures  
7 because this would allow us to accept what we call "POP count only" (population count only,  
8 without associated demographic information) is the minimal acceptable data necessary to fulfil the  
9 requirements for apportionment. Under the Replan, for households that have not responded to the  
10 Census in the final stage of the operation, we were going to utilize arrangements we had made  
11 with the Internal Revenue Service (IRS) to allow us to use IRS population count information (a  
12 high quality single administrative record source) as the sole source of POP count only information.  
13 We still planned to make an attempt to contact these households, and if an enumerator could obtain  
14 full information we would take that as a first choice. We have used POP count only enumeration  
15 in all censuses since 1990; it is an established technique to convert the final and most difficult  
16 cases, to meet the requirements for apportionment and to reduce the number of cases requiring  
17 imputation.

18 Ceasing Assignment of Reinterview Cases

19 10. In order to finish field operations by a given deadline, we would normally cease  
20 assigning new reinterview cases two weeks prior to conclusion. (The reinterview operation  
21 involves reinterviewing selected addresses for quality assurance.) Continuing to assign  
22 reinterview cases beyond that point would produce and continual cycle of new cases coming into  
23 the field. If we were not under the TRO, we would have ceased assigning reinterview cases, SRQA  
24 (Self Response Quality Assurance) cases, and field verification cases by September 16, 2020.  
25 Every day that we are forced to send these reinterview cases prevents from deploying these  
26 enumerators elsewhere, hindering our ability to complete the Census.

11. The Census Bureau Detailed Operations Plan for NRFU states in chapter 2.3.5.3 (page 39)<sup>2</sup> we have 3 types of reinterviews during NRFU –

- Analytic: Based on statistical calculations, enumerators whose work differs significantly from other enumerators are flagged as outliers. Cases completed by these enumerators are chosen so that an analytic reinterview can be used to further investigate these enumerators to determine if they are following proper enumeration procedures.
- Random: Random reinterview involves reinterviewing a random sample of the eligible cases completed by every enumerator.
- Supplemental: Supplemental reinterview allows the National Processing Center (NPC) staff to select additional cases for reinterview for any enumerator at any time during NRFU, if they suspect an enumerator may not be following procedures. This can be done through manual selection, where the user selects a specific case for supplemental RI, or future selection, where the user selects an enumerator and the next two cases checked in for that enumerator are selected for supplemental RI.

12. The Census Bureau assessed whether we were getting sufficient quality control using analytic and supplemental reinterviews, and as a part of our ongoing process management, and under the Replan, we determined that we would discontinue sending random reinterview cases to the field. In prior censuses, we selected cases for the Reinterview operation primarily through random selection because the paper-based enumeration did not provide us with a method of near real-time assessment of enumerator performance. In the 2020 Census, however, we can obtain information from the handheld devices used by enumerators, such as information about where they were at the time of the interview, the length of the interview, time spent on each question, and other detailed metrics. The elimination of random reinterview was introduced at the same time as the Replan and therefore we are enjoined from making the decision to discontinue this unnecessary

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<sup>2</sup> This is posted on the Census Bureau's public website at [https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan\\_v20.pdf](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan_v20.pdf)  
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1 operation. The mandatory continuation of random reinterview simply diverts enumerators who  
2 could be used to enumerate hard-to-count addresses.

3 Reversing Reduced Contacts for Vacant Units

4 13. As part of the Replan, the Census Bureau reduced the field work required to verify  
5 that a vacant housing unit is, in fact, vacant. We do some follow up with housing units that  
6 respondents report as vacant, simply to verify the information. Our original plan required us to  
7 make as many as six visits to housing units that had previously been self-reported as vacant. Under  
8 the Replan we reduced these six visits to one, and required no visit for self-reported vacant units  
9 where we had confirmation of vacancy from administrative records. The TRO's requirement that  
10 we visit housing units that respondents reported to be vacant as many as six times, even if we have  
11 confirmation of the vacancy from administrative records, also imperils our ability to complete the  
12 data collection prior to September 30, 2020. As of September 21, 2020 we are finished with 88.8%  
13 of the NRFU field work and 95.8% of the housing units in the nation have been enumerated - and  
14 those numbers increase daily. Additionally, 4 states have 99% or more of their housing unit  
15 enumeration completed. A total of 49 states, plus Washington D.C. and the Commonwealth of  
16 Puerto Rico, have completed 90% or more of the housing units.

17 14. In my September 5 declaration, ECF No. 81-1, I stated that as of that date, and at  
18 the completion rate we were then experiencing, we would be able to conclude data collection  
19 operations by September 30 and achieve a 99% completion rate for every state. On September 11,  
20 2020 I revised my assessment and stated that we were facing significant risks to complete all states  
21 by September 30, due to factors beyond the Census Bureau's control, such as wildfires in the  
22 western part of our country, major storms, resurgence of COVID-19 restrictions and other similar  
23 disruptions. My concerns in this regard continue. In the midst of major West Coast fires and air  
24 quality issues that have accelerated since September 11, and the current impacts of Hurricane Sally  
25 across the states of Louisiana, Mississippi, Alabama, the Florida panhandle area, parts of Georgia,  
26 and South Carolina, I stated publicly on September 17, 2020 in the Census Scientific Advisory  
27 Committee meeting that I did not know whether Mother Nature would allow us to meet the  
28 September 30 date. Mother Nature, however, is not the only factor; every day that Court

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1 injunctions preclude us from following our normal field procedures makes it more difficult for us  
2 to complete a timely and complete census.

3 15. The Census is a dynamic operation, conducted across the entire nation, and the  
4 situation changes rapidly. We are now dealing with the effects of wildfires, smoke, and multiple  
5 hurricanes, including storms still forming that may affect the Gulf Coast area. As of today, we  
6 still have 1 state with a completion rate below 90%, thus demonstrating our urgent need to revert  
7 to our planned completion strategies to meet the statutory deadline.

8  
9 **IV. Steps to Conclude Post-data Collection Processing**

10 16. The next major step, after the completion of data collection operations, is post  
11 processing, which refers to the Census Bureau's procedures to summarize the individual and  
12 household data into usable, high quality tabulated data products. Our Replan schedule was  
13 premised on beginning post processing on October 1 and was designed to allow the Census Bureau  
14 to finish NRFU and post processing before the statutory deadline of December 31, 2020.

15 17. Our post processing procedures and systems are meticulously designed, tested and  
16 proven to achieve standardized, thoroughly vetted, high quality data products that we can stand  
17 behind. The 2020 Census leveraged significant advances in computing technology that have  
18 occurred since the 2010 Census. Internet data collection, use of smart-phones for field data  
19 collection, digital input of phone data collection, and state-of-the-art paper data capture have  
20 enabled the Census Bureau to consolidate and prepare the raw census data for processing more  
21 rapidly than ever before. Additionally, our computer applications include built-in quality controls  
22 that guide respondents through the data collection process and help to ensure higher data accuracy  
23 at the point of data input than ever before.

24 18. The computer processing systems at Census Headquarters have also been optimized  
25 in partnership with industry leaders using the latest hardware, database, and processing technology  
26 available. Taking advantage of this processing power and speed, we were able to accelerate our  
27 processing time to fit within the Replan schedule.



1           19.       Nonetheless, post data collection processing is a particularly complex operation,  
2 and the steps of the operation must generally be performed consecutively. It is not possible, e.g.,  
3 to establish the final collection geograph (establishing the number of housing units for all  
4 geographic boundaries in the nation) prior to processing housing units and group quarters that are  
5 added or corrected during NRFU. Similarly, it is not possible to unduplicate responses prior to  
6 processing all non-ID responses (responses submitted online or via telephone without a census  
7 ID). In this sense, the post data collection activities are like building a house – one cannot apply  
8 dry wall before erecting the walls, any more than one could lay floor tile before the floor is  
9 constructed. There is an order of steps that must be maintained.

10          20.       As part of developing the Replan schedule, we looked at the possibility of starting  
11 the post data collection processing activities on a flow basis and reaffirmed that there is little  
12 opportunity to begin until data collection operations close everywhere. As explained above, it is  
13 generally necessary to perform processing steps consecutively, as each step depends upon  
14 completion of the prior step. The only processing step we could adjust in the schedule was initial  
15 processing of addresses, which we advanced by 26 days. It is not possible, however, to begin final  
16 census response processing in one region of the country while another region is still collecting  
17 data.

18          21.       In my prior declaration I provided information about the various operations  
19 comprising post processing and their original and Replan dates. I will not repeat that information  
20 here.

21          22.       Finally, we wish to be crystal clear that if the Court were to extend the data  
22 collection period past September 30, 2020, the Census Bureau's ability to meet its statutory  
23 deadlines to produce apportionment counts prior to December 31, 2020 and redistricting data prior  
24 to April 1, 2021 would be seriously jeopardized. The post processing deadlines for the Replan  
25 schedule are tight, and extending the data collection deadline would, of necessity, cause the Census  
26 Bureau would be at risk of failure of being unable to process the response data in time to meet its  
27 statutory obligations. We have already compressed the post processing schedule from 5 months  
28 to only 3 months. We previously planned and tested our post processing systems assuming that

1 we would follow a traditional, sequential processing sequence, and the 3-month schedule  
2 necessary for the Replan Schedule has already increased risk. We simply cannot shorten post  
3 processing beyond the already shortened 3-month period without significant risk.

4 23. The harms discussed in this declaration will be particularly severe in the states that  
5 are lagging in total response, primarily those states impacted by storms and weather conditions.  
6 Without full latitude to follow our standard completion procedures, these states are more likely to  
7 suffer an incomplete enumeration.

8 24. Both field operations and post processing are necessary to conduct the most  
9 complete and accurate Census. Spending too much time or effort on one at the expense of the other  
10 can result in a less complete or accurate Census. We at the Bureau use our expertise and  
11 knowledge to determine the right balance between the two in light of the applicable constraints,  
12 including the December 31 statutory deadline to complete the Census and the Secretary's report  
13 to the President. Were this Court's actions to compress our timeline still further, the Census Bureau  
14 would be at risk of not completing post processing without eliminating critical steps that are needed  
15 to insure the accuracy of the enumeration and the apportionment counts. If the court requires us  
16 to extend field operations past September 30, it necessarily will come at the expense of post  
17 processing, given the statutory deadline of December 31. We currently compressed post  
18 enumeration processes to the extent we believe feasible. Any shortening of the allotted time would  
19 force us to decide whether to delete operations that are critical and necessary to preparing the  
20 apportionment count. Under the current Census Act, neither the Census Bureau nor the Secretary  
21 have missed the statutory deadline.

## 22 23 **V. Conclusion**

24 25. The Census Bureau is doing everything it can to meet the statutory completion  
25 deadline and to comply with the Court's TRO. Continued requirement to comply with the  
26 restrictions of the TRO means that the Census Bureau will risk missing its statutory deadline to  
27 deliver apportionment data.

26. I have read the foregoing and it is all true and correct.

DATED this \_\_\_\_ day of September, 2020

**Albert E Fontenot**

Digitally signed by Albert E  
Fontenot  
Date: 2020.09.22 11:52:54 -04'00'

Albert E. Fontenot, Jr.

Associate Director for Decennial Census Programs

United States Bureau of the Census

DECLARATION OF ALBERT E. FONTENOT, JR.  
Case No. 5:20-cv-05799-LHK

**From:** U.S. Census Bureau [census@subscriptions.census.gov]  
**Sent:** 9/4/2020 6:40:07 PM  
**To:** Albert E Fontenot (CENSUS/ADDC FED) [Albert.E.Fontenot@census.gov]  
**Subject:** U.S. Census Bureau Daily News - Friday, September 4, 2020



## Census Daily News Digest

Sept. 4, 2020

**Full Daily Digest**

[Click Here](#)

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### Recently Released

[Food Trucks: One Way to Eat Out During Pandemic](#)

[Young Adults Most Likely to Change Living Arrangements](#)

[Webinar on Release of 2019 American Community Survey Statistics](#)

[2020 Census Nonresponse Followup Rates Available at Local Level](#)

[Census Bureau Mails Additional Questionnaire to Households](#)



### ***2020 Census Spotlight***

[Santa Fe New Mexican](#) published an editorial encouraging New Mexicans to respond to the 2020 Census.

Baltimore, MD's FOX ([WBFF-TV](#)) and CBS ([WJZ-TV](#)) affiliates reported that Maryland is in the top 10 of total enumeration rates for the 2020 Census and quoted Gov. Larry Hogan encouraging state residents to respond. Miami, FL's CBS affiliate ([WFOR-TV](#))

Census Bureau to wrap up the counting portion of the 2020 census four weeks early, by Sept. 30 instead of Oct. 31.

Trump administration says challenges to excluding undocumented immigrants from census are premature

CNN – Gregory Wallace, September 3

The Trump administration is characterizing as premature court challenges to its plan to exclude undocumented immigrants from the census count used to determine congressional districts.

