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EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

LA UNIÓN DEL PUEBLO ENTERO,
PROMISE ARIZONA, LYDIA
CAMARILLO, JUANITA VALDEZ-COX,
ROGENE GEE CALVERT; ZEENAT
NISHA HASAN; CANDY L. GUTIERREZ;
EUGENE WU, DEBORAH CHEN,
ORGANIZATION OF CHINESE
AMERICANS-GREATER HOUSTON,
DAVID CHIU, PHILLIP TING, ALBERT
MURATSUCHI, KENNY CHU, YICHENG
WU, CYNTHIA CHOI, VINCENT PAN,
JOHN PARK, JEFFREY D. HSI, JACINTA
TITIALII ABBOTT, VENGHAN TANG,
RAJ MUKHERJI, SHARON TOMIKO
SANTOS, MIA GREGERSON, JENNIFER
REYES, RAYMOND SANCHEZ,
MARICELA LECHUGA, MARTY
RAMIREZ, FELIPE CRUZ, ALEXANDRA
ROSY PALOMO-PUJOL, MARCO
ABARCA, COALITION FOR HUMANE
IMMIGRANT RIGHTS OF LOS
ANGELES, RALPH CARMONA, and
JAVIER GASTON-GREENBERG,

Plaintiffs,

v.

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

WILBUR L. ROSS, sued in his official
capacity as U.S. Secretary of Commerce,

STEVEN DILLINGHAM, sued in his official
capacity as Director of the U.S. Census
Bureau,

U.S. DEPARTMENT OF COMMERCE, and

U.S. CENSUS BUREAU,

Defendants.

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

SWORN EXPERT DECLARATION OF JOHN THOMPSON

I. Introduction

1. On April 13, 2020 the Secretary of Commerce, Wilbur Ross, and the Director of the Census Bureau, Dr. Steven Dillingham, issued a statement on 2020 Census operational adjustments due to the COVID-19 pandemic. This statement concluded that “[u]nder this plan, the Census Bureau would extend the window for field data collection and self-response to October 31, 2020, which will allow for apportionment counts to be delivered to the President by April 30, 2021, and redistricting data to be delivered to the states no later than July 31, 2021.”¹

2. On August 3, 2020 the Director of the Census Bureau, Dr. Steven Dillingham, issued a statement announcing that the Census Bureau would “accelerate the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020, as required by law and directed by the Secretary of Commerce.”² Based on my experience and expertise, I am extremely concerned that this August 3 decision will adversely affect the quality and accuracy of the 2020 Census.

3. The 2020 Census results will be of great importance to our nation. The Constitution requires that the census be used for reapportioning the House of Representatives and the Electoral College. The 2020 Census will also be used for numerous other functions to support good policymaking and economic growth including: redrawing congressional and state legislative voting districts; allocating over \$1.5 trillion of federal funds annually; informing

¹ U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Steven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19, April 13, 2020.

² Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count, August 3, 2017.

sound policy development; providing critical information for state, local and tribal government planning; and supplying important data to large and small businesses to generate growth and job creation. Inaccuracies or errors in the 2020 Census will have grave consequences on these uses for the subsequent 10-year period.

4. I have carefully reviewed the 2020 Census Operational Plans as well as the documentation that the Census Bureau has issued describing the actions it is taking in response to the COVID-19 pandemic and its recently issued documentation regarding its plans to conclude data collection by September 30, 2020. Based on my experience and expertise, I am concerned that reducing the time for data collection at this late date will have serious consequences for the 2020 Census, because: (1) the time constraints will force the Census Bureau to modify the plans for their data collection operations; (2) these modifications will significantly increase the risk of larger total and differential undercounts for the hard-to-count populations, as well as increase the levels of erroneous enumerations and reduce the overall quality of this census, relative to previous censuses; (3) the Census Bureau's new push to adhere to a truncated schedule reduces not only data collection time frames, but drastically reduces time frames for necessary post data collection processes that ensure an accurate and complete count; and (4) the Census Bureau is not providing timely measures that will allow stakeholders to assess whether the 2020 Census is succeeding in carrying out a fair and accurate enumeration under the limitations imposed by the new push to adhere to a truncated schedule.

II. Qualifications

5. Below I briefly describe specific aspects of my qualifications and work experience that establish my credentials as an accomplished statistician and an expert on the Census Bureau and Decennial Census. I have also attached a copy of my CV to this declaration.

6. I have served both as the Director of the U.S. Census Bureau and as the career senior executive in charge of management of all aspects of the 2000 Decennial Census. I am also a distinguished professional in the areas of statistics and survey design. I have a deep understanding of the processes that are necessary to achieve a complete and highly accurate Decennial Census.

7. I served as the Director of the U.S. Census Bureau from August 2013 to June 2017. Prior to becoming Director, I worked at the Census Bureau for 27 years (from 1975 to 2002). I started my career as a mathematical statistician in 1975. I spent the majority of my employment at the Census Bureau focused on the Decennial Census and ultimately served as the Associate Director for the 2000 Decennial Census, with management responsibility for all phases of the 2000 Decennial Census.

8. The Census Bureau is the country's largest Statistical Agency and produces a wide range of demographic and economic statistics including: the Decennial Census; the American Community Survey; the Current Population Survey; the National Crime Victimization Survey; the National Health Interview Survey; the Economic Census; 13 principal key economic indicators released on a monthly or quarterly basis; and about 100 additional surveys. The Director of the Census Bureau is appointed by the President and confirmed by the Senate.

9. My responsibilities as Director of the Census Bureau included overseeing the research and testing that produced the design for the 2020 Census. During my tenure, the original operational plan for conducting the 2020 Census was released, as was an updated version 2.0 of this plan.³ In addition, major field tests were conducted in 2013, 2014, 2015 and

³ U.S. Census Bureau, *2020 Census Operational Plan, A New Design for the 21st Century*, version 2.0 issued September 2016.

2016. The results of these tests informed the final 2020 Census Design that was tested in the 2018 end-to-end test. This was the final large-scale test in advance of the 2020 Census. It combined the results of all previous tests and could be viewed as a dress rehearsal for the 2020 Census.

10. Prior to being appointed Director of the Census Bureau, I was at National Opinion Research Center (NORC) at the University of Chicago, serving as Executive Vice President from 2002 to 2008 and President from 2008 to 2013. NORC is an objective, non-partisan independent research institution that delivers reliable data and rigorous analysis to guide critical programmatic, business, and policy decisions. Clients include government, corporate, and nonprofit organizations around the world who partner with NORC to transform increasingly complex information into useful knowledge. NORC conducts research in five main areas: Economics, Markets, and the Workforce; Education, Training, and Learning; Global Development; Health and Well-Being; and Society, Media, and Public Affairs. NORC services include designing and conducting surveys (telephone, internet, and in-person), as well as analytical studies.

11. From July 2017 to August 2018, I served as the Executive Director of the Council of Professional Associations on Federal Statistics (COPAFS). COPAFS is an organization with a membership consisting of professional associations and research organizations that depend on and support high quality federal statistics. The Executive Director of COPAFS must have a deep understanding of the Federal Statistical System and the wide range of data products that are produced. Serving as the Executive Director of COPAFS reinforced my appreciation of the importance of high-quality Decennial Census data to the entire Federal Statistical System.

12. In addition to the work experience described above, I am an elected Fellow of the American Statistical Association and was selected to serve on the National Academies of Science, Engineering, and Medicine Committee on National Statistics.

III. Concerns

A. Background on the Decennial Census

13. The uses of the data generated by the Decennial Census are extremely important for all components of our democracy and economy, including: the constitutionally required reapportionment of the House of Representatives; redrawing congressional and state legislative voting districts; allocating over \$1.5 trillion in federal funds annually; supporting evidence-based policy making by state, local and tribal governments; and allowing informed decisions by large and small businesses to generate economic growth and job creation. The Census results are also carried forward throughout the decade in the form of population estimates⁴ that are used for a number of purposes including ensuring that most public and private household surveys are fully representative of all population groups.⁵ Any undercounts in the Census would be carried forward in the population estimates and reflected in the surveys. Inaccuracies or undercounts in Decennial Census data will result in under-representation of the affected population groups not just in the immediate term, but for ten subsequent years until the next Decennial Census results are available.

14. As I discussed above, the Census Bureau spent much of this decade conducting testing and research in order to develop the plans and procedures to be used in the 2020 Census.

⁴ U.S. Census Bureau, <https://www.census.gov/programs-surveys/popest.html>.

⁵ There are many important surveys that provide information that is goes beyond the uses of the Decennial Census that I described above. For example, the Current Population Survey provides measures of unemployment, income and poverty; and the Health Interview Survey tracks health status, health care access, and progress in achieving national health objectives.

The plans for the 2020 Census include a number of operations and programs that are important to achieve a fair and accurate enumeration. I will briefly describe four of these here for background purposes and then discuss the impact of the COVID-19 pandemic and other issues relating to a fair and accurate enumeration in subsequent portions of this declaration. The four operations or programs are as follows:

- Developing a comprehensive address list – The Census Bureau worked this decade to continuously update the address list that supported the 2010 Census. Input is continuously received from sources such as the United States Postal Service and local governments. The Census Bureau also conducted an “address canvassing” operation that concluded in 2019. Address canvassing used field or office workers to find and include additional addresses that may not have been provided from other input sources. The address list is critical because it serves as the control file for most 2020 Census operations including data collection.
- Self-response – Most housing units on the address list received an invitation to self-respond to the 2020 Census in March 2020. Responses could be submitted by Internet, completing and mailing back a paper questionnaire, or over the telephone.
- Nonresponse Followup – Not all households provide self-responses, requiring the Census Bureau to conduct an operation to collect information from these self-nonresponding housing units. The Census Bureau refers to this operation as “Nonresponse Followup” or NRFU. NRFU requires recruiting and hiring a large staff of enumerators to visit the nonresponding housing units and obtain a response and is the most expensive and labor-intensive operation that the 2020 Census will carry out. As of August 16, the national self-response rate was 63.8 percent, which meant that over 36 percent—or over 50 million housing units and their

occupants must still be enumerated.⁶ Prior to the COVID-19 pandemic, the Census Bureau estimated that it would need to deploy at least 260,000 enumerators to conduct NRFU for a workload of this size.⁷ As I will discuss below, the hard-to-count populations are disproportionately represented in the nonresponse universe. Hard-to-count populations include young children, minorities, immigrants, low income renters, limited English speakers, residents of hard to reach rural areas; these include Asians and Latinos, and American Indian Reservations or Alaska Native Villages. A failure to obtain a complete enumeration in NRFU would result in disproportionate undercounts of these populations. Therefore, I view a successful NRFU as one of the most important census operations to ensuring a fair and accurate count.

- Developing and deploying an integrated communications and partnership program – The Census Bureau has conducted extensive research to develop a communications program, using paid advertising and digital media, coupled with a local partnership program to encourage self-response and participation in the 2020 Census. The goal of the program is to get out messages on a local level that the 2020 Census is important to local communities, and that respondent information is completely confidential. The Census Bureau will not share identifiable information for any person to any outside entity, including law and immigration enforcement. The Census Bureau was very successful in recruiting over 300,000 national and local partners for the 2020 Census. Many of these partners planned to hold local events to promote 2020 Census self-response.

⁶ U.S. Census Bureau 2020 Census daily response rate tracker, <https://2020census.gov/en/response-rates.html> (last accessed August 16, 2020).

⁷ U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU)*, Version 2.0 Final, July 15, 2019.

B. The requirement to end data collection by the end of September 2020 will force the Census Bureau to modify data collection procedures, resulting in a less complete enumeration compared to previous censuses.

15. The COVID-19 pandemic forced the delay of key 2020 Census operations out of concerns for the safety of both census workers and the general public. Of particular concern was the delay of the NRFU.

16. The NRFU operation had been scheduled to start on May 15, 2020 and run through July 31, 2020. However, as a result of the COVID-19 pandemic, the Census Bureau rescheduled it to start in most of the United States on August 11, 2020 and initially planned to complete it by October 31, 2020.

17. In order to accommodate this delay, the Census Bureau had requested, through the Department of Commerce, a four-month extension of the deadlines⁸ to deliver Apportionment and redistricting data. For apportionment, the requested extension was from the current deadline of December 31, 2020 to April 30, 2021. For redistricting, the requested extension was from March 31, 2021 to July 31, 2021.

18. However, the Census Bureau has now announced that the deadlines will not be extended, and that NRFU will now be completed by September 30, 2020.⁹ The Census Bureau will have to take steps to complete NRFU more rapidly than it planned, given that it has already lost over a third of the schedule that the career staff had developed under the original plan.

⁸ Title 13, US Code, Section 141, (b) and (c).

⁹ Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count, <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>, August 3, 2020.

19. The Census Bureau recently released a review of the 2020 Census Operational Plan Schedule¹⁰ that describes actions being taken to complete all data collection, including NRFU, by September 30, 2020. According to the review, these actions include:

- Starting NRFU in all areas by August 9, 2020
- Sending enumerators to make up to six visits to attempt to obtain an interview with occupied housing units
- Offering bonuses to NRFU enumerators to maximize staff production hours
- Making efforts at “Keeping Staff Levels Up”
- Implementing outbound telephone calling to supplement in-person contact attempts as a means of enumerating hard-to-count populations

20. The review document had a serious lack of detail regarding how NRFU would be actually implemented under the revised and shortened time schedule. The Census Bureau had prepared detailed information regarding how it was going to conduct NRFU under the original schedule and time frame. For example, the Census Bureau described three NRFU phases – Phase 1, Phase 2, and Closeout for the 2020 Census.¹¹ For each phase, criteria and dates were provided that described how each would start. There is no such discussion included in the review of the Operational Plan, nor is there even a mention as to whether there will still be three phases.

21. I am concerned that taking the actions described in the review of the Operational Plan will not effectively address the constraints imposed by the revised timelines for completing

¹⁰ U.S. Census Bureau, *Review of 2020 Census Operational Plan Schedule*, <https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/2020-operational-plan-schedule-review.pdf>, August 17, 2020.

¹¹ U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU)*, Version 2.0 Final, July 15, 2019.

NRFU. My concerns are informed by my experiences in managing all aspects of the 2000 Census and by directing the research and development necessary to plan the 2020 Census. My concerns are as follows:

- The staffing levels will not be adequate to complete NRFU without accepting lower quality enumerations and incompletely enumerating the traditionally hard-to-count populations. The Census Bureau has lost over 30 percent of the time that had been planned for NRFU, and my experience and knowledge lead me to conclude that the Census Bureau will need significantly more staff to complete this critical undertaking. However, the plan being put forth to end data collection by September 30 is to maintain staffing, at levels determined before the advent of the COVID-19 pandemic. The Department of Commerce Office of the Inspector (OIG) has recently reviewed the progress of staffing for the NRFU and stated:

“Bureau management have stated that their target number of enumerators, needed by the end of August 2020 to complete NRFU production, is just above 300,000. As of August 17, 2020, the Bureau has just under 220,000 enumerators trained and ready to start working on the NRFU operation that is underway—this represents approximately 73 percent of the estimated number of enumerators needed to complete NRFU production. However, 132 out of 248 total Area Census Office (ACOs) are less than 75 percent toward reaching their estimated goals; of those 132 ACOs at less than 75 percent, 37 are less than 50 percent toward reaching their goal.”¹²

¹² Zabarsky, Mark H, Principal Assistant Inspector General for Audit and Evaluation, **2020 Census Alert: The Census Bureau Faces Challenges in Accelerating Hiring and Minimizing Attrition Rates for Abbreviated 2020 Census Field Operations Final Memorandum No. OIG-20-041-M.**, Memorandum for Steven D. Dillingham, Director, U.S.. Census Bureau, August 18, 2020.

To explain briefly, the Census Bureau has established Area Census Offices (ACO) to carry out the 2020 Census field operations, including NRFU. There are 248 ACOs, each of which has a significant portion of the NRFU workload to carry out. On average, this would be about 226,000 housing units from which a self-response was not received. It is very troubling that not only is the Census Bureau falling behind in its plans for staffing NRFU, but also the hiring shortfalls for NRFU staff are not uniform. Approximately 15 percent of the NRFU workload is in areas where the Census Bureau is falling 50 percent short of hiring goals. While the Census Bureau stated in the Review of the Operational Plan Schedule that it was making efforts at “keeping staff levels up,” it is falling well behind in reaching the staffing levels it had determined were necessary for NRFU. In addition the NRFU staffing levels cited by the OIG are lower than the Census Bureau projected requirements *prior* to the COVID-19 pandemic - 260,000 enumerators.¹³ I will discuss the impact of these staffing shortfalls for hard-to-count communities in more detail below.

- The self-response rates are not uniformly distributed and are disproportionally lower in areas with higher proportions of Black and Latino (referred to as Hispanic by the Census Bureau) populations, as well as in some rural areas. For example, as of August 6, 2020, there were 50.7 million people living in census tracts in the lowest fifth of self-response.^{14, 15} The overall self-response rate for these tracts is less than 51.3 percent, compared to a national

¹³ U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU)*, Version 2.0 Final, July 15, 2019.

¹⁴ A census tract is a small geographic area that is similar to a neighborhood. See https://www.census.gov/programs-surveys/geography/about/glossary.html#par_textimage_13.

¹⁵ Romalewski, Steven, Mapping “Self-Response” for a Fair and Accurate Census, Center for Urban Research at the Graduate Center, City University of New York, https://www.gc.cuny.edu/CUNY_GC/media/CUNY-Graduate-Center/PDF/Centers/Center%20for%20Urban%20Research/Resources/Census2020-self-response-rates-thru-Aug-6-CUNY-Graduate-Center.pdf, August 7, 2020.

average of over 63 percent. Furthermore, while Latinos make up 18.3 percent of the U.S. population, they represent 25.8 percent of the population in these low response areas. For non-Hispanic Blacks, the corresponding rates are 12.3 and 22.2 percent, respectively. The Census Bureau also noted that, as of August 6, 2020, the self-response rate in update-leave (rural areas) was a little over 34 percent. The low update-leave self-response is also problematic for Latinos living areas such as the colonias in Texas, and for American Indian Reservations or Alaska Native Villages. As I will discuss below, the likely outcome for these areas and populations will be increased undercounts relative to previous censuses and decreased quality of the information collected.

- Given the current NRFU staffing levels, the Census Bureau will have to rely less on direct in-person contact attempts and more on the following in order to meet the new September 30, 2020 deadline with deleterious consequences for the count:
 - a. Reduced in-person contact attempts with residents of the NRFU households, leading to increased undercounts of the traditionally hard-to-count populations. While the Census Bureau is planning for up to six attempts for most NRFU households, this will not be enough to obtain complete interviews in many hard-to-count communities. The Government Accountability Office (GAO) evaluated the early testing that the Census Bureau carried out to develop the current NRFU procedures. The GAO stated:

“according to preliminary 2016 Census Test data, there were 19,721 NRFU cases coded as non-interviews in Harris County, Texas and 14,026 in L.A. County, California, or about 30 and 20 percent of the test workload respectively.

According to the Census Bureau, non-interviews are cases where no data or insufficient data were collected, either because enumerators made six attempted

visits without success (the maximum number the Bureau allowed) or visits were not completed due to, for example, language barriers or dangerous situations.”¹⁶

The Census Bureau subsequently refined the NRFU procedures to allow for more contact attempts, as is necessary to reach higher resolution rates comparable to previous censuses.¹⁷ However, my opinion is that there is a significant risk that NRFU will not be successful in completely enumerating hard-to-count communities under the current time schedule.

Hard-to-count communities have significantly lower levels of self-response, and a corresponding larger proportion of households that fall into NRFU, making recruiting and hiring sufficient staff to achieve a complete enumeration particularly challenging. As I discussed above, the Census Bureau has identified hiring staff with relevant language skills and hiring people who live in local communities as key components of its design for achieving a complete enumeration of hard-to-count communities. Difficulties in recruiting NRFU staff with the necessary qualifications make it much harder to assign enumerators with the language skills necessary to enumerate non-English speaking local areas, and it will also require the Census Bureau to send enumerators into communities that they are not familiar with. The ultimate outcome for these hard-to-count areas will be a higher portion of incomplete responses. I am also very concerned about the proposal to use outbound telephone calling to conduct NRFU in hard-to-count communities. For example, the Pew Research Center has

¹⁶ United States Government Accountability Office, *2020 CENSUS Additional Actions Could Strengthen Field Data Collection Efforts*, GAO-17-191, a report to congressional requesters, January 2017

¹⁷ US Census Bureau, *2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU)*, Version 2.0 Final, July 15, 2019.

documented that telephone survey rates have fallen from 36 percent in 1997 to under six percent in 2018.¹⁸ Achieving a complete and accurate count in the hard-to-count communities requires a lot of hard work by well-trained enumerators who are very familiar with these areas. Furthermore, the use of outbound telephone calling to conduct NRFU enumeration has not been tested, nor have methodologies to deploy in-language telephone enumerators. Based on my experience in planning and managing the 2000 and 2020 Censuses it is my opinion that limited staff, a shortened time frame, and the use of untested procedures will most likely result in serious increases in the undercounts for these communities relative to previous censuses.

b. Increased proxy enumerations, resulting in increased levels of erroneous enumerations.

The limited NRFU workforce combined with the shortened schedule will result in a higher level of proxy enumerations than in previous censuses. Proxy enumerations are those obtained by asking people other than the actual residents of NRFU households for information about those residents. These proxies can include neighbors, apartment managers, or other knowledgeable persons. In the 2010 Census, proxy enumerations were obtained for about 21 percent of the NRFU returns. The erroneous enumeration rate for the proxy enumeration was 6.7 percent—over twice the overall erroneous enumeration rate of 3.3 percent.¹⁹

c. Increased reliance on administrative records to complete NRFU enumerations, leading to less complete enumerations for the hard-to-count populations. The Census Bureau

¹⁸ Kennedy, Courtney and Hartig, Hannah, *Response rates in telephone surveys have resumed their decline*, Pew Research Center report, February 27, 2019.

¹⁹ P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

plans include the use of administrative records (e.g., records from the IRS, Medicare, and the Social Security Administration) to reduce the NRFU workload, where feasible, by using such records to enumerate occupied households that have failed to respond after several contact attempts.²⁰ The Census Bureau may be forced to rely more heavily on such enumerations if NRFU cannot be completed as planned. Based on the research that the Census Bureau conducted to develop the current NRFU strategy, it had planned to enumerate 12.9 percent of the occupied NRFU housing units after making one visit.²¹ Expanding the uses of administrative records to enumerate a higher portion of the NRFU occupied housing units is not supported by the research the Census Bureau has used to date, and the Census Bureau has not released additional research to support such actions. Census Bureau research has shown that the quality and completeness of administrative records is not expansive enough to replace a decennial census.²² In addition, noncitizens and Latinos are disproportionately underrepresented in administrative records. Therefore, the use of administrative records beyond the planned levels for NRFU would be less representative of the hard-to-count populations than a complete NRFU.

- d. There will likely be an increased use of “whole person imputation” relative to previous censuses. Such imputations will not correct for any undercounts that have resulted from an incomplete NRFU. In conducting NRFU in previous censuses,

²⁰ Albert E. Fontenot, *Intended Administrative Data Use in the 2020 Census*, 2020 Census Program Memorandum Series: 2020.06, May 7, 2020.

²¹ U.S. Census Bureau, *2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU)*, Version 2.0 Final, July 15, 2019.

²² Rastogi, Sonya and Amy O’Hara, *2010 Census Match Study*, 2010 Census Planning Memorandum Series, No. 247, November 19, 2012

situations have arisen where, despite the best efforts of NRFU enumerators, either minimal or no information was obtained for some housing units by the conclusion of the NRFU. The Census Bureau uses statistical techniques, referred to as imputation, to correct for this missing data problem. The statistical processes are used to estimate—or impute—all of the characteristics of the persons in these housing units. The Census Bureau applies “Count Imputation” for situations where no information is available for a housing unit. This methodology will first estimate whether the unit is occupied, and if so, will estimate or impute a household size – meaning, the number of people in that household. The process will then use “whole person imputation” to estimate characteristics (including age, race, and ethnicity) for persons in a household of this size. The Census Bureau also uses whole person imputation in situations where only the count of people residing in a housing unit could be determined. In the 2010 Census, about 2.0 percent of the enumerations fell into the category of whole person imputation – 0.4 percent were the result of count imputation and 1.6 percent resulted when only the population count was known.²³ It should be noted that of the 16.3 million persons enumerated by proxy in the 2010 Census, 23.1 percent required whole person imputation.²⁴ I am very concerned that the levels of housing units requiring whole person imputation will be much larger than in 2010, due to the reduction in time and staff limitations for NRFU enumerators to get a complete response. Unfortunately, the statistical methods that the Census Bureau uses for imputation rely on using information from the resolved housing units to estimate or

²³ P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

²⁴ Id.

impute for the unresolved housing units. Therefore, any undercounts that are in the resolved housing units will be carried forward in the imputation and not corrected.