Judges Skeptical of Trump Bid to Toss Census Exclusion Challenge

Bloomberg News – Bob Van Voris, September 3

A panel of federal judges expressed skepticism of the Trump administration's request that it dismiss a suit accusing the president of illegally ordering census officials to exclude undocumented immigrants from the decennial count.

## Census Data in the News

More Salt Lake County move-ins come from abroad each year than from many nearby counties Salt Lake Tribune

More Maryland unemployment claims have come from out of state than from any one county during pandemic Baltimore Sun

Workers Keeping Americans Fed Are Going Hungry in the Heartland Bloomberg

## Regional 2020 Census News

***Atlanta Region***

voices in urging people to respond to the census. Jeff Behler was interviewed by RI's Newport This Week about local census takers and how they are trained during the COVID-19 environment. Springfield, MA's dual NBC/CW affiliate (WWLP-TV) also interviewed Behler who said that census worker would be visiting the area and that responding to the census will help ensure federal funding is properly allocated. Wausau, WI's ABC affiliate (WAOW-TV) quoted a local media specialist highlighting why it's important for those who have a second home to respond to the 2020 Census. Rockford, IL's CBS affiliate (WIFR-TV) quoted Marilyn Sanders who reminded people that responding to the census helps ensure a complete and accurate count and determine allocation of federal funding for the next 10 years. ID's Post Register interviewed a media

located on 121 North Arroyo. The event is open to residents of Rio Hondo and surrounding areas and hopes to motivate residents to be counted in order to receive federal funding.

Rio Hondo to host Be Counted Census event today

The Brownsville Herald [TX] – Nubia Reyna, September 3

The City of Rio Hondo will host a Be Counted Census 2020 Free BBQ from 4:30 p.m. to 6:30 today Thursday Sep. 3 at Rio Hondo City Hall located on 121 North Arroyo. The event is open to residents of Rio Hondo and surrounding areas and hopes to motivate residents to be counted in order to receive federal funding.

Final push as U.S. Census deadline nears, millions of dollars in federal funding at stake

KRDO-TV [CO] – Mia Villanueva, September 3

The Sept. 30 deadline to respond to the 2020 U.S. census is quickly approaching and millions of dollars in federal funding are at stake for Colorado. Advocates for the census say Colorado's response is higher than the national rate - but it's still not nearly what it needs to be.

Lawton's Census Week: The impact on the housing division

KSWO-TV [OK] – Staff Writer, September 3

As Census Week continues in Lawton, the city is reporting just 55.8% people who have self-responded. Among the many services that stand to benefit from an accurate Census count is the Lawton Housing Division.

Navajo Nation joins lawsuit to fight expedited 2020 Census

to the 2020 Census is quickly approaching. The Census Bureau will carry out the "2020 Census Asian Week of Action" from Aug. 24 to 30 as we wrap up towards the deadline for responses on Sept 30. The Asian community is invited to participate, especially during this period. TDW+Co's Tim Wang urges for community support in increasing the number of responses. "We cannot wait another 10 years to receive all the benefits we should receive."

Asian American Creatives Call on Their Peers to Actively Participate in the 2020 Census [Print]

China Journal [GA] – N/A, August 28

Young Asian Americans, especially many leaders who focus on the arts and entertainment, are showing us how to break through communication barriers that are being caused due to being isolated at home. In order to increase the power of

KTVX-TV [UT] – Tracy Smith, September 3

The Navajo Nation joined a lawsuit against the U.S. Census Bureau and the Department of Commerce based on the what they are referring to as an “illegally expedited plan, the ‘Rush Plan’ for conducting the 2020 Census. The Navajo Nation joined the lawsuit as a plaintiff alongside non-profits, city and county governments, and the Gila River Indian Community.

### ***Los Angeles Region***

View today’s [broadcast report](#) for the Los Angeles Region.

#### Goleta Community Center Opens to Census

Santa Barbara Independent [CA] – Staff Writer, August 4

Still hoping to get to that Census form? The Goleta Valley Community Center’s computer room opened Wednesday so that members of the community can come fill out their forms if they don’t have internet service. The EqualiTech center will be open every Wednesday in September, 3-7 p.m., at 5679 Hollister Avenue. The staff speaks both English and Spanish.

#### ‘Everyone counts, everyone matters’

Pleasanton Weekly [CA] – Staff Writer, September 3  
Ryan J. Degan, September 3

While the Tri-Valley community's census self-response rates remain above the state and national average, there are still large groups of residents in the region -- roughly 15% to 30% -- who are still unaccounted for, many of whom belong to so-called "hard-to-count populations."

communication, TDW+Co has partnered with different creative art groups, trusted voices online that can share and discuss stories within its vast network. To date, these organizations have worked with the 2020 Census to attract millions of people online through their key programs and virtual events, such as Gold House’s annual A100 list. The award recognizes Asian Americans with cultural influence. Other companies and organizations like WEAREUPRISERS, Kollaboration, International Secret Agents (ISAtv) have also participated in these programs to promote the 2020 Census to encourage more people to actively participate in the 2020 Census.

#### Korean Association Receives \$17,900 in Census Funding

The Korea Times [NY] –  
Jin Woo Cho, August 28

The Korean American  
Association of Greater

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

[Hogan Urges Marylanders To Complete Their Census Form As Deadline Looms](#)

CityBizList [MD] – Bryan Renbaum, September 4

Gov. Larry Hogan on Thursday urged Marylanders to complete their 2020 U.S. Census form ahead of the looming Sep. 30th deadline. Maryland ranks 10th nationwide in its self-response rate and 4th nationwide in its internet response rate. Minnesota ranks 1st in its self-response rate.

[W.Va. native and actress joins senator to encourage West Virginians to fill out Census](#)

WSAZ-TV [WV] – Staff Writer, September 3

“Your response matters. Your voice matters.” U.S. Sen. Joe Manchin released a public service announcement Thursday featuring West Virginia native and actress Jennifer Garner encouraging West Virginians to participate in the 2020 Census.

[Maryland among top states responding to U.S. Census](#)

WBFF-TV [MD] – Chris Berinato, September 3

Maryland remains 10th in the number of people responding to the U.S. Census. This comes as the deadline for responding to the census approaches.

[Gov. Hogan Urges Marylanders To Complete 2020 Census Ahead Of Deadline](#)

WJZ-TV [MD] – Staff Writer, September 3

With less than 30 days left, Gov. Larry Hogan is asking every single Maryland household to fill

form, compared to 64.6% nationally.

[Census 2020: What could be the cause for the low level of participation in Chicago's 15th District?](#)

Univision [IL] – Staff Writer, Aug 31

Council Member Raymond López believes that one of the reasons of low Hispanic participation might be that some community members feel mistrust about how the data provided to the census will be used.

[Lawsuit seeks to block the new 2020 Census deadline](#)

Telemundo [TX] – Staff Writer, Aug 27

The Census Bureau is finalizing the 2020 count of the country's residents one month ahead of schedule so that the process for calculating the number of people used for the distribution of legislative districts will take place during the administration of President Donald Trump, according to



JEFFREY BOSSERT CLARK  
Acting Assistant Attorney General  
DAVID MORRELL  
Deputy Assistant Attorney General  
ALEXANDER K. HAAS  
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*Attorneys for Defendants*

**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' NOTICE REGARDING  
COMPLIANCE WITH TEMPORARY  
RESTRAINING ORDER**

Defendants file this notice to inform the Court of their compliance efforts in response to the Court's September 5, 2020 Temporary Restraining Order ("TRO"). Immediately upon receiving the TRO around 10 p.m. Eastern time on September 5, Defendants began taking steps to determine what concrete efforts would be required for Defendants to come into compliance with the TRO. Within two hours, Defendants transmitted a message to all Regional Directors, Deputy Regional Directors, Assistant Regional Census Managers, Area Managers, and Area Census Office Managers attaching a copy of the Order and stating that "Census Bureau and the Commerce Department are obligated to comply with the Court's Order and are taking immediate steps to do so." *See* Attach. A. The Census Bureau simultaneously posted a copy of the message on its public website, under the heading "Guidance for Census Bureau Field Employees." *See* Census Bureau, *Important Information Related to Census Bureau's Compliance with Today's Federal Court Order*, <https://www.census.gov/newsroom/press-releases/2020/federal-court-order.html>. The notice indicated that detailed guidance about compliance would be distributed shortly, and that enumeration would continue. *Id.*

The night of Sunday, September 6, Defendants transmitted a detailed list of instructions to Regional Directors regarding what steps the field offices must take and what they must refrain from doing to comply with the TRO. *See* Attach. B, C. These instructions reflect Defendant's alterations of census operations in order to comply with the requirement to stop "implementing the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened timelines in the August 3, 2020 Replan," as the Court's TRO directs. *See* Attach. C. Mr. Fontenot's Assistant Director for Field Operation convened a call with those directors in the morning of September 7, 2020, to explain those steps and their implementation, as well as to answer any questions. *See* Attach. B.

Defendants understand that, by its terms, the TRO is effective until the Court holds the scheduled preliminary injunction hearing on September 17, 2020. Defendants will fully comply with the TRO in the meantime. If the Court intends to extend the TRO or otherwise believes that the effect of the TRO lasts beyond September 17, Defendants respectfully request that the Court convert the TRO to a preliminary injunction now in order to afford adequate time for any appellate

1 review. As Mr. Fontenot stated in his declaration filed on September 4, 2020, “if the Court were  
2 to extend the data collection period past September 30, 2020, the Census Bureau would be unable  
3 to meet its statutory deadlines to produce apportionment counts prior to December 31, 2020 and  
4 redistricting data prior to April 1, 2021.” Fontenot Decl. ¶ 100, ECF 81-1.

5  
6 DATED: September 8, 2020

Respectfully submitted,

7  
8 JEFFREY BOSSERT CLARK  
Acting Assistant Attorney General

9  
10 DAVID MORRELL  
Deputy Assistant Attorney General

11  
12 ALEXANDER K. HAAS  
Branch Director

13  
14 DIANE KELLEHER  
BRAD P. ROSENBERG  
Assistant Branch Directors

15  
16 /s/ Alexander V. Sverdlov  
ALEXANDER V. SVERDLOV  
17 (New York Bar No. 4918793)  
M. ANDREW ZEE (SBN 272510)  
18 Trial Attorneys  
U.S. Department of Justice  
19 Civil Division - Federal Programs Branch  
20 1100 L Street, NW  
Washington, D.C. 20005  
21 Telephone: (202) 305-0550

22 *Attorneys for Defendants*  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of September, 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing.

/s/ Alexander V. Sverdlov

ALEXANDER V. SVERDLOV

## Attachment A

**Fw: Important Information related to Census Bureau's Compliance with today's Federal Court Order**

James T Christy (CENSUS/LA FED) [REDACTED]@census.gov>

Sat 9/5/2020 11:59 PM

To: [REDACTED]@census.gov>

1 attachments (205 KB)

TRO ORDER 9-5-20.pdf;

FYI

**James Christy**

**U.S. Census Bureau**

LA [REDACTED] HQ [REDACTED] Cell [REDACTED]

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---

From: James T Christy (CENSUS/LA FED) [REDACTED]@census.gov>

Sent: Saturday, September 5, 2020 11:57 PM

To: James T Christy (CENSUS/LA FED) [REDACTED]@census.gov>

Subject: Important Information related to Census Bureau's Compliance with today's Federal Court Order

**Guidance for Census Bureau Field Employees**

A federal district court for the Northern District of California issued a temporary restraining order at 9:29 PM EDT on 9/5/2020 in the case of National Urban League v. Ross, No. 20-05799. The Order provides that the Census Bureau and the Commerce Department "are enjoined from implementing the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened timelines in the August 3, 2020 Replan, including but not limited to winding down or altering any Census field operations, until the Court conducts its September 17, 2020 hearing on Plaintiffs' PI motion."

The Census Bureau and the Commerce Department are obligated to comply with the Court's Order and are taking immediate steps to do so.

The Bureau and the Department are also in the process of preparing additional guidance and will distribute that guidance shortly.

Enumeration will continue.

The Order is attached for reference.

Direct any questions to your regional management.

**James Christy**

**U.S. Census Bureau**

LA [REDACTED] HQ [REDACTED]

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**Shape Your Future | Start Here** [2020census.gov](https://2020census.gov)

DISTRIBUTION: All RDs, DRDs, ARCMs, Area Managers & ACOMs

## Attachment B

**Fw: Guidance for Field Managers**

James T Christy (CENSUS/LA FED) [REDACTED]@census.gov>

Mon 9/7/2020 12:02 AM

To: FLD Regional Directors [REDACTED]@census.gov>

Cc: [REDACTED]@census.gov>

2 attachments (130 KB)

Guidance for Field Managers related to Action Required following the 9-5 Court Order.pdf; Guidance for Field Managers related to Action Required following the 9-5 Court Order.docx

The attached documents the actions the Census Bureau will take or has taken to implement the September 5 Temporary Restraining Order. It includes adjustments you will need to make in your operations. **Please note that it continues on to a second page.** At this point, please do not share this document with your staff. We will discuss this on a conference call tomorrow. Look for an invite shortly.

**James Christy**

**U.S. Census Bureau**

LA [REDACTED] HQ [REDACTED] Cell [REDACTED]

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---

**From:** Albert E Fontenot (CENSUS/ADDC FED) [REDACTED]@census.gov>

**Sent:** Sunday, September 6, 2020 11:52 PM

**To:** James T Christy (CENSUS/LA FED) [REDACTED]@census.gov>

**Subject:** Fwd: Guidance for Field Managers

Jamey

Let me know when you send to the RDs.

AI

Albert E. Fontenot Jr.

Associate Director, Decennial Census Programs

United States Department of Commerce

Bureau of the Census

Office [REDACTED]

Office [REDACTED]

Cell [REDACTED]



## Attachment C

***Guidance for Field Managers related to Action Required following the 9/5 Court Order***

The following are actions the Census Bureau will take or has taken to implement the September 5 Temporary Restraining Order enjoining the Bureau and the Commerce Department from:

*“implementing the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened timelines in the August 3, 2020 Replan, including but not limited to winding down or altering any Census field operations, until the Court conducts its September 17, 2020 hearing on Plaintiffs’ Pl motion.”*

Field Managers will take the following actions to come into compliance with the September 5 Order and to preserve continuity of field operations pending further litigation developments:

- Refrain from releasing data collection staff (enumerators and CFSs) in Area Census Offices where operational progress indicates the area is in Phase 2 or the Closeout phase of the NRFU operation. The Optimizer will continue to assign available work to staff who enter work availability. Continue to release staff for reasons related to performance, quality concerns or conduct, as was appropriate before the Replan.
- The fixed date of September 11, 2020, as the date on which all CFS areas become eligible for the Closeout phase has been removed. We will implement Phase 2 only after we have enumerated 85% of housing units in a CFS area and we will implement the Closeout phase only when we reach 90%, which allows us to collect more quality data than the pre-Replan thresholds. Do not implement Phase 2 or the Closeout phase until these benchmarks have been met.
- The workload assigned for follow-up will reflect the following reversions to pre-Replan status:
  - We are restoring field verification of self-reported vacant housing units.
  - We will resume making six contact attempts to confirm vacant housing units, instead of the one contact attempt set forth in the Replan.
  - We will resume making six contact attempts on vacant/delete cases with conflicting information, instead of the one contact attempt set forth in the Replan.
  - We will resume making six contact attempts on addresses designated for reinterview and SRQA contacts, instead of the one contact attempt set forth in the Replan.
  - We will reintroduce random sample reinterview cases, as had been used to supplement analytical sample reinterview cases before the Replan.

Continue to take the following actions, consistent with pre-Replan procedures:

- Continue to conduct and schedule replacement training in areas that are showing low completion rates.
- Continue to have staff travel from areas that are at higher levels of completion to areas that are underperforming because of insufficient staffing numbers. This includes within and across regional boundaries.
- Continue to use the outbound telephone enumeration option for areas that are difficult to reach for in-person interviews, and as a supplement to in-person interviewing activities.
- Continue using “pop count only” during the final enumeration attempts (which occur in the last part of the Closeout Phase), as we have done in every prior decennial census.
- Continue to close CFS areas when enumeration of all housing units in that area is complete.

Additionally, continue to utilize enumerator and CFS awards programs as designed to maintain the maximum feasible level of staffing and staff footprint throughout the field.

**From:** U.S. Census Bureau [census@subscriptions.census.gov]  
**Sent:** 7/20/2020 5:54:20 PM  
**To:** Albert E Fontenot (CENSUS/ADDC FED) [Albert.E.Fontenot@census.gov]  
**Subject:** U.S. Census Bureau Daily News - Monday, July 20, 2020



## Census Daily News Digest

July 20, 2020

Full Daily Digest

[Click Here](#)

## 2020 Census in the News

### *National & Top-Tier News*

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

[Trump expected to exclude migrants from U.S. census](#)

Reuters – Steve Holland, July 17

President Donald Trump is expected to soon issue an executive order that would ban undocumented immigrants from being included in the 2020 census count of every



### *2020 Census Spotlight*

Des Moines' CBS affiliate ([KCCI-TV](#)) reported on Iowa's agreement to share driver's license and state ID records with the Census Bureau for administrative records. Indianapolis' ABC affiliate ([WRTV-TV](#)) reported that the Census Bureau and community partners are hoping to boost participation in the 2020 Census by

person living in the United States, a source familiar with the matter said on Friday.

## Census Data in the News

[Half of US adults live in households that lost income in pandemic](#) CNN

[\\$600 a Week in Extra Unemployment Benefits May Soon End, But Millions of Americans Still Can't Find Jobs](#) TIME Online

[College town businesses face uncertain months ahead as hopes hinge on school reopening plans](#) CNBC Online

## Regional 2020 Census News

### *Atlanta Region*

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

[Opinion: Your census response matters to Alabama](#)

Montgomery Advertiser [AL] – Martha Roby

As I recently wrote about all the ways government agencies are assisting during the current health pandemic, I want to focus on a significant action Alabamians can take now to support our state for years to come. As you know, the U.S. Census Bureau is in the process of conducting the 2020 Census.

[It's not too late to be counted in the U.S. Census; here's how](#)

The Advocate [LA] – Leila Pitchford, July 19

Sixty-seven is a magic number for one community in the Baton Rouge region. The village of French Settlement is close to reaching a town designation, which could see them jump from a three-alderman municipality

providing free tacos as an incentive to respond.

### *Census Bureau Spokespeople in the News*

[Albuquerque Journal](#) quoted a local media specialist in a story about the Census Bureau's preparations to swear in census workers in New Mexico, Grand Rapids' NBC affiliate ([WOOD-TV](#)) interviewed Michael Cook who informed Michigan residents that households that have not yet responded to the census should expect to see census takers in their neighborhoods this summer following up to ensure they respond. Cook noted that all census workers will be wearing personal protective equipment. [The Next Web](#) published an article about the Census Bureau making historical strides in digital improvements for the 2020 census. The article referenced a statement from Zach Schwartz who assured readers of the steps the

to five. The most recent census data shows the village has 1,133 of the 1,200 it would need to make the jump. Every 10 years, the United States conducts a census: 2020 is one of those years.

Local organization urges people to complete the 2020 Census to help communities

WJBF-TV [GA] – Renetta DuBose, July 18

A local organization hopes taking to the media will help encourage people in the CSRA to complete the Census 2020 form.

Editorial: Step up and be counted in US 2020 Census

The Natchez Democrat [MS] – Editorial Board, July 17

Adams County could sure use a few million dollars and a few hundred jobs right now. With all of the income and jobs that have been lost locally and across the state because of the COVID-19 pandemic any relief would be nice. You can help. How? By making sure you file with the U.S. Census.

SC to send ID, license holders' info, including citizenship status, to Census Bureau

The State [SC] – Emily Bohatch, July 17

The South Carolina Department of Motor Vehicles will transfer personal information of every South Carolinian with an ID or drivers license to the U.S. Census Bureau.

Family Success Center to host event

Gadsden Messenger [AL] – Emma Kirkemier, July 17

The Etowah County Family Success Center is holding a free event next Saturday, July 25, to

Census Bureau is taking to protect the confidentiality of each response. A local media spokesperson was interviewed by San Antonio's Fox affiliate (KTBC-TV) in which he discussed the lagging response rates in Texas and encouraged state residents to respond.

**Beltway & Other Online News**

There's a lot at stake in seniors being accurately counted in the 2020 Census

LGBTQ Nation – John Gallagher, July 19

When it comes to understanding the LGBTQ community in order to support and defend it, one of the main challenges is getting good data. Most of the data that we have comes from pollsters and can fluctuate wildly.

What's different about the 2020 Census?

The Next Web – Staff Writer, July 18

This year, for the first time, the bureau is

encourage families to complete the census, get registered to vote and give blood.

### ***Chicago Region***

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

[Census push: 30% of La Salle County residents haven't responded yet](#)

La Salle News Tribune [IL] – Derek Barichello, July 20

A little less than one-third of Illinois residents haven't responded to the U.S. Census. That figure is slightly better in La Salle County — where 70.3% of residents have responded to the census. That's better than the state's self-response rate of 66.9% and the nation's self-response rate of 62.1%.

[The Census Really Counts](#)

The Portland Beacon [MI] – Jordan D. Smith, July 18

If the census shows a lower population then our state's federal funding allocation will also be lowered. This means less money available to be distributed to schools – regardless of what distribution method is used. A strong census turnout by all Michigan residents benefits all Michigan students.

[Some areas of W. MI lagging in census response](#)

WOOD-TV [MI] – Justin Kolar, July 17

Census workers are reaching the point when they are going door to door to get people to respond to the decennial survey if you haven't yet already. In the age of coronavirus, things

aiming to go predominantly digital. The biggest motivation: cost savings. According to the U.S. Government Accountability Office (GAO), the cost of the census has doubled on average every decade since 1970.

[Meet Trump's controversial pick for a top Census job](#)

Science Magazine – Jeffrey Mervis, July 17

Last month, the U.S. statistical science community was shocked to learn that Nathaniel Cogley had assumed the new position of deputy director for policy at the Census Bureau.

[Trump administration preparing executive order banning undocumented immigrants from being counted in census](#)

The Independent – John T Bennett, July 17

The White House is readying an executive order that would block undocumented

are going to look a bit different as the newly extended deadline approaches.

Residents urged to complete census: 'If people are more informed they would respond'

Post-Tribune [IN] – Carrie Napoleon, July 17

Gary, East Chicago and Whiting lag well behind the state and county average for self-response to the 2020 U.S. Census. As of July 15, 66.4% of Hoosiers responded by phone, mail or online to the U.S. Census while the totals for the three communities hovered around and below a 50% response rate. The average response rate in Lake County was 65.7 percent. Nationwide, the average response rate is 62.1.

Governor hits the road to make census push

Robinson Daily News [IL] – Jerry Nowicki, July 17

Gov. JB Pritzker encouraged Illinoisans to complete the 2020 U.S. Census and touted a state investment in youth employment programs Thursday during two public appearances in Rockford.

Census takers start visiting Boone County homes

KOMU-TV [MO] – Great Serrin, July 17

In fiscal year 2016, Missouri received more than \$16 billion through federal spending programs guided by data derived from the 2010 Census, according to the release. Low participation can result in less funding. For every adult and child that is not counted, Missouri loses an estimated \$1,300 in federal funding per person, per year for 10 years, according to the release.

Governor hits the road to make census push

immigrants from being counted in this year's census, with Donald Trump likely signing it Friday.

Report: Trump Likely To Ban Census From Counting Undocumented Immigrants

Talking Points Memo – Tierney Sneed, July 17

The White House is likely to unveil Friday an executive order by President Trump banning the Census Bureau from counting undocumented immigrants in its 2020 decennial survey, Politico reported.

Donald Trump's Efforts to Distort the Census Have Started Back Up

Slate – Nikita Lalwani and Rachel Brown, July 17

On Friday, Politico reported that President Donald Trump was planning to re-up his push to exclude undocumented immigrants from the



Canton Daily Ledger [IL] – Jerry Nowicki, July 17

Gov. JB Pritzker encouraged Illinoisans to complete the 2020 U.S. Census and touted a state investment in youth employment programs Thursday during two public appearances in Rockford.

Toy giveaways and Census registration take over church parking lot

Frase-Clinton Township Chronicle [MI] – Nick Mordowanec, July 17

From noon to 2 p.m. June 27, a coalition of local organizations and activists gave away toys to community kids while adults were encouraged to register for the 2020 Census. It was part of the “Clinton Township Counts” event.

Iowa joins 3 other states sharing citizenship data with U.S. Census

KCCI-TV [IA] – Staff Writer, July 17

The state of Iowa is now sharing driver’s license information with the U.S. Census Bureau to help the Trump administration determine the citizenship status of every resident.

‘Taco Bout Census 2020’ on Friday seeks to boost census participation on west side of Indianapolis

WRTV-TV [IN] – Shakkira Harris, July 17

An event at “El Taco Loco” in Indianapolis on Friday seeks to boost census participation on the city’s west side.

Census takers begin visiting Boone County households

KRCG-TV [MO] – Staff Writer, July 17

count. Such a move this late in the count would be unprecedented; it would also fundamentally alter apportionment and likely depress the response rates of immigrants who have not yet filled out their form.

Hoping to Spur Participation, City Unleashes the Census Cowboy

Route Fifty – Kate Elizabeth Queram, July 17

The “census cowboy” will ride on horseback to 10 neighborhoods in Chicago with the lowest participation rates in the federal census, Mayor Lori Lightfoot said this week.