These undercounts would include persons omitted from housing units enumerated by both self-response and NRFU.

- The plan to offer bonuses or awards to increase the hours that NRFU enumerators work can have unintended consequences on accuracy. The Census Bureau plans to award NRFU enumerators up to \$800 above their regular pay, if they work a minimum number of hours and complete 0.75 cases per hour. I am concerned that in order to meet production goals, particularly in areas that are difficult to enumerate, some NRFU enumerators may be tempted to falsify data for some households to meet production goals. The result would be that instead of obtaining an accurate enumeration for these households, the data would be made-up. The Census Bureau has not conducted any testing to understand the effects on quality of such awards.
- The schedule will not allow the Census Bureau the flexibility to complete NRFU in areas affected by natural disasters. We are currently in the midst of a very active hurricane season, and there are many areas in the West that are dealing with wildfires. The Census Bureau will be forced to delay NRFU in such areas until it is safe to return and resume enumeration activities. The current schedule simply does not allow enough time to carry out a thorough NRFU in areas that may be impacted by these unforeseen events.

C. The reduced schedule for NRFU will have serious accuracy and quality implications for the 2020 Census

22. Undercounts, particularly for traditionally hard-to-count populations, are likely to increase relative to previous censuses as a result of the Census Bureau's new, reduced schedule. As I discussed above, the NRFU workloads will be relatively higher in areas with lower self-

response rates. The Census Bureau uses low self-response as a key measure in determining whether an area is hard-to-enumerate,²⁵ so by definition the challenge for NRFU to obtain a complete count is in these areas. In addition, these areas also contain higher proportions of Black, Latino, and immigrant populations relative to the White non-Hispanic population. The end result for these communities is likely to be incomplete NRFU enumeration due to staffing and time limitations, as well as more use of proxy enumerations and whole person imputation. This will lead to increased undercounts relative to previous censuses. For example, in the 1990 Census the undercount of the Latino population was 5.0 percent and the undercount for the Black or African American population was 4.6 percent.²⁶ It is important to understand that in 1990, the Census Bureau had the flexibility to extend the NRFU beyond its planned end date until it had reached a completion rate of over 99 percent for NRFU enumeration.²⁷ However, even with this high completion rate for 1990, serious undercounts were measured.²⁸ The Census Bureau is now being forced to stop all data collection, including NRFU as of September 30, 2020. In my opinion, there is a high risk that the measures the Census Bureau will be forced to take to complete NRFU by this new deadline (as I discussed above relying more on proxy or count-only enumerations and administrative records), even potentially falling short of the 99 percent completion goal, will likely result in undercounts that will be materially larger than were observed in the 1990 Census.

²⁵ Response Area Outreach Mapper, Census.gov, www.census.gov/roam, (July 2018).

²⁶ P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

²⁷ U.S. Census Bureau, *1990 Census of Population and Housing – History Field Enumeration 6-36*, Report Number CPH-R-2, <https://www.census.gov/library/publications/1996/dec/cph-r-2.html>, 1996.

²⁸ P. Cantwell, DSSD 2010 Census Coverage Measurement Memorandum Series # 2010-G-01, (May 22, 2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

D. The compressed schedule for post data collection processing significantly increases the risk of inaccuracies into the 2020 Census data

23. The initial Census Bureau schedule had NRFU ending at the end of July 2020 leaving about five months for the post data collection operations prior to the release of the Apportionment counts. In the revised schedule the Census Bureau issued in its request for an extension of the deadlines, there were six months allocated to complete the post data collection before the release of the Apportionment counts. Under the current schedule, there are only three months available for post data collection prior to release of the Apportionment counts. In the August 17, 2020 Review of the Operational Plan, the Census Bureau offered no insights into how it was going to address this shortfall. There are critical activities that must be accomplished as part of the post data collection processing, including:²⁹

- Apply data codes to facilitate data tabulation – Many of the questions included on the 2020 Census questionnaire allow respondents to write-in a response (for example the questions on Race and Ethnicity). In order to properly tabulate these responses, they must be assigned a numeric code. Coding is conducted by both automated and computer-assisted manual processes.
- Identify potential fraudulent returns from self-responses and record final fraud investigation disposition – The 2020 Census allows multiple opportunities for response. Including “non-ID” response where a respondent can go online and respond with just their address. In previous censuses respondents had to use a multi-digit identification code that uniquely identified their housing unit in order to self-respond. The non-ID process was designed to make it easier to respond to

²⁹ U.S Census Bureau, *2020 Census Operational Plan, A New Design for the 21st Century*, version 4.0 issued December 2018.

the 2020 Census, but it does carry a risk that it could be misused by those who might want to introduce inaccuracies into the 2020 Census data files. To guard against such actions, the Census Bureau has developed computer algorithms to detect such fraud. It is critically important that these algorithms be run, and the results evaluated during the post data collection processing.

- Resolve potential duplicate responses – Duplicate responses can occur in the conduct of a census. For example, someone could self-respond in one location and also be enumerated during NRFU in another. Given that NRFU is now taking place at a point in time that is much further from Census Day, April 1, 2020 the potential for duplicate responses is much higher since more people will have moved than the Census Bureau initially anticipated. It will be critical for the Census Bureau to have the time to identify and remove any duplicates.
- Identify the return of record for housing units with multiple returns – When multiple opportunities for response are allowed, situations arise where more than one questionnaire is returned for a housing unit. In these situations, the Census Bureau uses a Primary Selection Algorithm to establish the single enumeration record for the housing unit.
- Repair missing or conflicting data – There are situations where responses to some of the questions are missing. The count-imputation and whole person imputation scenarios that I discussed above are examples of these situations. This component of the post data collection processing is designed to carry out these statistical processes.

- Provide final census results – Finally, a census file must be created that combines the results of the steps I have outlined above so that it can provide the tabulations necessary for producing the Apportionment counts.

24. Each of the activities I described above must be carried out to ensure that the post data collection processing will generate high quality data. The Census Bureau has not stated what actions it will take to fit processes that were initially planned for five months into a three month window. Dropping or seriously curtailing any one of the above processes would have severe consequences by reducing the quality of the 2020 Census data.

25. The reduced time frame for post data collection processing will not allow the Census Bureau to run the computer programs that have been prepared to carry out the critical activities as had originally been planned. At a minimum the Census Bureau will have to modify or alter the sequence of these computer programs. Rushing to modify computer programs at the last minute introduces the risk of making systematic programming errors which would further erode the quality of the resulting 2020 Census data.

26. The initial 2020 Census schedule for post data collection is very reasonable and is consistent with the schedule for previous censuses. In both the 2000 and 2010 Censuses, NRFU was completed within the schedule originally planned for 2020 – June 26, 2000 and July 9, 2010, respectively. In both of these censuses the Apportionment counts were delivered to the President in late December of 2000 and 2010 respectively. The 2020 Census schedule, as originally revised and requested by the Census Bureau, was also following this well-established time schedule.

27. The overall quality of the 2020 Census data will most likely be lower than in previous censuses. As I noted above, it is very likely that the Census Bureau will have to rely

more on proxy enumeration and whole person imputation than in previous censuses. While this will be a particular problem for the hard-to-count communities, these less accurate enumeration methods will also most likely be used more across the board in the 2020 Census relative to previous censuses. In addition to the increased use of proxy enumeration, as I discussed above, employing a higher level of administrative records and statistical imputation will result in lower quality than would have been achieved through direct in-person contact. Finally, the extreme truncation of time to conduct the post-data collection activities, as discussed above, will most likely lead to additional inaccuracies that will disproportionately hurt hard-to-count populations.

28. The impacts of undercounts and poor quality data will not just be a problem for the immediate uses of the 2020 census (e.g., apportionment and redistricting), but will remain for the 10 years until they can be corrected in the 2030 Census (e.g. federal funding).

E. Increased transparency is essential to assure stakeholders of the legitimacy of 2020 Census data collection

29. At this point, there is little information available to assess the conduct of the 2020 NRFU. The Census Bureau has been very forthcoming about the self-response phase of the 2020 Census. Very detailed and granular data have been made available to allow for public assessment of self-response for many areas, including census tracts.

30. The current Census Bureau plan is to release only NRFU resolution rates at the State level. These rates are not helpful in assessing the actual progress of NRFU in achieving a complete enumeration of all population groups and areas. In order to demonstrate that NRFU is meeting the goal of a complete and accurate enumeration, it is essential that the Census Bureau provide additional data beyond just the resolution rate of housing units in NRFU. These data should include information such as the rate of proxy and count only enumerations at similar

levels of geographic aggregation as the self-response data. Further, in order to ensure that the reported apportionment tabulations will be complete and accurate, the Census Bureau should also provide additional information on how it plans to conduct needed post-data collection processes without the additional time it had originally requested.

31. The Census Bureau has recently announced three new political appointees including a new Deputy Director for Policy³⁰ and a new Deputy Director for Data,³¹ raising concerns among stakeholders. Having political appointees with vague responsibilities at the Deputy Director level of the Census Bureau (which has always been a career position) is unprecedented and is raising serious concerns among stakeholders. Perceptions that the results of the 2020 Census have been manipulated for political purposes will erode public and stakeholder confidence, not only in the 2020 Census, but also in our democratic processes more generally. Therefore, it is critical that the Census Bureau release the data that I have described above to demonstrate that it is achieving a complete and fair enumeration through NRFU.

IV. Conclusion

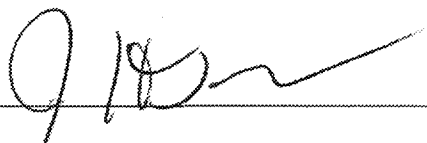
32. It is my conclusion that the current deadlines for delivering the 2020 Census Apportionment and redistricting data place unreasonable time constraints on the Census Bureau. These constraints will not allow the Census Bureau to carry out data collection operations that will deliver high quality results. I am very concerned that these timing constraints will significantly increase the risk of much larger undercounts for the 2020 Census than measured in

³⁰ Statement from Census Bureau Director Steven Dillingham, Release Number CB20-RTQ.20

³¹ Statement from Census Bureau on Deputy Director for Data, Release Number CB20-RTQ.24, August 17, 2020

previous censuses. These undercounts will disproportionately affect the traditionally hard-to-count communities including immigrants, persons of color, and the underserved.

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



John Thompson

Executed on August 27 2020 at Bend, Oregon.

APPENDIX 1

JOHN H. THOMPSON

BRIEF CAREER HISTORY

Extensive Senior Executive leadership in the non-profit and federal sectors, with experience in social science research and statistics, congressional advocacy, building coalitions, operational management, business development, stakeholder relations, innovation, and strategic vision.

Independent Consultant, August 2018 to present

Consulting service focusing on survey methodology, executive leadership, the Federal Statistical System, and decennial census. Activities have included:

- Expert witness for the plaintiffs in two court cases opposing the addition of a citizenship question to the 2020 Census
 - New York Immigration Coalition, et al v. United States Department of Commerce and Wilbur Ross, U.S. District Court for the Southern District of New York, and
 - Robyn Kravitz et al., v. United States department of Commerce, et al
- Training news media journalists on the 2020 Census with Georgetown University, the Poynter Center, and the Harvard Shorenstein Center.
- Providing consultation services to NORC at the University of Chicago

Executive Director, Council of Professional Associations on Federal Statistics – July 2017 to August 2018

The Council of Professional Associations on Federal Statistics (COPAFS) was founded in 1981 to coordinate activities of a number of Associations, Organizations, and Businesses that rely on federal statistics to support good governance and economic growth. COPAFS now represents a growing body of stakeholders that support the production and use of high quality statistics. The Executive Director represents these stakeholders in realizing their mission to *Advance Excellence in Federal Statistics*. Activities include:

- Advocated on behalf of federal agencies. For example, COPAFS is a co-chair of the Friends of the Bureau of Labor Statistics, and the Friends of the National Center for Health Statistics;
- Worked with stakeholder coalitions to support proper funding for the 2020 Census and the American Community Survey;
- Ensured members of Congress, COPAFS members, and other stakeholders were informed of critical issues facing agencies that produce federal statistics;
- Alerted members and stakeholders of breaking issues that needed immediate support and attention;
- Organized and supported ongoing educational efforts for members of Congress and their staff on the value and importance of federal statistics both nationally and in their own states and districts;
- Created and joined in powerful coalitions of organizations and businesses to advocate on behalf of federal agencies that produce statistics, building broad support across a wide spectrum of data users;

John H. Thompson
Page 2

- Built partnerships with foundations that help fund critical research in the statistical agencies and academia to ensure the on-going modernization of how statistical data are created and made available to the public and researchers, and to fund educational efforts;
- Worked closely with the Chief Statistician of the United States and the statistical agencies to help inform and promote modernization efforts underway and assist agencies in keeping abreast of new stakeholder data needs; and
- Hosted events to demonstrate the importance of federal statistics such as the 2018 Federal Committee on Statistical Methodology Research and Policy Conference.