**Multicultural News**

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The U.S. Census Bureau announced that census takers will begin following up with households that have not yet responded to the 2020 Census. Boone County is part of the Kansas City area census office where census takers began visiting households on Thursday, a news release said.

[South Bend Mayor encouraging residents to submit 2020 census](#)

WNDU-TV [IN] – Lindsay Stone, July 17

South bend is close to a 60 percent response rate, but Mayor Mueller is encouraging residents to submit their information so the city receives additional funding for schools and residential programs.

### ***Denver Region***

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

[Census Bureau seeks locations for swearing in new employees](#)

Albuquerque Journal [AZ] – Kyle Land, July 19

As COVID-19 cases in New Mexico continue to rise, the U.S. Census Bureau has begun talks about holding events to officially swear in thousands of New Mexicans as employees of the bureau at the end of the month.

[Undelivered packets may mean census undercount](#)

Albuquerque Journal [AZ] – Kyle Land, July 19

For weeks, the 2020 U.S. Census' update/leave process – through which census packets are hand-delivered to homes without traditional mailing addresses – was delayed due to the COVID-19 pandemic.

Take part in the census before it's too late

Santa Fe New Mexican [NM] – Elizabeth Groginsky and Ryan Stewart, July 19

As citizens of a democracy, we cherish our right to vote — and rightfully so. Every year or two, we select the people who will make decisions that shape our communities and our lives.

Potter, Randall residents urged to complete self-response census

Lubbock Avalanche-Journal [TX] – Douglas Clark, July 17

A Census Bureau tool used to determine 2020 Census self-response rates indicates Potter County's rate ending July 16, 2020, is 54.4% while Randall County's self-response rate is 65.5%.

Video: 2020 census response rate for Texas below national average

KTBC-TV [TX] – Robert Price, July 17

Jerome Garza with the US Census Bureau joined FOX 7 Austin to speak on Texans response rate for the 2020 census.

Governor's office: Arizona not sharing driver's license data with census

KUAZ-FM [AZ] – Matthew Casey, July 17

A spokesperson for Gov. Doug Ducey says Arizona has not made any data-sharing deal on licenses with the Census Bureau. A state Department of Transportation spokesperson says there were talks with Census officials late last year, but a formal request under Arizona law was not filed.

From the publisher: New Mexico deserves every penny

Albuquerque Business First [NM] – Candace Beeke, July 17

In 2000, the net undercount for New Mexico was nearly 2% or over 35,000 people. Each New Mexican not counted equates to a loss of about \$3,000 every year for the next decade. Just a 1% undercount of New Mexicans in 2020 could result in a \$600 million loss of funds over a 10-year period.

Port Arthur behind on Census count. Final push to have critical impact

Port Arthur News [TX] – Cassandra Jenkins, July 17

Port Arthur's 2020 Census Bureau response is lagging behind the targeted 50 percent goal at 47.7 percent. Port Arthur's lowest response rates are from districts 1 and 2, ranging between 31 & 40 %.

San Antonio Chamber: Too Many Residents Still Not Counted in 2020

KSTX-TV [TX] – Brian Kirkpatrick, July 17

The San Antonio Chamber of Commerce reports there are still a lot of residents who have not been counted as part of the 2020 federal census. As of mid-July, only 59% of San Antonians had filled out their census form online, by phone or by mail.

OKC Census response rate falls below national average

KOKH-TV [OK] – Kevin Severin, July 17

The self-response rates in OKC falls below the national response rate and is higher than the statewide rate. As of July 10, OKC has a current self-response rate of 60.6%, compared to 62.0% nationally and 56.3% in Oklahoma.

Valley gets creative with census, but will it be enough?

The Monitor [TX] – Rick Kelley, July 17

The Rio Grande Valley is putting its imagination to work to ensure the Census 2020 count is as thorough as can be. But the Valley is lagging behind the rest of Texas, which ranks a lowly No. 40 among states in the self-response rate to the census which began way back in April.

### ***Los Angeles Region***

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

Hawaii Is Trailing In Census Participation — And It Could Cost Us

Honolulu Civil Beat [HI] – Yoohyun Jung, July 19

This has been a strange year to say the least, with a global pandemic inflicting varying levels of disruptions — ranging from mildly inconvenient to catastrophic — on personal, professional and governmental affairs everywhere.

Census worker jobs available

Santa Barbara News-Press [CA] – Mitchell White, July 19

Jobs as temporary, part-time positions census takers are available in Santa Barbara County as local organizers ramp up for in-person visits to households that have yet to respond to the 2020 Census.

Census data is four months late, so Calif. redistricting maps may be too late, state Supreme Court says

San Francisco Chronicle [CA] – Bob Egelko, July 17

Because the Census Bureau now plans to release population data to the states on July 31, 2021, four months later than originally scheduled, the Citizens Redistricting Commission will be given a four-month extension of its legal deadline, until Nov. 1, 2021, to prepare and release new district maps for public comment, the court said in a unanimous ruling.

[Opinion: Counting unhoused people in the 2020 Census is crucial](#)

Street Roots [OR] – Kaia Sand, July 17 Street Roots is operating as a Census Assistance Center for unhoused people every Monday from 9 to 11 a.m. We call these mornings “Census Mondays” — casting this civic activity as celebratory.

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

View today’s [broadcast report](#) for the New York Region.

[Trump planning executive order to exclude illegal immigrants from census](#)

New York Post [NY] – Jon Levine, July 18

President Trump is expected to sign an executive order that will officially forbid illegal immigrants from being included in the 2020 United States census. It is unclear when the order will officially come down, according to Reuters, which first reported the news.

### ***Philadelphia Region***

View today’s [broadcast report](#) for the Philadelphia Region.

[‘Census Van’ Rolling Out to Get More People Counted](#)

Spectrum News [OH] – Sheena Elzie, July 20

You might see the van going around your neighborhood, at churches, libraries or COVID-19 testing sites. And it has one specific mission. The van is the newest way to get the public to fill out a form for the census count.

City census completion rates fall short of state, national averages

Toledo Blade [OH] – Emily Tian, July 19

Toledo's 2020 Census response rate — currently at 56 percent — trails nearly seven percentage points behind Lucas County's and more than 10 points behind Ohio's statewide response rate. It also falls several points short of the national average.

What counts most during a pandemic?

The Inter-Mountain [WV] – Dr. Heather Biola, July 18

Census takers do a real service for our community. Each time we apply for a grant, the most trusted information about the population in our county, the level of poverty, and the age of our citizens comes from the U.S. 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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*Attorneys for Defendants*

**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' NOTICE OF FILING  
DOCUMENTS IN RESPONSE TO THE  
COURT'S SEPTEMBER 10, 2020 ORDER**



1 Pursuant to this Court's Order of September 12, 2020 (ECF No. 103), Defendants  
2 respectfully notify the Court that they are filing with the Court forthwith documents responsive to  
3 the Court's Order dated September 10, 2020 (ECF No. 96).

4 As detailed in the accompanying declaration of Brian D. DiGiacomo, Defendants  
5 undertook extensive efforts to identify custodians who might possess documents responsive to the  
6 September 10, 2020 Order and to retrieve potentially-responsive files from those custodians.  
7 DiGiacomo Decl. ¶¶ 2-4. Those files were collected both manually and through the use of search  
8 strings. *Id.* ¶¶ 5-7. More than 8,800 documents were identified, and Defendants undertook an  
9 expedited review of those documents for responsiveness and privilege. *Id.* ¶¶ 5, 8-12.

10 Given the time constraints imposed by the Court's September 10, 2020 Order, Defendants  
11 were able to review 2,484 documents. *Id.* ¶ 12. Documents that Defendants have been able to  
12 identify as responsive and over which they are not asserting privilege are being filed following this  
13 notice. An index of those documents is included as Attachment 1. A privilege log for withheld  
14 documents that, as of the time of this filing, Defendants have been able to review is included as  
15 Attachment 2.

16 Review of the remaining documents remains ongoing. *Id.* ¶ 13. So too do Defendants'  
17 efforts to collect materials that the Court's September 10, 2020 Order directed Defendants to  
18 produce by September 16, 2020. *Id.* Because review of the remaining documents remains  
19 ongoing, and due to the volume of documents involved, Defendants will be unable to produce or  
20 log any additional documents today.

1 DATED: September 13, 2020

Respectfully submitted,

2  
3 JEFFREY BOSSERT CLARK  
Acting Assistant Attorney General

4 ALEXANDER K. HAAS  
5 Branch Director

6 DIANE KELLEHER  
7 BRAD P. ROSENBERG  
8 Assistant Branch Directors

9 /s/ Alexander V. Sverdlov  
10 ALEXANDER V. SVERDLOV  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of September, 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing.