Director, United States Census Bureau – August 2013 to June 2017

Appointed by the President as Director of the largest federal statistical agency, with a staff of over 5,000 headquarters employees and approximately 10,000 to 15,000 staff spread across the United States in six regional offices and a major production facility in Indiana, with an annual budget exceeding \$1 billion. Key accomplishments include:

- Worked successfully with the executive and legislative branches of the federal government, including the White House, the Office of Management and Budget, Cabinet officials, and members of Congress and congressional staff, to accomplish a major transformation of the Census Bureau into a forward-looking 21st century statistical agency. Testified at 6 congressional hearings on the Census Bureau;
- Provided a conceptual vision and lead a redesign of the 2020 decennial census that is estimated to save \$5 billion through effective use of operations research-driven reengineering of field operations, innovative use of technology, and partnership with key stakeholders;
- Lead outreach to key stakeholders including representatives of state local and tribal governments; advocacy organizations; professional associations, business groups, various media; and academic researchers;
- Put in place a robust research program to support mission critical activities, such as linking administrative records, disclosure avoidance methods, economic studies, statistical research, survey methodology, big data, and data dissemination;
- Lead efforts to maintain congressional support and funding for the American Community Survey, a critical data asset of the federal government, including mobilizing a diverse group of key stakeholders to effectively advocate in support of the survey, personally visiting almost all of the House of Representatives and Senate members of the Census Bureau appropriations and oversight committees, and establishing a program of research directly related to the concerns that had been raised;
- Improved economic statistics through research on using alternatives to direct survey data collection to produce statistics that are timelier and have increased granularity, and carrying out three initiatives to advance the release of principal economic indicators on trade, retail sales and services, which allowed the Bureau of Economic Analysis to significantly reduce revisions to Gross Domestic Product (GDP) estimates;
- Recruited outstanding research staff including new senior leadership for Research and Methodology, the Director of a newly established big data center, and seven former Presidential Innovation Fellows; and
- Improved data dissemination to the public, including development of a platform to deliver data in ways that will meet the rapidly evolving demands of a growing body of users. In addition,

John H. Thompson
Page 3

in order to meet immediate targeted demands two new tools were released: City SDK (Software Development Kit) to allow easy developer access; and Census Business Builder a tool that combines small area demographic and economic data in a way that is easily accessible for entrepreneurs and small business owners.

President and Executive Vice President, NORC at the University of Chicago – July 2002 to August 2013

NORC is a national non-profit organization that conducts high quality social science research in the public interest. As President, I had responsibility for all NORC corporate activities and for the quality of all NORC research efforts. I provided vision for NORC to establish the organization as a leader in the social science research industry. My accomplishments included:

- Strengthened the organization's high-quality, diverse staff;
- Broadened the scope of the collaborations between NORC and the University of Chicago;
- Realized nearly 50 percent growth in revenue and greatly expanding NORC's portfolio of business and research programs; and
- Provided leadership in the social science research community - selected to be a Fellow of the American Statistical Association (ASA), elected to serve a term as Chair of the Social Statistics Section of the ASA, and chaired the 2009 ASA Committee on Fellows. Also elected as a member of the Committee on National Statistics, serving on two National Academy of Sciences panels addressing 2010 and 2020 Census concerns.

As Executive Vice President of Survey Operations (2002 – 2008), I provided oversight and direction to the Economics, Labor Force, and Demography Research Department, the Statistics and Methodology Department, and Survey Operations for field and telephone data collection. My major accomplishments included:

- Provided leadership and guidance for a major corporate initiative, the National Immunization Survey, which is conducted on behalf of the Centers for Disease Control and Prevention, and is the largest telephone survey in the United States conducted via random digit dialing for scientific purposes.
- Significantly increased the productivity and cost effectiveness of NORC's overall data collection activities;
- Successfully utilized skills in directing large project start-ups, and in managing large complex operations, directing the project through the completion of the first contract phase, which included the first year of data collection and the delivery of the first data set; and
- All survey operations were completed on schedule, and within budget including the delivery of an extremely complex data set, and a public use file.

Principal Associate Director and Associate Director for Decennial Census Programs, United States Census Bureau – 1997 to July 2002

Served as the senior career executive responsible for all aspects of the 2000 Decennial Census. This was the largest peacetime mobilization undertaken by the U.S. government, with a budget of \$6.5 billion, establishment of over 500 field offices, a temporary workforce that peaked at over 500,000, and establishment of telephone capacity to receive over 5 million calls over a period of one month. I was also chairman and director of the Executive Steering Committee for Accuracy & Coverage Evaluation Policy for the 2000 Census. This Committee was charged with making a recommendation as to whether or not to adjust the 2000 Census redistricting data for coverage errors, an issue fraught with political disagreement and controversy. This work was widely recognized as superb – with the Committee’s recommendation supported by numerous reviews, including the National Academy of Sciences Panel on evaluating Census 2000.

EDUCATION

- M.S. Virginia Polytechnic Institute and State University, 1975 Mathematics
Graduate course work in statistics - George Washington University 1977-1981
- B.S. Virginia Polytechnic Institute and State University, 1973 Mathematics

PROFESSIONAL SERVICE AND ASSOCIATIONS

American Statistical Association, 1975 to Present

Chair, Social Statistics Section – 2011

Chair, ASA Committee on Fellows - 2009

National Academy of Sciences,

Member of the Committee on National Statistics – 2011 - 2013

Member of the Panel on the Design of the 2010 Census Program of Evaluations and Experiments

Member of the Panel to Review the 2010 Census

HONORS AND AWARDS

Virginia Tech College of Science Hall of Distinction inaugural class, 2013

Presidential Rank Award of Meritorious Executive, 2001

Department of Commerce, Gold Medal, U.S. Bureau of the Census, 2000

Elected Fellow of the American Statistical Association, 2000

Department of Commerce, Silver Medal, U.S. Bureau of the Census, 1998

Department of Commerce, Bronze Medal, U.S. Bureau of the Census, 1988

PAPERS AND PUBLICATIONS

- 2018 Thompson, John H and Yablon, Robert. Issue Brief: “Preparing for the 2020 Census Considerations for State Attorneys General”. American Constitution Society., October 10, 2018
- 2012 Thompson, John H. (Panel Member). “Panel Discussion: Considering Changing Sectors in the Research Industry?: Advice From Those Who Have Done It!” AAPOR 67th Annual Conference, Orlando, Florida, May 19, 2012
- 2012 Thompson, John H. (Discussant). “Future is Now: Realignment of Current Survey Management and Operations at the Census Bureau”. Population Association of America 2012 Annual Meeting, San Francisco, California, May 4, 2012.
- 2012 Thompson, John H. (Discussant). “Use of Administrative Records in the 2020 Census.” Federal Committee on Statistical Methodology, Washington, DC., January 10, 2012
- 2011 Weinberg, Daniel H. and Thompson, John H., “Organization and Administration of the 2010 U.S. Census.” In Margo J. Anderson, Constance F. Citro, and Joseph J. Salvo (eds.) *Encyclopedia of the U.S. Census*, Second Edition, CQ Press., July 2011
- 2010 Thompson, John H., “Challenges, Innovation and Quality for the 21st Century” Keynote Speech at the 2010 FCSM Statistical Policy Seminar, Washington, DC, December 14, 2010.
- 2010 Thompson, John H., “The Future of Survey Research: Opportunities and Challenges” Paper presented at the Applied Demography Conference, San Antonio, Texas., January 11, 2010 and at the Population Association of America 2010 Annual meeting, Dallas, Texas, April 15, 2010.
- 2008 Thompson, John H. (Panel Member). “Panel Discussion: The American Community Survey: Promise, Products and Perspectives.” Population Association of America Annual Meeting, New Orleans, Louisiana, April 17, 2008.
- 2006 Thompson, John H. (Discussant). “Census 2010: A New Census for the 21st Century.” Population Association of America Annual Meeting, Los Angeles, California, March 30, 2006.
- 2004 Thompson, John H., “Interviewer Falsification of Survey Data.” Paper presented at the Joint Meetings of the American Statistical Association, Toronto, Canada, August 11, 2004.
- 2003 Thompson, John H., “Is Interviewer Falsification Scientific Misconduct?” Roundtable paper presented at the American Association for Public Opinion Research 58th Annual Conference, Nashville, Tennessee, May 16, 2003.
- 2002 Thompson, John H. (Discussant). “Eliminating the 2010 Census Long Form? – Current Status of the American Community Survey.” Population Association of America Annual Meeting, Atlanta, Georgia, May 9, 2002.

- 2001 Thompson, John H., "Decision on Release of Statistically Corrected Redistricting Data." Invited paper presented at the Joint Meetings of the American Statistical Association, Atlanta Georgia, August 6, 2001.
- 1999 Thompson, John H., "Census 2000 – Innovations and New Technology." Paper presented at the Economic Commission for Europe's Conference of European Statisticians Meeting, Geneva, Switzerland, February 15-17, 1999.
- 1998 Thompson, John H. and Robert E. Fay, "Census 2000: The Statistical Issues." Paper presented at the Joint Meetings of the American Statistical Association, Dallas, Texas, August 9-13, 1998.
- 1996 Thompson, John H. and Karen Mills, "Census 2000 Content: Tradeoffs on Cost, Quality, and Quantity." Paper presented at the Annual Meeting of the Population Association of America, New Orleans, Louisiana, May 9-11, 1996.
- 1995 Thompson, John H., Mary H. Mulry, Susan M. Miskura, "Census 2000: Statistical Issues in Reengineering the Decennial Census." Paper presented at the Annual Meeting of the American Statistical Association, Orlando, Florida, August 13-17, 1995.
- 1992 Fay, Robert E. and John H. Thompson, "The 1990 Post-Enumeration Survey: Statistical Lessons in, Hindsight." Paper presented at the Annual Research Conference, March 22-25, 1992, Arlington, Virginia.
- 1989 Edson, Robert G. and John H. Thompson, "1990 Decennial Census Coverage Improvement Program." Paper presented at the Annual Winter Meetings of the American Statistical Association, San Diego, California, January, 1989.
- 1988 Navarro, Alfredo, John H. Thompson, and Linda Flores-Baez, "Results of Data Switching Simulation." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, April, 1988.
- 1987 Griffin, Richard A. and John H. Thompson, "Confidentiality Techniques for the 1990 Census." Paper presented to the Census Advisory Committees at the Joint Advisory Committee Meetings, Oxon Hill, Maryland, October, 1987.
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- Fan, Milton C., Martha L. Sutt, and John H. Thompson, "Evaluation of the 1980 Census Precanvass Coverage Improvement Program." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.
- Keeley, Catherine and John H. Thompson, "The 1980 Census Nonhousehold Sources Program." Paper presented at the Annual Meeting of the American Statistical Association, Philadelphia, Pennsylvania, August, 1984.

- 1983 Miskura, Susan M. and John H. Thompson, "1980 Census Findings and Their Implications for 1990 Census Planning." Presented at the Joint Statistical Meetings, Toronto, Canada, August, 1983.
- Taeuber, Cynthia and John H. Thompson, "1980 Census Data: The Quality of the Data and Some Anomalies." Paper presented at the Annual Meeting of the Population Association of America, April, 1983.
- 1982 Fan, Milton C., John H. Thompson, Jay Kim, and Henry F. Woltman, "Sample Design, Estimation and Presentation of Sampling Errors for the 1980 Census Early Publications National Sample." Paper presented at the Annual Meetings of the American Statistical Association, Chicago, Illinois, August, 1982.
- 1981 Woltman, Henry F., Susan M. Miskura, John H. Thompson, and Peter A. Bounpane, "1980 Census Weighting and Variance Estimation Studies, Design and Methodology." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.
- Kim, Jay, John H. Thompson, Henry F. Woltman, and Stephen M. Vajs, "Empirical Results from the 1980 Census Sample Estimation Study." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.
- Fan, Milton, C., John H. Thompson, and Susan M. Miskura, "1980 Census Variance Estimation Procedure." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.
- Thompson, John H., "Convergence Properties of the Iterative 1980 Census Estimator." Paper presented at the Annual Meetings of the American Statistical Association, Detroit, Michigan, August, 1981.
- 1978 Thompson, John H., "The Nonhousehold Sources Program." Paper presented at the Annual Meetings of the American Statistical Association, San Diego, California, August, 1978.