/s/ Alexander V. Sverdlov  
ALEXANDER V. SVERDLOV

# Attachment 1

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## Attachment 2

Production:Begin Dates	Production:End Dates	Production:Begin Attachment	Production:End Attachment	Email From	Email To	Email CC	Date	Author	File Name	Privilege	Privilege Description	Redacted
DOC_0000222	DOC_0000227	DOC_0000221	DOC_0000227		Kelley, Karen (Federal) [KKelley@doc.gov]; Walsh, Michael (Federal); Dillingham, Steven [MWalsh@doc.gov]; Foti, Anthony (Federal) [AFoti@doc.gov]	(steven.dillingham@census.gov); Jamnia, Ron S (ron.s.jamnia@census.gov)	4/13/2020 11:00 FED)	Ali Mohammad Ahmad (CENSUS/ADCOM)	Briefing Materials re Hill Conversation re June 1 Restart.docx	Predecisional and Deliberative	Draft document containing pre-decisional deliberations regarding draft talking points on proposed Department action/decision/policy. Email communication containing pre-decisional deliberations regarding draft talking points on proposed Department action/decision/policy.	Withheld in full
DOC_0000228	DOC_0000228	DOC_0000228	DOC_0000236	Ahmad, Ali M [ali.m.ahmad@census.gov]			4/13/2020 11:48 FED)	Ahmad, Ali M	Background Materials: Hill Talking Points and Draft Legislative Text	Predecisional and Deliberative	Draft document reflecting mental processes of advisor to decisionmaker regarding draft talking points on proposed Department action/decision/policy.	Redacted
DOC_0000229	DOC_0000236	DOC_0000228	DOC_0000236				4/13/2020 11:48 FED)	Ali Mohammad Ahmad (CENSUS/ADCOM)	Briefing Materials re Hill Conversation re June 1 Restart.docx	Predecisional and Deliberative	Draft document reflecting mental processes of advisor to decisionmaker regarding draft talking points on proposed Department action/decision/policy.	Withheld in full
DOC_0000237	DOC_0000237	DOC_0000237	DOC_0000245	Ali Mohammad Ahmad (CENSUS/ADCOM FED) [ali.m.ahmad@census.gov]	Kelley, Karen (Federal) [KKelley@doc.gov]; Walsh, Michael (Federal) [MWalsh@doc.gov]; Dillingham, Steven (steven.dillingham@census.gov); Jamnia, Ron S (ron.s.jamnia@census.gov); Lamas, Enrique (enrique.lamas@census.gov); Jones, Christa D (christa.d.jones@census.gov); Page, Benjamin J (benjamin.j.page@census.gov); Christy, James T (james.t.christy@census.gov)		4/13/2020 14:04 FED)	Ali Mohammad Ahmad (CENSUS/ADCOM)	Please Review- Updated Briefing Points w/ Next Steps	Predecisional and Deliberative	Email communication reflecting mental processes of advisor to decisionmaker regarding draft talking points on proposed Department action/decision/policy. Document reflecting mental processes of advisor to decisionmaker regarding proposed updates to Census schedule.	Redacted
DOC_0000238	DOC_0000245	DOC_0000237	DOC_0000245				4/13/2020 14:04 FED)	Ali Mohammad Ahmad (CENSUS/ADCOM)	Updated Briefing Materials re Hill Conversation re June 1 Restart.docx	Predecisional and Deliberative	Document reflecting mental processes of advisor to decisionmaker regarding draft talking points on proposed Department action/decision/policy.	Withheld in full
DOC_0000267	DOC_0000272	DOC_0000266	DOC_0000272				4/13/2020 16:27 FED)	Ali Mohammad Ahmad (CENSUS/ADCOM)	Briefing Materials re Hill Conversation re June 1 Restart.docx	Predecisional and Deliberative	Document reflecting mental processes of advisor to decisionmaker regarding draft talking points on proposed Department action/decision/policy.	Withheld in full
DOC_0000273	DOC_0000273	DOC_0000273	DOC_0000278	Ali Mohammad Ahmad (CENSUS/ADCOM FED) [ali.m.ahmad@census.gov]	Gorey, Lauren (Federal) [LGorey@doc.gov]; Foti, Anthony (Federal) [AFoti@doc.gov]; Ding, Michael (Federal) [MDing@doc.gov]; Brebbia, Sean (Federal) [SBrebbia@doc.gov]; Rockas, James (Federal) [JRockas@doc.gov]; Paranzino, Anthony (Federal) [AParanzino@doc.gov]	Walsh, Michael (Federal) [MWalsh@doc.gov]; Kelley, Karen (Federal) [KKelley@doc.gov]; Dillingham, Steven (steven.dillingham@census.gov); Jamnia, Ron S (ron.s.jamnia@census.gov)	4/13/2020 16:50 FED)	Ali Mohammad Ahmad (CENSUS/ADCOM)	QUICK REVIEW-- STATEMENT & TWO-PAGE SCHEDULE	Predecisional and Deliberative	Email communication reflecting information provided to facilitate deliberative discussions regarding internal deliberations among Department personnel, including counsel, on proposed Department action/decision/policy. Document reflecting mental processes of decisionmaker regarding a draft public statement on proposed Department action/decision/policy.	Redacted
DOC_0000274	DOC_0000275	DOC_0000273	DOC_0000278				4/13/2020 16:50 FED)	Ali Mohammad Ahmad (CENSUS/ADCOM)	FOR REVIEW-- DRAFT Working Statement re 2020 Census Shift.docx	Predecisional and Deliberative	Document reflecting information provided to facilitate deliberative discussions regarding proposed updates to Census schedule.	Withheld in full
DOC_0000276	DOC_0000278	DOC_0000273	DOC_0000278				4/13/2020 16:50 FED)	Ali Mohammad Ahmad (CENSUS/ADCOM)	FOR REVIEW-- Operational Adjustment and Activities- WORKING DOCUMENT.docx	Predecisional and Deliberative		Withheld in full
DOC_0000279	DOC_0000280	DOC_0000279	DOC_0000285	Gorey, Lauren (Federal) [LGorey@doc.gov]	Ding, Michael (Federal) [MDing@doc.gov]; Jamnia, Ron S (ron.s.jamnia@census.gov); Ahmad, Ali M [ali.m.ahmad@census.gov]; Foti, Anthony (Federal) [AFoti@doc.gov]; Brebbia, Sean (Federal) [SBrebbia@doc.gov]; Rockas, James (Federal) [JRockas@doc.gov]; Paranzino, Anthony (Federal) [AParanzino@doc.gov]	Walsh, Michael (Federal) [MWalsh@doc.gov]; Kelley, Karen (Federal) [KKelley@doc.gov]; Dillingham, Steven (steven.dillingham@census.gov)	4/13/2020 17:06 FED)	Gorey, Lauren (Federal)	RE: QUICK REVIEW-- STATEMENT & TWO-PAGE SCHEDULE	Predecisional and Deliberative	Email communication reflecting information provided to facilitate deliberative discussions regarding a draft public statement on proposed Department action/decision/policy. Document containing information gathered for pre-decisional deliberations regarding a draft public statement on proposed Department action/decision/policy.	Redacted
DOC_0000281	DOC_0000282	DOC_0000279	DOC_0000285				4/13/2020 17:06 FED)	Ali Mohammad Ahmad (CENSUS/ADCOM)	FOR REVIEW-- DRAFT Working Statement re 2020 Census Shift +OPA.docx	Predecisional and Deliberative	Document reflecting information provided to facilitate deliberative discussions regarding a draft public statement on proposed Department action/decision/policy.	Withheld in full
DOC_0000283	DOC_0000285	DOC_0000279	DOC_0000285				4/13/2020 17:06 FED)	Ali Mohammad Ahmad (CENSUS/ADCOM)	20-060751 Oman- Cisco_sec_03062020 +OPA 4.13.2020.docx	Predecisional and Deliberative		Withheld in full
DOC_0000286	DOC_0000288	DOC_0000286	DOC_0000293	Ali Mohammad Ahmad (CENSUS/ADCOM FED) [ali.m.ahmad@census.gov]	Paranzino, Anthony (Federal) [AParanzino@doc.gov]; Gorey, Lauren (Federal) [LGorey@doc.gov]; Ding, Michael (Federal) [MDing@doc.gov]; Jamnia, Ron S (ron.s.jamnia@census.gov); Foti, Anthony (Federal) [AFoti@doc.gov]; Brebbia, Sean (Federal) [SBrebbia@doc.gov]; Rockas, James (Federal) [JRockas@doc.gov]	Walsh, Michael (Federal) [MWalsh@doc.gov]; Kelley, Karen (Federal) [KKelley@doc.gov]; Dillingham, Steven (steven.dillingham@census.gov)	4/13/2020 17:17 FED)	Ali Mohammad Ahmad (CENSUS/ADCOM)	Re: QUICK REVIEW-- STATEMENT & TWO-PAGE SCHEDULE	Predecisional and Deliberative	Email communication reflecting information provided to facilitate deliberative discussions regarding a draft public statement on proposed Department action/decision/policy. Document reflecting mental processes of advisor to decisionmaker regarding a draft public statement on proposed Department action/decision/policy.	Redacted
DOC_0000289	DOC_0000290	DOC_0000286	DOC_0000293				4/13/2020 17:17 FED)	Ali Mohammad Ahmad (CENSUS/ADCOM)	FOR REVIEW-- DRAFT Working Statement re 2020 Census Shift +OPA.docx	Predecisional and Deliberative		Withheld in full

DOC_0000291	DOC_0000293	DOC_0000286	DOC_0000293			Ali Mohammad Ahmad (CENSUS/ADCOM)	FOR REVIEW- WORKING OPERATIONAL UPDATE w LG edits.docx	Predecisional and Deliberative	Document reflecting mental processes of advisor to decisionmaker regarding a draft public statement on proposed Department action/decision/policy.	Withheld in full	
DOC_0000294	DOC_0000310	DOC_0000294	DOC_0000310				3- DRAFT DOC Exec Report Slides- Data Updated Monday 4-20-20.pdf	Predecisional and Deliberative	Document containing information gathered for pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full	
DOC_0000311	DOC_0000316	DOC_0000311	DOC_0000317	Olson, Stephanie (Federal) [SOlson@doc.gov]	Grossman, Beth (Federal) [bgrossman@doc.gov];Page, Benjamin J [benjamin.j.page@census.gov];Cannon, Michael (Federal) [McCannon@doc.gov]	Walsh, Michael (Federal) [MWalsh@doc.gov]	4/18/2020 20:06 Olson, Stephanie (Federal)	CUI/PRIV FW: Census Legislative Proposal for OMB Review	Attorney-Client Privilege; Predecisional and Deliberative	Email communication providing legal advice from Department counsel regarding proposed updates to Census schedule.	Withheld in full
DOC_0000317	DOC_0000317	DOC_0000311	DOC_0000317				4/18/2020 20:06	Draft Census Legislative Text for Congress 04.14.20 + OLC.docx	Attorney-Client Privilege; Predecisional and Deliberative	Draft document reflecting legal analysis regarding proposed updates to Census schedule.	Withheld in full
DOC_0000318	DOC_0000323	DOC_0000318	DOC_0000323	Walsh, Michael (Federal) [MWalsh@doc.gov]	Olson, Stephanie (Federal) [SOlson@doc.gov];Grossman, Beth (Federal) [bgrossman@doc.gov];Page, Benjamin J [benjamin.j.page@census.gov];Cannon, Michael (Federal) [McCannon@doc.gov]		4/18/2020 20:08 Walsh, Michael (Federal)	Re: CUI/PRIV FW: Census Legislative Proposal for OMB Review	Attorney-Client Privilege; Predecisional and Deliberative	Email communication providing legal advice from Department counsel regarding proposed updates to Census schedule.	Withheld in full
DOC_0000324	DOC_0000325	DOC_0000324	DOC_0000325			Deborah Stempowski (CENSUS/DCMD)	4/20/2020 0:36 FED)	TPs (high level) on post processing v.6.docx	Predecisional and Deliberative	Document reflecting information provided to facilitate deliberative discussions regarding proposed updates to Census schedule.	Withheld in full
DOC_0000326	DOC_0000326	DOC_0000326	DOC_0000326				4/20/2020 15:56 James T Christy (CENSUS/LA FED)	Copy of Post Processing Calculator.xlsx	Predecisional and Deliberative	Document reflecting information provided to facilitate deliberative discussions regarding internal briefing materials on proposed Department action/decision/policy.	Withheld in full
DOC_0000327	DOC_0000327	DOC_0000327	DOC_0000332	Ron S Jarmin (CENSUS/DEPDIR FED) [Ron.S.Jarmin@census.gov]	Ahmad, Ali M [ali.m.ahmad@census.gov];Walsh, Michael (Federal) [MWalsh@doc.gov];Kelley, Karen (Federal) [KKelley@doc.gov]	Fontenot, Albert E [albert.e.fontenot@census.gov];Christy, James T [james.t.christy@census.gov];Lamas, Enrique [enrique.lamas@census.gov]	4/20/2020 15:59 Ron S Jarmin (CENSUS/DEPDIR FED)	Background	Predecisional and Deliberative	Email communication reflecting information provided to facilitate deliberative discussions regarding internal deliberations among Department personnel, including counsel, on proposed Department action/decision/policy. Document containing information gathered for pre-decisional deliberations regarding internal deliberations among Department personnel, including counsel, on proposed Department action/decision/policy.	Redacted
DOC_0000328	DOC_0000331	DOC_0000327	DOC_0000332				4/20/2020 15:59 James B Treat (CENSUS/ADDC FED)	Post Data Collection Narrative-1.docx	Predecisional and Deliberative	Document reflecting information provided to facilitate deliberative discussions regarding proposed updates to Census schedule.	Withheld in full
DOC_0000332	DOC_0000332	DOC_0000327	DOC_0000332				4/20/2020 15:59 James T Christy (CENSUS/LA FED)	Copy of Post Processing Calculator.xlsx	Predecisional and Deliberative	Document reflecting information provided to facilitate deliberative discussions regarding proposed updates to Census schedule.	Withheld in full
DOC_0000392	DOC_0000392	DOC_0000392	DOC_0000392				4/27/2020 16:53 jeff bryant	4. NPC Reopening Status 2020.04.27.docx	Predecisional and Deliberative	Document reflecting information provided to facilitate deliberative discussions regarding proposed Department action/decision/policy. Document containing pre-decisional deliberations regarding proposed updates to Census schedule.	Withheld in full
DOC_0000393	DOC_0000403	DOC_0000393	DOC_0000403				4/27/2020 17:33 johns225	1. Notional Phased Restart DOC Exec Slides Apr 27 2020 ver 1 (6).pdf	Predecisional and Deliberative	Document reflecting mental processes of advisor to decisionmaker regarding internal briefing materials on proposed Department action/decision/policy.	Withheld in full
DOC_0000404	DOC_0000422	DOC_0000404	DOC_0000422				5/1/2020 19:38 Christopher Demmo	Phased Start of Field Ops - FOUO (005) final.pdf	Predecisional and Deliberative	Document reflecting mental processes of advisor to decisionmaker regarding internal briefing materials on proposed Department action/decision/policy.	Withheld in full
DOC_0000423	DOC_0000423	DOC_0000423	DOC_0000442	DRisko@doc.gov	Kelley, Karen (Federal) [KKelley@doc.gov]		5/2/2020 19:59 DRisko@doc.gov	Fwd: Census Phased Resumption of Field Activities	Predecisional and Deliberative	Email communication reflecting information provided to facilitate deliberative discussions regarding a draft presentation on proposed Department action/decision/policy. Document containing information gathered for pre-decisional deliberations regarding internal deliberations among Department personnel, including counsel, on proposed Department action/decision/policy.	Redacted
DOC_0000424	DOC_0000442	DOC_0000423	DOC_0000442	Risko, Daniel (Federal) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=65966F04F7414063BA61A760C5AEAE61-DANIEL RISK]			5/2/2020 19:59 Christopher Demmo	Phased Start of Field Ops - FOUO (005) final.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding internal deliberations among Department personnel, including counsel, on proposed Department action/decision/policy.	Withheld in full
DOC_0000443	DOC_0000443	DOC_0000443	DOC_0000462		Kelley, Karen (Federal) [KKelley@doc.gov]		5/2/2020 19:59 Risko, Daniel (Federal)	Fwd: Census Phased Resumption of Field Activities	Predecisional and Deliberative	Email communication containing pre-decisional deliberations regarding draft correspondence communicating proposed Department action/decision/policy. Document containing pre-decisional deliberations regarding internal deliberations among Department personnel, including counsel, on proposed Department action/decision/policy.	Redacted
DOC_0000444	DOC_0000462	DOC_0000443	DOC_0000462				5/2/2020 19:59 Christopher Demmo	Phased Start of Field Ops - FOUO (005) final.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding proposed updates to Census schedule.	Withheld in full
DOC_0000482	DOC_0000504	DOC_0000482	DOC_0000504				5/4/2020 22:26 johns225	2. Phased Restart DOC Exec Slides for 2020.05.04 Updated (5).pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding proposed updates to Census schedule.	Withheld in full