APPENDIX 2

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From: Christopher J Stanley (CENSUS/OCIA FED) [christopher.j.stanley@census.gov]
Sent: 9/11/2020 2:55:34 PM
To: Steven Dillingham (CENSUS/DEPDIR FED) [steven.dillingham@census.gov]; Steven K Smith (CENSUS/DEPDIR FED) [steven.k.smith@census.gov]; Ali Mohammad Ahmad (CENSUS/ADCOM FED) [ali.m.ahmad@census.gov]; Nathaniel Cogley (CENSUS/DEPDIR FED) [nathaniel.cogley@census.gov]; Benjamin A Overholt (CENSUS/DEPDIR FED) [benjamin.a.overholt@census.gov]; Kevin Quinley (CENSUS/ADCOM FED) [kevin.quinley@census.gov]; Michael John Sprung (CENSUS/DEPDIR FED) [michael.j.sprung@census.gov]; Adam Michael Korzeniewski (CENSUS/DEPDIR FED) [adam.m.korzeniewski@census.gov]
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Subject: today's hearing transcript

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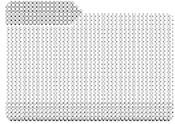
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MALONEY:

Welcome everybody to today's hybrid hearing. Pursuant to House rules some members will appear in person and others will appear remotely via WebEx. Some members are appearing in person let me first remind everyone that pursuant to the latest guidance from the House attending physician all individuals attending this hearing in person must wear a face mask unless they are talking.

Members who are not wearing a face mask will not be recognized. Let me also make a few reminders for those members appearing in person. You will only see members and witnesses appearing remotely on the monitor in front of you. When they are speaking in what is known as WebEx as an actor speaker view a timer is visible in the room directly in front of you. For members appearing remotely I know you are all familiar with WebEx by now but let me remind everyone of a few points.

Four members appearing remotely I know you are familiar and here are the points. First, you will be able to see each person speaking during the hearing whether they are in person or remote as long as you have your WebEx set to active speaker view. If you have any questions about this please contact committee staff immediately. Second, we have a timer that should be visible on your screen when you are in the active speaker with thumbnail view. Members who wish to attend the timer to their screens should contact committee staff for assistance. Third, the House rules require that we see you so please have your camera is turned on at all times.

Fourth, members appearing remotely who are not recognized should remain muted to minimize background noise and feedback. Fifth, I will recognize members verbally but members retain the right to seek recognition verbally. In regular order members will be recognized in seniority order for questions.

Lastly if you want to be recognized outside of regular order you may identify that in several ways. You may use the chat function to send a request. You may send an email to the majority staff or you may unmute your mic to seek recognition. Obviously, we do not want people talking over each other so my preference is that members use the chat function or email to facilitate formal verbal recognition. Committee staff will ensure that I am made aware of the request and I will recognize you. We will begin the hearing in just a moment when they tell me they are ready to begin on live stream.

Do I need someone to tell me? Pardon me? Are we ready?

The committee will come to order. Without objection the chair is authorized to declare a recess of the committee at any time. I now recognize myself for an opening statement. Good morning

and thank all of you for joining me today especially our witnesses. This past April the Trump administration asked Congress to pass urgent legislation to extend several key statutory deadlines for the 2020 census for about four months.

This request was based on unprecedented delays caused by the coronavirus crisis. The President personally advocated for these extensions. He said and I quote I think 120 days isn't nearly enough end quote. The House responded quickly by passing these extensions on May 15 as part of the HEROES Act. I also introduced stand-alone legislation on May 27 the Fair and Accurate Census Act and the Senate introduced a companion bill.

However on July 28 the Trump administration seemed to reverse course. The Commerce Department told the Census Bureau it needed to deliver data to the President by the end of the year and the Senate has failed to act to pass the time delay. As a result Census Bureau workers were forced to rewrite carefully considered plans over the course of a weekend. They had to cut field operations by a month and they had to slash their data processing operations from five months to three.

Last week I released an internal document, this document showing that Census Bureau officials warned the Commerce Department about how these cuts would significantly damage the 2020 census. They cautioned that quote and I'm quoting from this report eliminated activities will reduce accuracy end quote. They highlighted that the compressed schedule quote creates risk for serious errors not being discovered in the data and they warned that these errors quote may not be fixed because of the lack of time end quote.

There is strong bipartisan support for extending these deadlines in the wake of the coronavirus crisis so why has the Trump administration seemingly gone back on this request? Why did they ask--they asked for the extension and then why do they reverse themselves and drop it? And why can't we give the Census Bureau professionals the time that they need for an accurate and complete count of everyone?

We do not have the full story but the White House Chief of Staff Mark Meadows stated that the reason for this change and I quote his quote is the Democrats just want to control the apportionment and we are not going to let them do that end quote. His statement seems to forget that it was the Trump administration that asked for this change in the first place, that asked for these extensions not Democrats. It also seems to suggest that Donald Trump will not be president next year so the administration wants to control apportionment this year while he is still in office.

But there is a much bigger problem with this statement an undercount will directly harm states and therefor people across this country including states with large populations who vote Republican. An undercount will reduce the amount of funding the states are entitled to receive for healthcare, education, and transportation. Each year we distribute over \$1.5 trillion federal trillion dollars payments to states based on census numbers and if the numbers are not correct then the payments to the communities are not correct or fair.

This is not a theoretical risk. Today I am releasing several staff reports showing the negative impact on states with particularly hard to count populations Alabama, Arizona, Florida, Georgia,

Kentucky, Montana, North Carolina, South Carolina, Texas, and Utah. These states and others could be directly harmed by the President's insistence on rushing an inaccurate count by December. That is why a number of Republican senators have come out in support of extending the deadlines.

Let me quote from a letter that Senator Steve Daines from Montana sent to Mitch McConnell and Chuck Schumer urging them to pass legislation to extend the deadlines. He wrote and I quote given the rural nature of Montana and the additional challenges brought about by the ongoing COVID-19 pandemic reverting the deadline back to September 30, 2020 will leave tens of thousands of Montanans uncouned and underrepresented at the federal level.

Nearly half of the households in the state have yet to be counted. It is critical that a full and accurate census is completed and every Montanan is counted end quote. This should not be a partisan issue. This is a Republican senator from Montana. He supports the extensions because people from his state will lose federal funding to which they are entitled.

MALONEY:

On Saturday--this past Saturday, a federal judge issued an order temporarily halting efforts to end the census early. This is good news, but we should not wait for the courts to determine the fate of the census.

Last month, four former census directors, one of whom is John Thompson who is here with us today, warned that we cannot have an accurate sense is using the current schedule. The coronavirus crisis has made that impossible. If you support full funding for state--for your state, if you support providing your constituents with health care, well-funded schools, hospitals, even road and bridge repair, then you should support these extensions. They will ensure your states are fully counted.

UNKNOWN:

The sound has dropped out it's now it's back. Sorry.

MALONEY:

Should I go back?

UNKNOWN:

You should go back.

MALONEY:

To where?

UNKNOWN:

To--to Montana.

MALONEY:

I regret that the sound was dropped, so I am now going back. We had a technical problem.

UNKNOWN:

Not a partisan issue. Not a partisan issue.

MALONEY:

Okay, this is a--Okay. Let me quote. This is not a partisan issue. Let me quote from a letter that senator Steve Daines from Montana sent to Mitch McConnell and Chuck Schumer urging them to pass legislation to extend the deadlines.

He wrote, and I quote "Given their rural nature of Montana and the additional challenges brought about by the ongoing COVID-19 pandemic, reverting the deadline back to September 30th, 2020 will leave tens of thousands of Montanans uncounted and underrepresented at the federal level. Nearly half of that households in the state have yet to be counted. It is critical that a full and accurate census is completed and every Montanan is counted."

This should not be a partisan issue. This is a Republican senator from Montana. He supports the extensions because people from his state will lose federal funding to which they are they are entitled.

Over \$1.5 trillion is distributed every year based on census numbers and formulas to our cities and our States and to our people. On Saturday, a federal judge issued an order temporarily--temporarily halting efforts to end the census early. This is good news, but we should not wait for the courts to determine the fate of the census.

Last month in this room, four former census directors, one of whom, John Thompson is here with us today. They warned that we cannot have an accurate census using the current schedule. The coronavirus crisis has made that impossible. If you support full and fair funding for your state, if you support providing your constituents with health care, well-funded schools, hospitals,

even roads and bridges, then you should support these extensions. They will ensure that your state is fully counted.

The Senate should do with the Trump administration originally requested and what the career professionals at the Census Bureau need. Passed legislation to extend these deadlines and ensure a full, fair, and accurate census for our country. Thank you for your indulgence. I will give the ranking member extra time should he require it and want it. I now want to recognize Mr. Comer, the ranking member for his opening statement.

COMER:

Thank you, Chairwoman Maloney. I appreciate you calling this hearing today on the 2020 census, even though we got started 22 minutes late. Let me begin by saying unequivocally the 2020 census is counting every resident in the United States regardless of citizenship status. Any assertions to the contrary are scare tactics which had the consequence of reducing participation in the census.

The census is underway now. I wanted to encourage all people to complete their census form. Census enumerators are knocking on doors around the country to count nonresponding households. I encourage everyone to engage with enumerators if they come to your door. If you are concerned about an enumerator coming to your door, you can complete your 2020 census online now at my2020census.gov.

Unfortunately, the Democrats are not interested in bipartisanship on the 2020 census. Instead, Democrats have once again lodged a partisan investigation into the 2020 census. Surprise, surprise. Today's hearing is supposedly about the accuracy of the 2020 census. However, no witnesses from the Census Bureau have been invited to discuss current operations.

Why aren't we hearing directly from the Census Bureau about the census? Well, it's because the Democrats don't like what careers Census Bureau officials have to say. In transcribed briefings before the committee, three Census Bureau officials stated that as of now, the 2020 census can be accurately and fully completed by September 30th of this year. These facts contradict The Democrats narrative about the 2020 census so they're just going to ignore them.

The truth is that technological improvements have made it possible to gather information more efficiently than ever before. Here are the facts about the 2020 census, according to career Census Bureau officials. As of September 8th, 2020, nationwide 88.8 percent of all households have been counted in the 2020 census. Nationwide, 66 percent of the non-response follow up caseload has been completed. Twenty-five states have counted 90 percent or more of all households. All states have counted more than 75 percent of all households.

Enumerators in the field are working at a more productive pace than expected. 232,000 enumerators are working across the country with another 69,000 enumerators in training to begin work. These are the real facts about the census that all Americans should know. The Democrats know these facts, but are choosing to ignore them.

In July, President Trump took a very important step to ensure the sanctity of our nation's elections an equal representation under our constitution. The president directed the secretary of Commerce to report an apportionment count to the House of Representatives, which excludes non legal residence in the United States, including illegal immigrants. All Americans should care about who is being included in the apportionment count.

Including illegal immigrants in the count for representation in Congress, only dilutes the representation for all Americans who vote in elections and makes a mockery of our basic principle of one person, one vote. The president's action restores the concept of representation representational government envisioned by the constitutional.

In a country so closely divided as the United States, illegal immigrants and non-citizens have a material effect on representation. Representation should matter to everyone. It's a simple question of fairness. Predictably, the Democrat's left wing allies have already filed lawsuits against the president. I have no doubt that the information gathered in the Democrats partisan investigation will be leaked through their left wing friends suing the administration.

Forget the fact that testimony provided to the committee totally refutes the Democrat narrative like the sound and fury surrounding the citizenship question, illegal questions the legal questions about the president's actions are likely to wind up at the Supreme Court. The hearing today is a continuation of the coordinated pressure campaign against Chief Justice Roberts and the other Supreme Court justices.

The Democrat majority, their left wing allies and activist judges are all working together to undermine the 2020 census count. I urge us all to focus on the task at hand. The timely and accurate completion of the 2020 census count by September 30th, 2020. Thank you and I yield back.

MALONEY:

Thank you. I now recognize my good friend Mr. Raskin, who is the chairman of the subcommittee on civil rights and civil liberties for an opening statement.

RASKIN:

Thank you so much, Madam Chair, for holding this hearing and for being such a great champion for the census. I just want to take a second to remind my friend that the Trump administration lost its battle to paste a citizenship question last minute onto the census in the Supreme Court. So the Supreme Court has already rejected their efforts to post graffiti all over the census.

Look, it's difficult enough in a normal year to conduct a census of all of American people. It's infinitely harder in the middle of a pandemic. And the intricate plans and military like schedule that was--that were a decade in the making have been completely upended by this out-of-control

coronavirus crisis and the lethal incompetence and indifference of the Trump administration, thereby creating an unprecedented challenge for the bureau.