DOC_0000505	DOC_0000527	DOC_0000505	DOC_0000527			5/4/2020 22:51	johns225	Phased Restart DOC Exec Slides for 2020.05.04 Updated 2 at late.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0000528	DOC_0000546	DOC_0000528	DOC_0000546			5/4/2020 22:53	johns225	DOC Exec Report Slides for 2020.05.04 at late.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy. Email communication reflecting mental processes of advisor to decisionmaker regarding a draft presentation on proposed Department action/decision/policy.	Withheld in full
DOC_0000547	DOC_0000548	DOC_0000547	DOC_0000567	DRisko@doc.gov	Kelley, Karen (Federal) [KKelley@doc.gov]	5/4/2020 23:13	DRisko@doc.gov	Fwd: Census Phased Resumption of Field Activities	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding internal deliberations among Department personnel, including counsel, on proposed Department action/decision/policy.	Redacted
DOC_0000549	DOC_0000567	DOC_0000547	DOC_0000567			5/4/2020 23:13	Christopher Denno	Phased Start of Field Ops - FOUO (005) final.pdf	Predecisional and Deliberative		Withheld in full
DOC_0000568	DOC_0000569	DOC_0000568	DOC_0000588	Risko, Daniel (Federal) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=65966F04F7414063BA61A760CA5EAE61-DANIEL.RISK]	Kelley, Karen (Federal) [KKelley@doc.gov]	5/4/2020 23:13	Risko, Daniel (Federal)	Fwd: Census Phased Resumption of Field Activities	Predecisional and Deliberative	Email communication reflecting mental processes of advisor to decisionmaker regarding a draft presentation on proposed Department action/decision/policy. Document containing pre-decisional deliberations regarding internal briefing materials on proposed Department action/decision/policy.	Redacted
DOC_0000570	DOC_0000588	DOC_0000568	DOC_0000588			5/4/2020 23:13	Christopher Denno	Phased Start of Field Ops - FOUO (005) final.pdf	Predecisional and Deliberative	Draft document containing pre-decisional deliberations regarding proposed updates to Census schedule.	Withheld in full
DOC_0000589	DOC_0000592	DOC_0000589	DOC_0000592			5/7/2020 12:20	CENSUS	Three Page Narrative-1editARJ.docx	Predecisional and Deliberative		Withheld in full
DOC_0000593	DOC_0000596	DOC_0000593	DOC_0000598	Ali Mohammad Ahmad (CENSUS/ADCOM FED) [ali.m.ahmad@census.gov]	Foti, Anthony (Federal) [AFoti@doc.gov];Brebbia, Sean (Federal) [SBrebbin@doc.gov]	5/8/2020 19:29	Ali Mohammad Ahmad (CENSUS/ADCOM FED)	Re: Timeline Update	Predecisional and Deliberative	Email communication reflecting information provided to facilitate deliberative discussions regarding internal deliberations among Department personnel, including counsel, on proposed Department action/decision/policy.	Redacted
DOC_0000597	DOC_0000598	DOC_0000593	DOC_0000598			5/8/2020 19:29	CENSUS	2020 Operational Timeline v5 Clean.docx	Predecisional and Deliberative	Draft document reflecting information provided to facilitate deliberative discussions regarding draft talking points on proposed Department action/decision/policy.	Withheld in full
DOC_0000600	DOC_0000601	DOC_0000599	DOC_0000601			5/8/2020 19:38	CENSUS	2020 Operational Timeline v5 Clean.docx	Attorney-Client Privilege; Predecisional and Deliberative	Draft document containing communications among agency staff, including counsel, providing legal advice and analysis from counsel regarding draft talking points on proposed Department action/decision/policy.	Withheld in full
DOC_0000671	DOC_0000695	DOC_0000670	DOC_0000695			5/11/2020 17:32	Akshay.Gupta@treasury.gov	attachment 1.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy. Document containing information gathered for pre-decisional deliberations regarding internal briefing materials on proposed Department action/decision/policy.	Withheld in full
DOC_0000696	DOC_0000713	DOC_0000696	DOC_0000713			5/14/2020 12:36	Dominic R Beamer (CENSUS/DCMD FED)	2_2020 Nonresponse Followup Overview Presentation 05.18.20.pdf	Predecisional and Deliberative		Withheld in full
DOC_0000746	DOC_0000747	DOC_0000746	DOC_0000747			5/28/2020 13:00	Ron Jarmin	External Review of COVID response.docx	Predecisional and Deliberative	Draft document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy. Document containing pre-decisional deliberations regarding internal briefing materials on proposed Department action/decision/policy.	Withheld in full
DOC_0000748	DOC_0000760	DOC_0000748	DOC_0000760			5/28/2020 13:39	Paul Krutich (CENSUS/DCMD FED)	Decision Criteria for Reopening ACOs.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding internal briefing materials on proposed Department action/decision/policy.	Withheld in full
DOC_0000761	DOC_0000769	DOC_0000761	DOC_0000769			5/28/2020 13:40	Meghan Lee Philbin (CENSUS/CTO CTR)	State_Reopening_Supporting Data AI AK_01 MAY 2020v3.pdf	Predecisional and Deliberative	Draft document containing pre-decisional deliberations regarding draft correspondence communicating proposed Department action/decision/policy.	Withheld in full
DOC_0000770	DOC_0000771	DOC_0000770	DOC_0000771			5/28/2020 14:18	Ron Jarmin	External Review of COVID response v2.docx	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding proposed Department action/decision/policy.	Withheld in full
DOC_0000772	DOC_0000775	DOC_0000772	DOC_0000775			5/28/2020 15:00	Dora B Durante (CENSUS/DCMD FED)	2020 Census SBE Options 051920 (Late July or Late September only).docx	Predecisional and Deliberative		Withheld in full
DOC_0000776	DOC_0000791	DOC_0000776	DOC_0000791			5/28/2020 22:17	johns225	2_ DRAFT DOC Exec Report Slides for June 1 2020 ver 1.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full

DOC_0000792	DOC_0000806	DOC_0000792	DOC_0000806	Rafiekian, Christine [Christine.Rafiekian@trade.gov];Brooke, Beatrice E. (Federal) [BBrooke1@doc.gov];Risko, Daniel (Federal) [DRisko@doc.gov]	5/29/2020 12:44 johns225	1. DRAFT Phased Restart DOC Exec Report Slides for June 1 2020 ver 2.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0000869	DOC_0000870	DOC_0000869	DOC_0000870		6/5/2020 19:52 Knight, Harry (Federal)	OMB feedback is addressed and DOC FINAL APG Q1/Q2 Updates submitted...	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding internal deliberations among Department personnel, including counsel, on proposed Department action/decision/policy.	Redacted
DOC_0000871	DOC_0000886	DOC_0000871	DOC_0000886		6/8/2020 13:37 johns225	DRAFT Phased Restart DOC Exec Report Slides for June 8 2020 ver 1 (1).pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0000947	DOC_0000962	DOC_0000947	DOC_0000962		6/11/2020 17:51 johns225	2. DRAFT DOC Exec Report Slides for June 15 2020 ver 1.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0000963	DOC_0000978	DOC_0000963	DOC_0000978	Knight, Harry (Federal) [HKnight@doc.gov]	6/11/2020 18:22 johns225	1. DRAFT Phased Restart DOC Exec Report Slides for June 15 2020 ver 1.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001039	DOC_0001054	DOC_0001039	DOC_0001054		6/18/2020 19:08 johns225	2. DRAFT DOC Exec Report Slides for June 22 2020 ver 1.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001055	DOC_0001066	DOC_0001055	DOC_0001066		6/18/2020 21:15 johns225	1. DRAFT Phased Restart DOC Exec Report Slides for June 22 2020 ver 1.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001104	DOC_0001118	DOC_0001104	DOC_0001118		6/25/2020 18:09 johns225	2. DRAFT DOC Exec Report Slides for June 29 2020 ver 1.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001119	DOC_0001131	DOC_0001119	DOC_0001131	Kelley, Karen (Federal) [KKelley@doc.gov];Risko, Daniel (Federal) [DRisko@doc.gov];Dillingham, Steven [steven.dillingham@census.gov];Jarmain, Ron S [ron.s.jarmain@census.gov];Lamas, Enrique [enrique.lamas@census.gov];Fontenot, Albert E [alberte.fontenot@census.gov];Christy, James T [james.t.christy@census.gov];Jones, Christa D [christa.d.jones@census.gov];Smith, Steven K [steven.k.smith@census.gov];Ahmad, Ali M [ali.m.ahmad@census.gov];Stanley, Christopher J [christopher.j.stanley@census.gov]	6/25/2020 18:11 johns225	1. DRAFT Phased Restart DOC Exec Report Slides for June 29 2020 ver 2.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001192	DOC_0001203	DOC_0001192	DOC_0001203		7/9/2020 20:27 johns225	2. DRAFT DOC Exec Report Slides for July 13 2020 ver 1 (5).pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001204	DOC_0001227	DOC_0001204	DOC_0001227		7/9/2020 21:04 johns225	1. DRAFT Phased Restart DOC Exec Report Slides for July 13 2020 ver 1 (1).pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001265	DOC_0001276	DOC_0001265	DOC_0001276		7/16/2020 19:03 johns225	3. DRAFT DOC Exec Report Slides for July 20 2020 ver 1.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001278	DOC_0001288	DOC_0001278	DOC_0001288	Benjamin J Page (CENSUS/CFO FED) [benjamin.j.page@census.gov]	7/16/2020 21:52 johns225	2. DRAFT Phased Restart DOC Exec Report Slides for July 20 2020 ver 1 (3).pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001289	DOC_0001290	DOC_0001289	DOC_0001290		7/18/2020 16:44 Benjamin J Page (CENSUS/CFO FED)	Re: OMB Supp Request	Predecisional and Deliberative	Email communication containing pre- decisional deliberations regarding proposed Department action/decision/policy.	Redacted
DOC_0001315	DOC_0001325	DOC_0001315	DOC_0001325		7/23/2020 16:52 johns225	2. DRAFT Phased Restart DOC Exec Report Slides for July 27 2020 ver 1.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001326	DOC_0001327	DOC_0001326	DOC_0001327		7/23/2020 18:26 Burris, Meghan (Federal)	RE: Email for Census Staff	Predecisional and Deliberative	Email communication reflecting mental processes of advisor to decisionmaker regarding draft correspondence communicating proposed Department action/decision/policy.	Redacted

DOC_0001328	DOC_0001339	DOC_0001328	DOC_0001339		7/24/2020 0:39 Johns225	3. DRAFT DOC Exec Report Slides for July 27 2020 ver 2.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy. Draft document containing pre-decisional deliberations regarding a draft public statement on proposed Department action/decision/policy.	Withheld in full
DOC_0001367	DOC_0001367	DOC_0001367	DOC_0001367		8/1/2020 22:44 Ali Mohammad Ahmad (CENSUS/ADCOM FED)	DRAFT Interim Statement (SD-v2) 8_1_20.docx	Predecisional and Deliberative	Draft document containing pre-decisional deliberations regarding a draft public statement on proposed Department action/decision/policy.	Withheld in full
DOC_0001410	DOC_0001411	DOC_0001410	DOC_0001411		8/2/2020 23:44 Ali Mohammad Ahmad (CENSUS/ADCOM FED)	FOR REVIEW- Draft Director Dillingham Statement v 5 clean ss+ms+RJ.docx	Predecisional and Deliberative	Draft document containing pre-decisional deliberations regarding a draft public statement on proposed Department action/decision/policy.	Withheld in full
DOC_0001413	DOC_0001426	DOC_0001412	DOC_0001426		8/3/2020 13:39 Christopher Denno	operational and processing options to meet september 30 final.pdf	Predecisional and Deliberative	Document reflecting information provided to facilitate deliberative discussions regarding internal briefing materials on proposed Department action/decision/policy.	Withheld in full
DOC_0001428	DOC_0001441	DOC_0001427	DOC_0001441		8/3/2020 13:39 Christopher Denno	operational and processing options to meet september 30 final.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001444	DOC_0001457	DOC_0001442	DOC_0001457		8/3/2020 13:39 Christopher Denno	operational and processing options to meet september 30 final.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001460	DOC_0001473	DOC_0001458	DOC_0001473		8/3/2020 13:39 Christopher Denno	operational and processing options to meet september 30 final.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001474	DOC_0001475	DOC_0001474	DOC_0001477	Burris, Meghan (Federal) [MBurris@doc.gov] Wilbur Ross [wlr@doc.gov]	Walsh, Michael (Federal) [MWalsh@doc.gov]; Barranca, Steven (Federal) [SBarranca1@doc.gov]	8/3/2020 15:56 Burris, Meghan (Federal)	Draft Census Statement	Email communication reflecting information provided to facilitate deliberative discussions regarding a draft public statement on proposed Department action/decision/policy.	Withheld in full
DOC_0001476	DOC_0001477	DOC_0001474	DOC_0001477		8/3/2020 15:56 Ali Mohammad Ahmad (CENSUS/ADCOM FED)	FOR REVIEW- Draft Director Dillingham Statement_cd.docx	Predecisional and Deliberative	Draft document reflecting information provided to facilitate deliberative discussions regarding a draft public statement on proposed Department action/decision/policy.	Withheld in full
DOC_0001478	DOC_0001479	DOC_0001478	DOC_0001479		8/4/2020 0:11 Ali Mohammad Ahmad (CENSUS/ADCOM FED)	Embargoed Till Posting- Statement from Director Dillingham on 2020 Census Updates.docx	Predecisional and Deliberative	Draft document containing pre-decisional deliberations regarding a draft public statement on proposed Department action/decision/policy.	Withheld in full
DOC_0001480	DOC_0001481	DOC_0001480	DOC_0001481		8/4/2020 0:11 Ali Mohammad Ahmad (CENSUS/ADCOM FED)	Embargoed Till Posting- Statement from Director Dillingham on 2020 Census Updates.docx	Predecisional and Deliberative	Draft document containing pre-decisional deliberations regarding a draft public statement on proposed Department action/decision/policy. Draft document containing pre-decisional deliberations regarding a draft public statement on proposed Department action/decision/policy.	Withheld in full
DOC_0001484	DOC_0001485	DOC_0001484	DOC_0001485		9/10/2020 20:17 Ali Mohammad Ahmad (CENSUS/ADCOM FED)	FOR REVIEW- Draft Director Dillingham Statement (f).docx	Predecisional and Deliberative	Draft document containing pre-decisional deliberations regarding a draft public statement on proposed Department action/decision/policy.	Withheld in full
DOC_0001486	DOC_0001487	DOC_0001486	DOC_0001487		9/10/2020 20:17 Ali Mohammad Ahmad (CENSUS/ADCOM FED)	FOR REVIEW- Draft Director Dillingham Statement (f).docx	Predecisional and Deliberative	Draft document containing pre-decisional deliberations regarding a draft public statement on proposed Department action/decision/policy.	Withheld in full
DOC_0001488	DOC_0001499	DOC_0001488	DOC_0001499		9/10/2020 20:21 Christopher Denno	Operational and Processing Options to meet September 30 Final.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full
DOC_0001500	DOC_0001511	DOC_0001500	DOC_0001511		9/10/2020 20:21 Christopher Denno	Operational and Processing Options to meet September 30 Final.pdf	Predecisional and Deliberative	Document containing pre-decisional deliberations regarding a draft report on proposed Department action/decision/policy.	Withheld in full



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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  
BRIAN D. DIGIACOMO**

1 I, Brian D. DiGiacomo, make the following Declaration pursuant to 28 U.S.C. § 1746, and  
2 state that under penalty of perjury the following is true and correct to the best of my knowledge  
3 and belief:

4 1. I am the Assistant General Counsel for Employment, Litigation, and Information,  
5 Office of the General Counsel (OGC), U.S. Department of Commerce (DOC). In my capacity as  
6 the Assistant General Counsel, I advise and oversee the preparation of records evidencing  
7 decisions made by the Department and its constituent bureaus and their filing in courts and  
8 administrative tribunals. One of the Department's bureaus is the Census Bureau. I submit this  
9 declaration to explain the process followed by DOC to comply with the court's September 10,  
10 2020, order [ECF 96]. The information in this declaration is based upon my personal knowledge  
11 and information I obtained in the course of my official duties as I oversaw this production process.

12 2. As I mentioned in ¶ 3 of my Declaration of September 8, 2020 [ECF 88-1], no  
13 contemporaneous administrative record exists for the operations Replan that the Census Bureau  
14 announced on August 3, 2020. Therefore, several strategies were employed to identify the  
15 documents that could be responsive to the Court's order.

16 3. First, in anticipation of receiving the Court's order, on September 9, 2020 the  
17 Census Bureau Communications Office began to compile publicly-available information that the  
18 Census Bureau released to Congress and the public regarding the specifics of the Replan from mid-  
19 July to mid-August, 2020, because there was reason to believe that those documents could contain  
20 information shedding light on the Replan decision. DOC OGC attorneys reviewed these  
21 documents for relevance to the Replan. Relevant documents were compiled for presentation to  
22 the Court. These documents are provided to help the Court understand the Replan decision.

23 4. Upon receipt of the Court's order on the morning of September 10, DOC undertook  
24 the following tasks to identify documents responsive to the Court's order:

- 25 a. The Census Bureau Communications Office was directed to expand their search to  
26 include documents between April 13 and August 3, 2020, so as to comply with the  
27 dates specified by the Court.  
28

1           b. DOC OGC interviewed individuals in the Office of the Secretary who were  
2           knowledgeable of record-keeping practices. Those interviews revealed that the  
3           Office's normal business practice was to rely on email accounts as the primary  
4           repository of information. Based on the interviews, OGC determined that the  
5           Secretary, the Secretary's Chief of Staff Michael Walsh, Deputy Secretary Karen  
6           Kelley, and the Deputy Secretary's Chief of Staff Daniel Risko would have the  
7           greatest probability of possessing documents responsive to the Court's order.

8           c. DOC OGC attorneys also held a conference call with Census Bureau senior staff to  
9           ensure they were aware of Census's document production obligations under the  
10          Court's order, in addition to determining appropriate custodians. Regarding  
11          Director Dillingham and his direct reports/subordinates, Census staff advised OGC  
12          that only one direct report was likely to have documents responsive to the Court's  
13          order, and that was Deputy Director Ron Jarmin. Regarding Associate Director  
14          Fontenot and subordinates and individuals who worked with him on the Replan,  
15          eleven additional custodians were later identified as having the greatest probability  
16          of possessing documents responsive to the Court's order.

17 **I. Census Bureau Searches**

18          5. During the conference call with Census, OGC attorneys directed that Director  
19          Dillingham, Associate Director Fontenot, and those identified as working with Mr. Fontenot on  
20          the Replan, collect documents in their possession related to the execution of the Replan, as outlined  
21          in the Court's order, and to provide those documents to DOC OGC attorneys for review,  
22          processing, and presentation to the Court. A total of 227 documents were identified by the Census  
23          Bureau and provided to DOC OGC for review, processing, compilation, and presentation to the  
24          Court. The 227 total is comprised of 210 documents from Dr. Dillingham's office and 17 are  
25          publicly-available documents.

26          a. Associate Director Fontenot, who was the official responsible for development of  
27          the COVID-19 plan and the Replan, is currently undertaking a search for documents  
28          in his possession that fell into the following categories:

- i. materials that he recalled relying on to develop the 2020 Census Operational Adjustments due to COVID-19;
- ii. materials that he recalled relying on to develop the Phase Reopening strategy and plan;
- iii. materials that he recalled relying on to develop the soft launch of NRFU, and;
- iv. materials that he recalled relying on to develop the Replan.

b. OGC also was aware that the Census Bureau had produced documents to the DOC Inspector General in response to the Inspector General's request for information regarding the Replan from Director Dillingham, Deputy Director Jarmin, Associate Director Fontenot, and three of Mr. Fontenot's previously-identified custodians. OGC is also reviewing documents identified as responsive to that earlier request for privilege and responsiveness to the Court's order.

## **II. Searches for Documents in the Office of the Secretary**

6. OGC attorneys directed the Department's Office of the Chief Information Officer to search the Secretary's two official DOC email accounts, as well as the official DOC email accounts of Walsh, Kelley, and Risko using the following two search strings for documents between April 13 and August 3, 2020:

- a. (COVID OR coronavirus) AND (Census OR decennial) AND (Congress! OR relief) AND ("Compressed schedule" OR "Accelerated schedule" OR "revised schedule" OR "original schedule" OR "schedule change" OR deadline OR statutory OR replan OR re-plan OR accelerat\* OR apportionment OR "December 31" OR "October 31" OR "September 30" OR "April 30" OR "July 31" OR "2021" OR "Date Change" OR "Schedule Change" OR option OR streamline); OR

b. (“Compressed schedule” OR “Accelerated schedule” OR “revised schedule” OR “original schedule” OR “schedule change” OR deadline OR statutory OR replan OR re-plan OR accelerat\* OR apportionment OR “December 31” OR “October 31” OR “September 30” OR "April 30" OR "July 31" OR "2021" OR “Date Change” OR “Schedule Change” OR option OR streamline) AND (“response processing” OR “post processing” OR “post data collection processing” OR “backend processing” OR “Operational Changes” OR “data quality” OR “data review” OR Edit OR allocate\* OR input\*).

7. After de-duplication procedures were employed, the above-referenced search terms yielded a total of 8,573 documents from those officials.

### **III. Processing of Documents**

8. Upon receipt of the court’s order, DOC OGC formed a team of 7 attorneys and 1 Relativity support contractor to process and review the responsive documents.

9. By 4:05 p.m., September 10, our Relativity contractor began receiving responsive documents identified in the email searches and began processing them into the database. Responsive documents from the Office of the Secretary and Census Bureau searches continued throughout the day of September 11. By 12:54 a.m., September 12, most of the Office of the Secretary documents were loaded into our Relativity database, and they began to be assigned to members of the OGC team to review.

10. By 9:46 a.m., September 12, all 8,573 Office of the Secretary and 227 Census Bureau documents had been loaded into the Relativity database for review, and all OGC team members were actively reviewing documents. Document review consisted of reviewing for privilege, personally-identifiable information, and responsiveness to the Court’s order. An index

1 of documents that have been determined to either be responsive to the Court order or otherwise  
2 helpful to understand the Replan is included at Attachment 1. A log of documents withheld in  
3 full or redacted on the basis of privilege is included at Attachment 2. As of 5:00 p.m., September  
4 12, 2020, 7,882 Office of the Secretary documents still had not been reviewed.

5 11. As of 11:00 a.m., September 13, 6,316 Office of the Secretary documents still  
6 have not been reviewed.

7  
8 12. All 227 documents received from the Census Bureau have been reviewed for  
9 responsiveness and privilege. Of the seventeen publicly-available documents, six were deemed to  
10 be responsive to the Court's order and are included in Attachment 1. Of the 210 documents  
11 received from Dr. Dillingham's office, 80 were deemed to be responsive to the Court's order.

12  
13 13. DOC is able to identify all documents that have not yet been reviewed in the  
14 Relativity database. DOC also continues to search for, review, process, and compile responsive  
15 documents regarding Mr. Fontenot and his staff for presentation to the Court in order to comply  
16 with the September 16 deadline.

17  
18  
19 I have read the foregoing and it is all true and correct.

20 DATED this 13<sup>th</sup> day of September, 2020

21  
22 **BRIAN**

23 **DIGIACOMO**

Digitally signed by  
BRIAN DIGIACOMO

Date: 2020.09.13  
14:34:50 -04'00'

24  
25 Brian D. DiGiacomo

26 Assistant General Counsel for Employment, Litigation, and Information  
27  
28

**From:** U.S. Census Bureau [census@subscriptions.census.gov]  
**Sent:** 9/23/2020 6:22:33 PM  
**To:** Albert E Fontenot (CENSUS/ADDC FED) [Albert.E.Fontenot@census.gov]  
**Subject:** U.S. Census Bureau Daily News - Wednesday, September 23, 2020



## Census Daily News Digest

Sept. 23, 2020

**Full Daily Digest**

[Click Here](#)

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### Recently Released

[Household Pulse Survey Phase 2 Biweekly Data Release](#)

[2020 Census Paid Temporary Workers](#)

[Over 95% of Households Counted So Far in 2020 Census](#)

[Monthly AES Compliance Reports: What Are They?](#)

### 2020 Census in the News

**Summary**



#### **2020 Census Spotlight**

Baltimore's FOX affiliate (WBFF-TV) reported that Governor Hogan urged all Marylanders, in a PSA, to respond to the 2020 Census, highlighting the impact it will have on funding for SNAP benefits, emergency preparedness and transportation projects. New York's [Midtown-Hell's Kitchen Patch](#) reported that there will be a flash mob taking place in Times Square

The Commerce Department's internal watchdog has warned that the order to cut short the 2020 census did not come from the Census Bureau and even the bureau's director doesn't know who ultimately made the call. In a new report, the department's inspector general said the decision to accelerate the deadline for data collection increases the risks of an incomplete or inaccurate Census.

Decision to speed up 2020 census schedule not made by Census Bureau, internal watchdog finds

CBS News – Melissa Quinn, September 22

The Department of Commerce's internal watchdog found that a recent decision to condense the 2020 census schedule was not made by officials within the bureau and warned the shortened schedule for the decennial population count increases the risks to obtaining a complete and accurate count.