Despite the Herculean effort of an army of enumerators, there is still a shocking amount left to do to meet the constitutional mandate. As of yesterday, at least 15 percent of households in 10 different states had not been counted. Those states include Florida, North Carolina, New Mexico, South Carolina, Louisiana, Arizona, Mississippi, Montana, and Georgia. At the bottom of that list is Alabama, where the bureau still has not enumerated 20 percent of the households. That doesn't seem like a--much perhaps, but if 15 percent to 20 percent of people in all the states are counted, more than 12 million Americans will be missed.

The threat of an inaccurate count is no more of a blue state problem than COVID-19 is a blue state problem. Of those 10 states that are at the bottom of the barrel in enumeration, seven have Republicans representing them on this very committee. 65 percent of the House seats in those 10 states are held by Republicans, and more than half of those states have all Republican delegations in the Senate. This is a problem not for blue states or for red states, but for the people of the United States.

The census is important for two main things, money and power. You don't care about money or power? Well, don't worry about the census. But if you do, you better pay attention. I've got the honor of serving on the Select Subcommittee on the Coronavirus Crisis. Many people don't realize how crucial the census is to our COVID-19 response and the ability of governments to meet the needs of the people.

The CARES Act, which established the \$150 billion Coronavirus Relief Fund, required of that the money be distributed to states based on since this population data.

Countless studies tracking the prevalence of the disease in the country have relied on census tract data, and our fine-grained understanding of the disproportionate impact on communities of color across America is also based on census data. The census is used to determine where to build hospitals. It will help businesses trying to revitalize our economy determine where to set up shop, and it'll help cities and counties determine where to run bus routes and build roads that will help carry workers and consumers to their businesses.

The census cannot become a hostage once again to a political fight perpetrated by this administration and their allies in Congress. It is foundational to the American constitutional system and to representative democracy. It will only grow in importance as we use the data to fight the pandemic and rebuild our devastated economy. This is not the time to rush things in the interest of some partisan advantage. It is time to get it right.

The pandemic has not only made the count itself harder, it has made post enumeration data integrity even more compelling and essential. In a normal year, the bureau count everyone as close to April 1 as possible, but this year the count has been stretched out over many months, six or seven months. That's six or seven months where people have scattered and moved around the country.

College students have abandoned their dorms to go home. Laid off workers have consolidated households or moved in with families, medical professionals shuffled around the nation to hotspots. Essential workers quarantined themselves away from vulnerable family members. Loved ones who would have been counted on April 1 sadly succumbed to the disease before their household was enumerated. And I need not remind my colleagues we have lost more than 190,000 Americans to this nightmare.

The chances seem higher than ever before that a lot of people are going to be missed, while others may be double counted. This calls for a more comprehensive, robust, and elongated post enumeration data review process. But instead, the bureau has cut its data processing schedule by 40 percent, from 150 days to around 90 days.

The bureau knows this is not enough time. We all know it's not enough time. The bureau has been asking for an extension since April when it first concluded that it couldn't meet the current statutory redistricting and apportionment deadlines while still delivering the highest quality count. The House is already agreed to this commonsense plan, but the HEROES Act, which granted the extension that the administration itself requested, still is not law because of the inaction of the Senate.

This has left the bureau scrambling and caused the agency to abandon its carefully crafted data processing schedule for a seat of the pants plan cobbled together in a couple of days. This is not how an efficient, modern government operates. This is what happens in failed states, not functioning democracies. Every census expert, including the bureau itself, agrees that rushed census is untenable and un--unsustainable and inconsistent with the Constitution.

I call upon my GOP colleagues to give the bureau the time it says it needs to do the census right in 2020. I don't believe anyone here once their constituents to go uncounted. Nobody wants their constituents to be missed. So, let's make sure that doesn't happen. Let's pass this indispensable and common sense extension and make sure that we have a comprehensive, full, and accurate census in 2020.

We'll have to live with the results of it for a decade. And if 2020 has taught us anything by now, it's that people's lives, our economy, and our democracy depend on getting things right the first time. So, let's not hide the truth. Let's not bury the truth. Let's recognize it and let's act accordingly. With that, yield back to you, Madam Chair, and thank you for the time.

MALONEY:

Thank you so much for all your hard work and statement today.

Now I would like to introduce our witnesses. We are grateful for their attendance today and for their expertise. Our first witness today is John H. Thompson, who served as the census director from 2013 to 2017. Then we will go to Christopher Mihm, who is the managing director of the Strategic Issues Team at the Government Accountability Office.

Then we will hear from Stephen Roe Lee--Lewis, who serves as the governor of Gila Indy--Indian Community--River Indian Community. Next we will go to Stacey Carless, who is the executive director of the North Carolina Counts Coalition. Finally we'll hear from Hans Von Spakovsky, who is the senior legal fellow at the Heritage Foundation.

The witnesses will be unmuted so we can swear them in. Please raise your right hands. Do you swear or affirm that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God? Let the--

UNKNOWN:

--I do--

MALONEY:

--Record show that the witnesses--

UNKNOWN:

--I do--

MALONEY:

--answered in the affirmative.

Without objection, your written statements will be made part of the record. With that, Mr. Thompson, you are now recognized for your testimony. You want to turn on your mic? We can't hear you.

THOMPSON:

Sorry.

MALONEY:

Um-hmm.

THOMPSON:

Good morning, Chairwoman Maloney, Ranking Member Comer, and members of the committee. Thank you for this opportunity to testify before your committee regarding providing the Census Bureau with time to produce a complete and accurate census.

I am extremely concerned that the actions that have been taken to truncate 2020 census data collection activities by September 30th, 2020 will adversely affect the quality and accuracy of the 2020 census. I have submitted a detailed written testimony describing my concerns. In the following oral testimony, I will present an overview of these concerns.

The Census Bureau will not conduct an effective follow-up of those households that do not self-respond. Over 50 million households did not self-respond to the 2020 census. The operation to enumerate these households is what the Census Bureau refers to as nonresponse follow-up, or NRFU. Given the magnitude of the non-responding households, conducting a comprehensive NRFU is necessary to achieve a fair and accurate enumeration for all populations and areas.

The Census Bureau took actions with respect to the COVID-19 pandemic to revise the plans for data collection. In particular, NRFU was scheduled to start by August 11th, 2020 and to conclude by October 30th, 2020. On August 3rd, 2020, the Census Bureau announced that the deadlines would not be extended and that NRFU would be completed by September 30th, 2020.

The Census Bureau will have to take steps to complete NRFU more rapidly than it planned, given that has already lost over a third of the schedule that the career staff and developed under the original plan. These adjustments or steps may include, one, not making sufficient enumeration attempts in hard to count communities.

Hard to count communities have a significantly lower level of self-response and a correspondingly larger proportion of households that fall into NRFU than other communities. Not making appropriate enumeration attempts with staff with a proper understanding and language skills in these areas--

THOMPSON:

--will lead to a higher proportion of incomplete responses. Two, the Census Bureau will have to rely on proxy enumerations to a much larger extent than in previous censuses. Proxy enumerations had twice the level of error as other enumerations in the 2010 census. A larger proportion of proxy enumerations in the 2020 census will significantly increase the levels of error.

Three, the Census Bureau will be forced to complete (INAUDIBLE) by relying on the use of administrative records to a greater extent than had been initially planned. Administrative records are not representative of immigrant and minority communities so this will result in increased under counts of these populations.

For, limitations imposed by the truncated schedule will force the Census Bureau to accept a higher proportion of incomplete NRFU enumerations resulting in the use of count and hold person imputation to a much greater extent than in previous censuses. This will increase the under counts for the hard to count communities.

Five, finally, if the actions described in the document that the committee recently released are actually what is being implemented by the Census Bureau it is clear that quality is being sacrificed in order to meet the September 30, 2020 deadline.

The schedule for post data collection processing has been severely truncated raising concerns of undiscovered computer errors and a loss of data quality. The initial Census Bureau schedule allowed five months for the post data collection processing operations prior to the release of apportionment counts.

In the revised schedule the Census Bureau issued in its request for an extension of the deadlines there were six months allocated to the post data collection processing. Under the current schedule there are only three months of available for the post data collection processing. The Census Bureau has released little information regarding how it plans to address the new limited timeframe for post data collection processing.

For example, there is no discussion of how it plans to remove duplicate enumerations. They Census Bureau has stated that the time allotted for subject matter expert review and software error we mediation has been compressed by cutting 21 days from the schedule. This is alarming because the well-developed plans for this phase of post data collection processing were based on extensive planning.

The likelihood--paid likelihood of a serious computer error that goes undetected is very high. In conclusion thank you for this opportunity and I look forward to answering any questions that you may have.

MALONEY:

Thank you for your testimony and your service as a census director that--that help develop this plan that is now being compressed. I would now like to call upon Mr. Mihm. You are now recognized. Turn your mic on.

MIHM:

Thank you, Madam Chairwoman and Chairwoman Maloney, Ranking Member Comer, members of the committee. It's indeed a great honor to be here today to talk about the status of the 2020 census. I have the great privilege today of talking about the work that many of my colleagues at GAO have been doing over many months on behalf of the Congress and to present that work to you today.

Our bottom line today is that like the rest of the country including obviously the Congress the Census Bureau was forced to respond to the COVID-19 national emergency. In regards to the 2020 census, it undertook a series of changes that resulted in the COVID-19 resulted in delays, compressed time frames, implementation of untested procedures and continuing challenges which we believe could undermine the overall quality of the census count and escalate cost.

My statement today is based on our August 27 report to this committee entitled 2020 census recent decision to compress time frames poses additional risk to an accurate count. As you mentioned and as you know on August 3 the Bureau announced that it would end data collection by September 30 and deliver apportionment counts by the statutory deadline of December 31. This September 30 cutoff date is one month earlier than the Bureau had planned due to the COVID-19 emergency.

The Bureau said it would shorten first, planned field data collection and second, data processing operations in order to meet the statutory deadlines. My comments this morning will cover both of those issue--or issues in both of those areas. First, in regards to field data collection, the good news, as Mr. Comer noted in his opening statement, is that as of September 8 the Bureau is about 70 percent complete in following up on households where it did not have a census form. This is ahead of its goal to be at 62 percent at this point.

On the other hand and not surprisingly and Madam Chairwoman this was the point that you were making in your opening statement the census progress varies markedly among localities and in fact the census is inherently a local enterprise and some hard to count areas are lagging significantly from the national average.

High rates of COVID-19 in some areas, weather events such as hurricane Laura, wildfires all affect the Bureau's ability to visit households to get a response. As of September 1, 49 of the 248 local census offices had not met their follow-up goals. The Bureau had planned to hire up to 435,008 enumerators to conduct follow-up however as of September 8, the Bureau had hired only about 355,000 census takers. Again the census is local and as of the end of August 7 area census offices were below 50 percent of their goal in the number of a enumerators actively working exacerbating the workload issue that I just discussed.

To help address having shortfalls the Bureau is providing incentive awards to its staff based on productivity and hours worked. The Bureau also made operational adjustments to its follow-up efforts however as you mentioned Madame as of September 5, the temporary restraining order was issued that in joins the Census Bureau from accelerating its data collection and data processing or allowing in the actions as a result of the shortened timelines to be implemented. As a result of the Bureau's--the Bureau's ability to continue with its adjustments it is unclear at this time we will continue to monitor and follow up on these operations and we will be reporting to the Congress.

Second, in regards to the streamlined response processing the commitment to provide the apportionment counts by the end of December means as director Thompson was mentioning that the Bureau has less time to conduct its post data collection activities which improve the completeness and the accuracy of census data.

During census response processing the Bureau checks for duplicate and inconsistent and incomplete responses and where appropriate uses administrative records to supplement the response data. The Bureau expects to begin this response processing in mid-October--in mid-October instead of in January 2021 as previously planned after Congress requested the statutory change to the required deadline. This means activities that were planned for 150 days will now need to be completed in 92 days.

However here to the Bureau's plans may change due to the September 5 temporary restraining order and again we will continue to monitor this. Let me conclude on a point that Mr. Comer was making in his opening statement about the continued importance of public participation. There is still time to fill out the form. There is still time to cooperate with the census taker when they come to our addresses. The national--the national need is to have a full and accurate census. With this Madame this concludes my statement and I would be pleased to take any questions you or the committee may have.

MALONEY:

Thank you very, very much for your testimony. You have testified many times before this committee on the census and we appreciate it.

Next we will hear from Governor Lewis. Governor Lewis, you are now recognized and he will be by remote. Governor Lewis?