Trump administration asks Supreme Court to intervene in census fight over undocumented immigrants

CNN – Gregory Wallace, September 22

The Trump administration asked the Supreme Court to step in and consider a second fight over citizenship and the 2020 census on Tuesday, and to do so on an expedited basis. The appeal concerns President Donald Trump's effort to exclude undocumented immigrants from being counted when congressional seats are re-allocated among the 50 states next year.

Trump Asks Supreme Court to Hear, Expedite Census Case

Bloomberg News – Greg Stohr, September 22

inspector general report said Monday. Top Census Bureau officials, including its President Trump-appointed director Steve Dillingham, are still not sure who within the administration made the decision to speed up the count.

Decision to Shorten Census Schedule Came From Outside the Census Bureau, IG Says

Government Executive – Eric Katz, September 22

The Census Bureau was not itself involved in a decision to cut short its time to collect and deliver results for its decennial count, a watchdog has found, once again warning the shortened schedule is risking an incomplete and inaccurate enumeration.

Officials outside bureau made decision to speed US census, report finds

The Guardian – Sam Levine, September 22

Officials outside of the US Census Bureau made the decision to speed up efforts to complete the



The Trump administration asked the Supreme Court to let the president exclude undocumented immigrants from the census count that determines the allocation of congressional seats and federal dollars.

## Census Data in the News

1 in 3 U.S. families with kids don't have enough food CBS News

COVID-19 recession hit women especially hard. We need bold policies to promote equality. USA Today

Walmart, UPS and others are staffing up for an online shopping surge this holiday season CNN

## Regional 2020 Census News

### ***Atlanta Region***

View today's broadcast report for the Atlanta Region.

2020 census deadline fast approaching

WMBF-TV [SC] – Kate Merriman, September 23

The 2020 census deadline is one week away, and your response is crucial in determining how much federal money comes to the community. For the first time, the public has the opportunity to complete the census online in just a few minutes. The purpose of completing the census is to bring as much federal money to communities as possible. Simply put, the more people who fill out the form, the more money for South Carolina.

Columbus mayor, city manager encouraging residents to complete census

WTVM-TV [GA] – Olivia Gunn, September 22

2020 census, a move likely to decrease the accuracy of the decennial survey, according to a report released on Monday.

Trump Admin. Asks Supreme Court to Fast-Track Ruling on Blocking Illegal Immigrants from Census

National Review – Zachary Evans, September 22

The Trump administration is asking the Supreme Court to take fast action in ruling on the constitutionality of President Trump's order prohibiting illegal immigrants from being counted in the U.S. census.

bureau is dedicated to providing current facts and figures about America's people, places and economy. Federal law protects the confidentiality of all individual responses the Census Bureau collects.

### ***Los Angeles Region***

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

#### [Los Altos seeing high self-response rate to census](#)

Los Altos Town Crier [CA] – Eric He, September 23

Los Altos residents are responding at a high rate to the 2020 U.S. Census, according to census data. The latest figures indicate that the city has a self-response rate of 86%, much higher than California's self-response rate of 68.4%. Los Altos' self-response rate ranks among the top 250 cities nationwide and is also ahead of its 2010 final response rate of 83.4%.

#### [The Most Important Census Of A Lifetime](#)

The Progress [CA] – Amy Davis, September 23

Los Lupes Mexican Restaurant in Mesquite hosted a special event on Monday, September 14 to provide an opportunity for community members to fill out the 2020 US Census. The September 30 census deadline is fast approaching. With a struggling economy, this year's census has become more important than ever for the city and the community.

#### [Arvin mural encourages community to fill out Census form](#)

KGET-TV [CA] – Marisel Maldonado, September 22

this year if there is an undercount in the county.

#### Manhattan Beach Under 70% Return Of Completed 2020 Census

Patch [CA] – Liz Spear, September 22

Some 68.9% of Manhattan Beach households have completed the 2020 U.S. Census [via "self response]," which must be completed by Sept. 30 to beat the deadline. Statewide in California the "self-response" rate is at 68.6%.

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

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

#### Census 2020 Celebration to Include Free Food Truck

TAPintoBayonne [NJ] – Staff Writer, September 23

County and local efforts to achieve a complete count for Census 2020 will continue in Bayonne on Sunday, with a census countdown party at Kopcinski Park, by 19th Street and Broadway. Co-sponsored by the Bayonne Economic Opportunity Foundation (BEOF), the event will be held from 11:00 a.m until 2:00 p.m. and feature a Corn Guys food truck that will offer free meals to the first 150 households that complete the census at the event.

#### Putnam Leads Hudson Valley in Census Response Rate

The Putnam County News [NY] – Eric Gross, September 22

Putnam County leads the Hudson Valley with its Census Response Rate of 70 percent. Hudson Valley Pattern for Progress is tracking

the response rate to a questionnaire sent by the Federal Government earlier this year.

#### NYC to “Crown a “Census Queen”

Queens County [NY] – Clarissa Sosin,  
September 22

New York City is choosing a “Census Queen” and it needs your help to do so.

For the next week, five New York City drag queens will use their social media influence to get out the count for the 2020 Census in their respective boroughs before the looming pushed up September 30 deadline. The queen whose borough ends the week with the highest self-response increase will be “crowned” the “Census Queen.”

#### Onondaga County leaders make last push to take part in Census 2020

WSYR-TV [NY] – Staff Writer, September 22

Tuesday was National Voter Registration Day and as part of that effort, Syracuse city officials joined with county leaders to make sure you take part in the 2020 Census, which has a deadline next week. Syracuse Mayor Ben Walsh stood in solidarity with Onondaga County Executive Ryan McMahon and legislators, along with Census representatives. It comes as New York faces a critically low response year.

#### 2020 Census Registration Enters Final Week

Oswego County [NY] – Staff Writer, September 22

If you’ve put off filling out your 2020 Census form, or perhaps forgot about it, there is still time to register. As the deadline for submitting the 2020 form enters its final week Oswego

View today's broadcast report for the Philadelphia Region.

'The Census is one of the most important things we as citizens can do': Deadline one week away

WBIR-TV [TN] – Leslie Ackerson, September 23

The deadline to fill out the U.S. Census is one week away. At stake are millions of dollars in funding for Knoxville programs, census totals determine the aid that community programs receive from the government. One of those programs, the Low-Income Home Energy Assistance Program "LIHEAP" affects something we use everyday, our utilities. More than 6,000 households are served through the program.

2020 Census Deadline Days Away

WVXU-FM [OH] – Michael Monks, September 23

The decision to shorten the 2020 census schedule by a month was not made by officials within the bureau, according to a report from the bureau's watchdog agency. The report also warned the shortened schedule for the decennial population count increases the risks of not obtaining a complete and accurate count.

Census response in Philadelphia still lagging as deadline looms

WPVI-TV [PA] – Walter Perez, September 22

With about a week to go before the deadline arrives to fill out the United States Census, State Representative Morgan Cephas spent time Tuesday encouraging her constituents to do just that. "Currently, Pennsylvanians average, in other counties throughout the

California could extend that deadline based on a recent lawsuit. As of last Friday, Hamilton County's self-response rate, or voluntarily completion of the census, was 67.4%. That compares to a final self-response rate of 67.2% in 2010.

[How you can fill out the 2020 Census and how you can do it](#)

WFXR-TV [VA] – Staff Writer, September 22

Loving Living Local host Kianna Price sat down with Tiffany Bradbury from the City of Roanoke, to talk about why the Census is so important and how you can fill it out in time.

[Gov. Hogan provides update on Maryland 2020 Census before the deadline](#)

WBAL-FM [MD] – Staff Writer, September 22

With less than 10 days away from the Sept. 30 deadline for the 2020 Census, 16 of Maryland's 24 jurisdictions have already met or surpassed their 2010 self-response rates. However, we have more to go. "As we enter the final stretch of this critical, once-in-a-decade initiative, I want to thank the people of Maryland for stepping up and helping to shape our state's future," said Gov. Hogan.

[Fremont Civic Day of Action emphasizes voting, Census count](#)

Fremont News-Messenger [OH] – Daniel Carson, September 22

November's general election is about six weeks away and all U.S. Census Bureau offices are scheduled to complete their work by Sept. 30 To encourage more local residents to register to vote and fill out their Census forms, Fremont-based Justice for Migrant Women

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

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

Defendants.

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

**DEFENDANTS' NOTICE OF MOTION;  
RENEWED MOTION TO STAY PENDING  
APPEAL**

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that Defendants, Commerce Secretary Wilbur L. Ross, Jr., the U.S. Department of Commerce, the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau, by and through undersigned counsel, hereby renew their motion to stay the preliminary injunction entered against Defendants pending their appeal to the U.S. Court of Appeals for the Ninth Circuit and any further review by the U.S. Supreme Court.

**RENEWED MOTION TO STAY PRELIMINARY INJUNCTION PENDING APPEAL**

The Acting Solicitor General has authorized an appeal of this Court's Order Granting Plaintiffs' Motion for Stay and Preliminary Injunction ("Order"), ECF No. 208, and Defendants have accordingly filed a Notice of Appeal, ECF No. 210. Defendants had previously requested a stay of any injunction "pending a determination whether to appeal and, if appeal is authorized, a stay pending appeal." ECF No. 196 at 11; *see also* Tr. 9/22/2020 Hr'g at 86:1-5 ("[I]t would be helpful . . . if the Court ruled on a stay at the same time that it issued its decision."). Because the Court did not address that request in its Order, Defendants understand their request to have been implicitly denied. Nevertheless, in an abundance of caution, Defendants now renew their request that the Court stay the preliminary injunction pending a decision from the Ninth Circuit and, if necessary, the Supreme Court, on Defendants' appeal.

Federal Rule of Civil Procedure 62(c) grants district courts discretion to "'suspend, modify, restore, or grant an injunction' during the pendency of the defendant's interlocutory appeal." *Mayweathers v. Newland*, 258 F.3d 930, 935 (9th Cir. 2001) (quoting Fed. R. Civ. P. 62(c)). "Deciding whether to grant a stay of a preliminary injunction pending an appeal is an equitable inquiry." *Apple, Inc. v. Samsung Elecs. Co.*, No. 11-cv-01846, 2012 WL 2527044, at \*2 (N.D. Cal. July 2, 2012). In determining whether to grant such a stay, district courts consider four factors: (1) the applicant's likely success on the merits; (2) irreparable injury to the applicant absent a stay; (3) substantial injury to the other parties; and (4) the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *see Nken v. Holder*, 556 U.S. 418, 433-34 (2009); *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (*Nken* requires a showing of irreparable harm, but applies a balancing test showing "that irreparable harm is probable and either: (a) a strong likelihood of success on the



merits and that the public interest does not weigh heavily against a stay; or (b) a substantial case on the merits and that the balance of hardships tips sharply in the petitioner's favor").

Defendants' prior briefing, including their second supplemental brief filed on September 22, 2020, ECF No. 196, and the accompanying supplemental declaration from Associate Director Albert E. Fontenot, ECF No. 196-1, already establishes that Defendants are likely to satisfy each of those factors. In particular, Defendants' second supplemental brief and Mr. Fontenot's declaration detail the serious harms that would come from an order—such as the one the Court has issued—preventing the Census Bureau from completing its field operations by September 30, 2020. Fontenot Supp. Decl. ¶ 22. As Mr. Fontenot stated, “if the Court were to extend the data collection period past September 30, 2020, the Census Bureau’s ability to meet its statutory deadlines to produce apportionment counts prior to December 31, 2020 and redistricting data prior to April 1, 2021 would be seriously jeopardized.” *Id.* This is a grievous public harm, because it forces the Census Bureau to confront the uncharted territory of missing the reporting deadlines of 13 U.S.C. § 141, which the Bureau has never previously missed. Were the Bureau to miss these deadlines, Congress could well decide to disregard the 2020 census results in conducting apportionment, as it previously did for the 1920 census. *See U.S. Dept. of Commerce v. Montana*, 503 U.S. 442, 451-53 (1992). Given that the operational deadlines the Court enjoined in its Order were specifically designed to enable the Bureau to comply with the non-discretionary command in § 141—and that there is currently no alternative plan for the Bureau to do so—Defendants have a strong likelihood of establishing, on appeal, that setting aside the deadlines was improper. *See, e.g., Klutznick v. Carey*, 449 U.S. 1068 (1980) (staying district court order that would have caused Census Bureau to miss the § 141 deadline); *Klutznick v. Young*, No. A-533 (Dec. 24, 1980) (same). We will not reiterate our points on the merits, which are set out in our briefs before this Court.

For these reasons, Defendants respectfully renew their September 22, 2020, request that the Court stay the preliminary injunction pending resolution of Defendants' appeal or expressly state that the requested stay has been denied. Given the recognized need for expedition, in the absence of relief from the Court, Defendants intend to seek a stay from the Court of Appeals later

1 today. Counsel for Defendants contacted counsel for Plaintiffs shortly before filing this motion;  
2 Plaintiffs' counsel indicated that Plaintiffs oppose the request.

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4 DATED: September 25, 2020

Respectfully submitted,

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