LEWIS:

Good morning, Chairwoman Maloney, Ranking Member Comer, Congressman Gosar and members of the committee. I want to thank you for holding this important and timely hearing on producing an accurate census.

My name is Stephen Roe Lewis and I am the governor of the Gila River Indian Community. The community is located outside of Phoenix Arizona and our reservation covers approximately 372,000 acres in total the community has over 22,000 tribal members with approximately 14,000 residing on the reservation.

I want to state up front that the community supports this committee's efforts to legislatively extend census field operations to October 31, 2020 and the statutory deadlines for reporting the apportionment and redistricting data to April 30, 2021 and July 31, 2021, respectively.

An accurate census is critical to Indian country. It is not an exaggeration--it is not an exaggeration to say that an accurate census can be a matter of life or death in tribal communities because the program impacted by a census count affects delivery of healthcare, public safety, our youth and elder programs, housing, violence against women grants and other programs that sustain our tribal communities and we have a reason to be concerned that an accurate count will not occur if the Census Bureau ends field operations at the end of this month.

In March of this year during the initial stages of the coronavirus pandemic--

LEWIS:

--the Census Bureau temporarily suspended operations because of health and safety issues. In April, the Commerce secretary and the Census Bureau director announced a plan to extend field operations to October 30th, 2020 and seek an additional 120 calendar days for apportionment and redistricting reporting.

However, in August in an abrupt reversal, the Census Bureau condensed the deadline for field operations and self-responses to September 30th and is no longer seeking an extension for reporting. This is troubling to the Gila River Indian Community and the many other tribal leaders and tribal organizations that I've spoken to.

In the 2010 decennial census, Indian country was the most undercounted demographic at a rate more than double the next closest hard to count population, and that was during a regular census cycle. These current self-response rate on that Gila River Indian Community Reservation today is 10.1 percent. Let me say that again. 10.1 percent. That means that if the census were to end today, I can only be certain that 2200 of our over 22,000 tribal members would be counted.

That's compared to a response rate for the state of Arizona up 62.1 percent at a national rate of 65.5 percent. And we're not alone. If you look at the chart that accompanies my written testimony, you will see that of that 19 tribal responders in Arizona, 17 or below a 50 percent response rate and 14 are below a 33 percent response rate. These self-response--these self-response rates are staggering really staggeringly low, but not surprising.

In many tribal communities like that Gila River Community Indian community, in person contact is the only method to make sure our households are counted and that just wasn't possible this year.

At the risk of stating the obvious, we are in the midst of a global pandemic. Indian country has the unfortunate distinction of being the most impacted population of COVID-19 according to the CDC. And ironically, the reasons can be directly tied back to these programs that rely on census data for funding allocations like housing, infrastructure, and elder care, to name a few.

The circumstances that created the instruction of census field operations could not have been predicted or prevented, but what can be prevented is a rush--is a rushed count. Any attempt to deliberately cut off census operations during the pandemic with the full understanding that it will result in such a significant undercount for Indian country is not only responsible, Madam Chair and members of the committee, it is a breach of the trust and responsibility between the United States and tribal nations.

At the Gila River Indian Community, our reservation our reservation has been in shelter at home status for all but four weeks since March. My executive order to require a mask for anyone on

the reservation was one of the first in the state. I did that because as an elected leader, it's my responsibility to put the health and safety of my people and all those on the reservation first.

But that doesn't mean that Gila River Indian Community or any other tribal nation in the United States gave up our right to be counted in the census. The stakes are too high. We have the right to adequate federal representation in Congress and we have the right for our voices to be heard. The tribal members of the Gila River Indian Community count. The members of all Arizona tribal nations count. The members of all 574 tribal nations must be counted.

Anything other than the time and process required for a full and accurate census count is a deliberate undermining of our tribal communities. And that is not only unacceptable, it's unconscionable. Thank you for the opportunity to speak today. I'm happy to answer any questions from the committee.

MALONEY:

Thank you so much for your testimony, governor. Now Ms. Carless. You are now recognized, Ms. Carless.

CARLESS:

Chairwoman Maloney, Ranking Member Comer, and members of the committee, I am Stacy Carless, executive director both NC Counts Coalition. I want to thank you for the opportunity to appear before you today to testify about the upcoming 2020 census deadline.

NC Counts Coalition is a nonprofit organization established to facilitate cross sector collaboration to achieve a complete and accurate census count in North Carolina. We believe that accurate census data is essential to the economic and general well-being of every single North Carolinian. Our roles as North Carolina's help (SP) for 2020 census outreach keeps us on the ground and connected to North Carolina communities, which positions us well to adjust the current deadline of the 2020 census.

As COVID-19 continues to disrupt our lives, it is also disrupting the 2020 census operation. About 3.8 million individuals are missing from North Carolina's count, putting North Carolina at risk of missing out on \$7 billion in federal funding every year and not gaining our expected 14th seat in the U.S. House of Representatives. As of September 7th, 61.4 percent of North Carolina households had self-responded to the census. This is below the national average of 65.5 percent and below our state's 2010 self-response average of 64.8 percent.

North Carolina has 100 counties. Only 18 of our 100 counties have surpassed the 2010 self-response rate. Currently, census tracts with low census self-response rates have greater proportions of residents that identify as American Indian, Black, or Latino. These populations have also been hit hard by COVID-19 and felt the impact of hurricanes in the last couple of years.

Other factors associated with low response in North Carolina include low Internet access, college and military communities, and census tracts with a high percentage of young children under five. North Carolina needs extended timeline for self-response and a robust non-response follow-up field outreach. We are extremely concerned that North Carolina is on the verge of a failed 2020 census. Due to COVID-19, Census Bureau staff has been limited in the field support they had provided as part of the self-response operations.

On July 14th, the Census Bureau announced that it would begin its Mobile Questionnaire Assistance Program. Census Bureau staff categorized NC counties as green or red according to the county's COVID-19 infection rate. Red counties were considered high risk counties where MQAs could not be conducted. From July 30th through about August 12, Census Bureau staff were discouraged from working in red counties, which were more than half of North Carolina counties.

We are also concerned about the accuracy of the non-response follow up enumeration due to allegations of inadequate training, reports of terminated employees, and witness accounts of enumerators not knocking on doors. Last week, organization dropped off information in low responding since as it tracks. While they are, our staff observed and the enumerator go door to door and place a census form at the doorstep without even knocking on doors.

Due to time, I can only share with you one example of an instance that has raised red flags. We hear on a regular basis from current and past staff about concerns that they have about census operations. We are concerned about the quality of data being collected through the non-response follow up operation. Under the current timeline, it will be nearly impossible for enumerators to knock on the doors of the estimated 1.5 million households that have yet to respond.

We are concerned about the state's current nonresponse follow-up rate of 20.7 percent. Is the Bureau focusing on addresses that are easy to enumerate such as vacation homes in the mountains and at the beach where homes are likely vacant, allowing for an easier enumeration versus deploying resources into low performing since his attracts wear Black and brown families actually reside?

I have provided you with data and testimony to illustrate our concerns. NC Counts Collision (INAUDIBLE) steadfast in our commitment and we understand the impact that this enumeration will have on our communities for the next 10 years.

Our children need a complete and accurate census to access and education. Our seniors need a complete and accurate census so they can retire and have access to health care. Our military community needs a complete and accurate census. As they fulfill their commitment to serve our country, it is our commitment to serve them.

Throughout the pandemic, part partner organizations have strapped on their boots, put on their masks, and it done their part to get out the count across North Carolina. We need more time. The constitution gives Congress responsibility for getting the census right. If there is any hope

establishing a complete and accurate 2020 census, the deadline must be extended to at least October 31st, 2020. Thank you.

MALONEY:

Thank you very much for your testimony. I now recognize our final speaker, Mr. Spakovsky. You are now recognized.

VON SPAKOVSKY:

Can you hear me, Madam Chairman?

MALONEY:

Yes, we can hear you. Thank you.

VON SPAKOVSKY:

Very good. Thank you. I appreciate the invitation to be here today. It is essential to the Census Bureau follow longstanding historical precedent and collect data on the number of citizens and noncitizens present in the U.S. using the extensive information on citizenship contained in executive branch agency records that the president has ordered supply for the Census Bureau. That data is important not only for apportionment and redistricting, but also for the effective enforcement of the Voting Rights Act.

It is within the constitutional and delegated statutory authority of the chief executive to direct the collection of citizenship data. Collection of citizenship data is also vital to establishing consensus on national immigration policy. Without citizenship data, it's not possible to have an informed debate and discussion over what U.S. policy should be and how to successfully implement it.

The Census Bureau has been collecting citizen population data since the 1820 census. It currently collects that data through the American Community Survey. However, because the ACS is only sent out annually to about 2.5 percent of American households, it does not collect complete data on the country. The executive order ensures that the Census Bureau has access to all available records.

The limited citizenship data from the ACS is routinely used by the Department of Justice in enforcing Section 2 of the Voting Rights Act. Section 2 is most often used for challenges to at-large districts and to the redistricting process, ensuring that minority voters have the opportunity to elect representatives of their choice.

The remedy to a Section 2 violation is to draw a district in which minority voters, citizens, constitute a majority of voters such that they can elect their candidate of choice. Citizen population data is essential to drawing an effective voting district for minority voters. The Justice Department's use of citizenship data can be seen in numerous complaints filed by the Justice Department to enforce Section 2 in both Republican and Democratic administrations, but it is hampered by the limited data available through the ACS.

Basing apportionment on total population that includes large numbers of illegal aliens is fundamentally unfair to American citizens and dilutes and diminishes the value of their votes. On July 21st, President Trump issued a memorandum directing that illegal aliens be excluded from the population used for apportionment. This is within his constitutional and statutory authority.

Since the first census, we have not counted every single individual physically present in each state, as is the normal procedure. For example, and this is a quote from the current census residency criteria, "Citizens of foreign countries reside--visiting the United States, such as on vacation or business trips, are not counted."

In *Franklin v. Massachusetts*, the U.S. Supreme Court pointed out that the key phrase in the Constitution concerning the number of persons "in each state can," and this is a quote from the Supreme Court case, "mean more than mere physical presence and has been used broadly enough to include some element of allegiance or enduring tie to a place."

Illegal aliens, like tourists, clearly have no element of political allegiance to a state or a federal government. They can't be called for jury duty. They can't be drafted for military service, if we had a mandatory draft, because they owe their political allegiance to their native country of which they are citizens.

Furthermore, illegal aliens have no enduring tie to any state since they are illegally present in the country. They could be picked up, detained at any time by federal authorities and removed from the U.S. Thus, excluding individuals who have no allegiance or enduring tie to his state is well within the precedent set by the court in *Franklin*.

As the Supreme Court said in *Reynolds v. Sims*, it's the seminal case on represent--representational government and the equal protection clause, "Achieving a fair and effective representation of all citizens is concededly the basic aim of legislative apportionment." Illegal aliens are not citizens and the fact that they may be temporarily or merely, as the Supreme Court said, living in a particular state does not make them inhabitants who must be counted for apportionment purposes.

Including noncitizens in apportionment and redistricting unfairly dilutes the votes of citizens and distorts the political representation of states. This violates fundamental principles of fairness and equity to which citizens are entitled as members of the body politic.

The senior career leadership currently in the Census Bureau has already testified before this committee that it has the ability, the time, and the resources to provide an accurate count of the population of the U.S. as it has in numerous prior census counts. That includes its duty and

obligation to provide a complete count of the number of citizens and noncitizens present in the country. Thank you, Madam Chairman.

MALONEY:

Thank you very much for your testimony. The gentleman yields back. And now I thank every-- all of our participants today. I now recognize myself for five minutes for questions.

I want to address my questions to the two people hear from states that could lose tens of millions of dollars in federal funding as a result of a rushed undercount, Ms. Carless from North Carolina and Governor Lewis from Arizona, because this will not happen only in Democratic leaning states. It will happen in states with Republican voters and representatives too.

Now, both of your states are lagging behind on their census counts for a variety of reasons, including the coronavirus crisis. Right now, the national average of response is 88.8 percent, but North Carolina is only at 82.9 percent and Arizona is even worse at 80.8 percent. So, in other words, North Carolina is six percentage points behind the national average and Arizona is eight percentage points behind.

So, let's discuss what this means for federal funding for your states. Ms. Carless, in the staff report we should this morning, we estimated how much funding your state would lose with an undercount of just 1 percent. And based on that estimate, North Carolina could lose more than \$99 million in federal funding. That includes funding for healthcare, jobs training, education, transit, and much more. And that is for just one year. Over 10 years, that would be nearly \$1 billion.

Ms. Carless, this is federal funding that the people of your state, the people of North Carolina, are entitled to under the law, but they will not get it if they are not counted. Isn't that right? And what does that mean for your state, Ms. Carless?

CARLESS:

Chairwoman Maloney, thank you for your question. And yes, that is correct. North Carolina is the ninth most populous state and the fourth fastest-growing state in the country. Our state really needs every dollar we are entitled to to support infrastructure, resources, and programs for our growing population. Also, I think the current pandemic really magnifies the importance of government programs such as housing assistance and food and nutrition programs, which all relate back to the census.

So, right now in North Carolina, there are 1 million utility customers and renters at risk of utility disconnection and eviction, as well as applications for food assistance programs has increased by 15 percent and unemployment is high. North Carolina is going to need every dollar we are entitled to as our state recovers from the financial hardships of this pandemic.

MALONEY:

Thank you. Now, Governor Lewis, according to our estimate, an undercount of just 1 percent in Arizona could mean a reduction of federal funds of over \$60 million. Again, that's just for one year. Over the next decade, which is what the census numbers stand for, a complete 10 years, that would be over \$600 million. And there is another factor. As you testified, Arizona has large tribal and rural areas, and their counts are far below even the state average right now.

So, Governor Lewis, federal funding helps not only the tribal communities who desperately need it, but the entire state of Arizona. These are funds that the people of your state are due under these federal programs, but they won't get it if things continue like this and go on as is planned. Isn't that right, Governor Lewis? And can you elaborate what will not getting a full and accurate count of everyone in Arizona mean to your state?

LEWIS:

Thank you, Chairwoman Maloney, for bringing attention to the Arizona state (INAUDIBLE). What that report shows, that if the undercount is the same percentage as the 1027 American community survey, the populations most at risk for underfunding of critical programs are also the most vulnerable populations, African-Americans, Hispanics, young children, Asian Americans, and over 19,000 American Indians.

Each of those numbers represent an individual who will be counted for purposes of education, healthcare, eldercare, food security, housing and other programs that utilize census data. There is an individual, family, and a community behind each of those numbers, Madam Chair, that will be irreparably harmed by the undercount that would be anticipated. And again, the undercount anticipated for the 2020 census is much greater, given the pandemic interruption of census operations.

Now, in a real-world scenario, I don't have the specific dollar amount, but I can provide an example that came about as a result of the allocation of the tribal relief fund in the CARES Act. The Treasury Department used, in a large part, the population numbers from the Indian Accounting Block Grant Program to distribute those funds. The Gila River Indian Community had an undercount of approximately 8,000 tribal members.

This resulted in tens of millions of dollars not being allocated to our tribal government to provide for our citizens during this pandemic. But some tribal nations had a population count so skewed that they received little or no money to combat COVID-19 in their tribal communities from the population allocation and these are impacts that will be with us for decades, not just one year or one COVID-19 relief package Madam Chair, members of the committee.

MALONEY:

Thank--thank you very, very much and I--I would like to ask one last question to each of you and let you both respond. You both have Republican senators who represent your states Senator McSally represents Arizona and Senator Tillis and Senator Burr represent North Carolina. I would like the two of you to please explain, take a moment and tell your senators whatever you want about the need to extend the census deadlines and what it will mean for the to ask and all we are asking is stand lines. Governor Lewis, let's start with you. If Senator McSally was listening right now what would you want to say to her about the need for an accurate and full census count?

LEWIS:

Madam Chair, I would tell my Republican delegation out of respect the same thing that I would tell all congressional members, the census should not be a political or partisan issue. The census is too important to all tribal nations, states, and local governments who rely on funding to provide for the basic needs of our citizens.

The low response rates that are currently being reported are just as detrimental to those states deemed red states or blue states. In fact recent rankings of state responses placed more red states in the bottom 20 than blue states. We have to make sure there is an accurate count. It's in everyone's interest that the census is accurate.

Our tribal citizens are relying on it and frankly every member of Congress should be relying on it because the census determines representation and equal representation that is vital Indian country as I represent my tribal community for its federal tribal trust relationship Madam Chair and this goes right to the underpinnings and the foundation of our Constitution.

MALONEY:

Thank you very much. Ms. Carless, what would you say to senators from North Carolina Senator Tillis and Senator Burr?

CARLESS:

Senator Tillis and Senator Burr, I urge you to support a later deadline for 2020 census operation, too much is at stake for North Carolina for us to risk a complete and accurate count \$44 billion, a 14th Congressional seat and essential data to help guide allocation of resources and services for North Carolinians across our state. Senator Tillis, you advocated for North Carolina's soldiers and Marines to be counted in the decennial census as residents of the state regardless of whether or not they were deployed abroad.

Unfortunately, the counties that are home to military families are underperforming leaving military families at risk of losing resources that would help support military personnel and their families. Let's not--let's not let the work we put into getting North Carolina communities go in

vain. Let's do everything we can together to support a complete and accurate 2020 census count for our state.

MALONEY:

Thank you. I--I hope they are both listening. I now yield to the Ranking Member for five--well, he has said and designated that Congressman Gosar is next. I now yield to Congressman Gosar and recognize him for questions. Is there a technical problem? There seems to be some technical problem. I now yield to Congressman Hice. Mr.--Congressman Hice you are now recognized.

HICE:

Thank you, Madam Chair. Mr. Mihm, let me begin with you if I can. I am sure you are aware of the recent stats that the Bureau has come out regarding the non-response follow-up operation. Is that correct?

MIHM:

Yes, sir.

HICE:

Okay. So I--I feel like I am getting a little different type of information because in one regard we are like 70 percent ahead of the game but in other ways we are not so just bottom line would you consider the Bureau ahead of projections or behind?

MIHM:

Well, as I--as I mentioned sir is that there is good news and that is that they are ahead on their nonresponse follow-up of where they had, where they are gold would be at this point. The challenge that they have and we have seen this in every single census is getting that last few percentage points of the population and that is still something that they need to work on and that will be very difficult for them to do but they--they are ahead of their schedule according to their plan at this point.

HICE:

Okay. And I would imagine every census has problems, great difficulties getting these last handful to respond. I mean non-responders are non-respondents it doesn't matter which census we are talking about but bottom line we are ahead of projections. I think that is incredible news.

Now in light of that districts like mine just for example the 10th District of Georgia largely rural, we are reporting less than 60 percent so we are ahead of the Bureau estimated there would be 60 percent of self respondents and yet in our district we have at least certain areas of our district that we don't even have 60 percent counted yet. So we have technological advances.

We are using iPads, we are using laptops. We have got a lot of things going on and yet in some rural areas like mine we are still struggling to get the numbers so my question is what is the problem? Is it technology, is that the pandemic? What--what is the issue in some of these more rural districts?

MIHM:

In some cases, sir, it is just almost a perfect storm. I mean in this and certainly the pandemic has wreaked havoc on the Bureau's ability to--to first in terms of recruiting people they are having also problems with turn over. Their turnover estimates were about 10 percent would come into training and then not actually then begin work.

It is actually running over--over double that. They are also having trouble obviously with people being willing to open the doors and talk even though they practice PPE and are keeping a 6 foot distance away from that. The big challenge that the Census Bureau runs into is a, again, getting that last kind of couple 2 percent, 3 percent of the population.

For a 10 week operation nonresponse follow-up it is not uncommon for the last four weeks to be going after the 2 percent of the population. That is an important point you know both because we want everyone counted but it's also because that's where we make sure that those--those hardest to count, hardest to enumerate communities are actually included in the census.

HICE:

Okay. So the real--the real problem here you are going to get you feel comfortable we are going to get 97 percent. Now the real problem is going to be getting that last 3 percent or so, correct?

MIHM:

That is--that has typically been the challenge that the Bureau faces. I mean obviously it is even more compressed this time but if they end up with--with 3 percent without being you know fully enumerated that would be by all historical standards and certainly these standards of the professionals at the Census Bureau not as successful a count, not a complete and accurate count so that would be a major kind of defeat, institutional defeat for the Census Bureau.

HICE:

Okay. So we have got let's say 20 days or so remaining for the field operations right now. What are the biggest challenges on this final stretch for world districts? I mean obviously Internet connectivity is I would think somewhat of a problem but what are the biggest challenges that you are facing as we approach this deadline?

MIHM:

I think the biggest challenges sir, our first making sure that we have enough the enumerators out there and that they are working enough hours and that is part of what the incentive pay program, the Census Bureau has put in place to address just to try and get the enumerators to work more hours. That--that is probably one of the biggest things.

The second thing is obviously having the public cooperate and participate with the Census Bureau. The Census Bureau has continued its--it's community outreach programs because they know in a lot of areas around the country having trusted local voices speak up for the census and talk about the importance of the census as a couple of the witnesses here have done is very important to convincing people to participate in the census and then hopefully touchwood that we don't have other coronavirus spikes, we don't have other weather related events that would certainly derail the Census Bureau if any of that happened.

HICE:

I feel like we're going to make it and I feel--and I'll close with this. You feel like we're going to make the deadline, is that correct?

MIHM:

Well it's--it depends on--you know, and I'm not trying to, you know, to--to parse words here, sir. It's that--you know, to be accurate it's that the Census Bureau will complete a census. It's a question and the risk is of what will be lost. Will we--will it be a less than historically acceptable count in terms of completeness and in terms of accuracy? And that's the big worry that I think everyone faces.

HICE:

I'm sure it is. Thank you.

MIHM:

Thank you, Sir.

HICE:

I yield.

MALONEY:

The gentleman yields back. Congresswoman Norton is now recognized. Congresswoman Norton, you are now recognized.

NORTON:

Thank you very much, Madam Chair, for this important hearing. It means dollars and cents to every district, including my own, the District of Columbia. I have--I want to get a sense of what we're talking about here, Mr. Thompson, when we hear that the time has been cut from five months to three months, exactly what the implications are. Mr. Thompson, could you explain how the Census Bureau develops timelines for data collection and processing so we will understand what this reduction in months means?

THOMPSON:

Certainly, Congresswoman. I'm delighted to respond. So the Census Bureau began their testing program in 2013 and it conducted a number of tests, did a lot of research, understanding the time that was available to conduct the 2020 census. And based on that extensive planning and preparation, they developed a schedule and that schedule allowed for five months of post data collection processing. That--that's basically how it came about.

NORTON:

So this is not--this is certainly not arbitrary timeline. Let me further ask you, Mr. Thompson, in order to process this data on a shortened timeline, it-- will the Bureau how to alter or eliminate some of the processes it has developed to ensure a complete and accurate census?

For example, in a court suit filed, the Census Bureau said it plans to cut 21 days of the schedule by compressing the time allotted. And here I am quoting. "Subject for--subject matter expert review and software remediation." I wonder if you could translate that for us. Does this change increase the risks of inaccurate or incomplete data count? If so, why?

THOMPSON:

Congresswoman, that's also a good point. So what that operation entails is for the Census Bureau subject matter experts to look at preliminary tabulations of census data and compare them with the--with well-known benchmarks and understand what--what's causing differences. And then they have to go back and if they find differences and understand is a computer problem or is this a problem with the census counts or what.

So--so it's very important that they carry out this operation because that's--that's one of the ways in which they find that there are errors in their computer programming and then they fix those errors. If they don't fix the errors, they could be with us for quite a while.

NORTON:

Here's a here's another change mentioned. And again, I'm asking for your translation. The--the change described in this court suit is that the Census Bureau will eliminate redundant quality control steps. Why does--does this change increase risks of inaccurate or incomplete data? And if so, why?

THOMPSON:

Certainly, Congresswoman. So the Census Bureau on a lot of their operations, including the non-response follow up interviewing and other interviewing, they have--they have quality checks that they build in to make sure that--that the enumerators are doing high-quality work. So if those quality checks are reduced, than that, of course, introduces the prospect that more enumerator fabrication might occur and not be detected and put more error into the system.

NORTON:

And the bottom line, sir, are you concerned that 92 days will not be enough time to ensure that the census is as accurate and as complete as possible?

THOMPSON:

Congresswoman, as I've testified, I'm very concerned about the effect of the truncated schedule on both data collection and post data collection processing on the accuracy and quality of the 2020 census.

NORTON:

thank you, Madam Chair. I yield back.

MALONEY:

The gentle lady yields back. Congressman Jordan, you are now recognized.

JORDAN:

Thank you, Madam Chair. Mr. Von Spakovsky, so two weeks ago on August 28th, Ron Jarmin, deputy director chief operating officer of the United States Census Bureau said, "We will be able to produce a complete and accurate census by the deadline." August 27th 2020, again, two weeks ago, Tim Olson, associate director for Field Operations said, "Yes, we are on track to get this done on time." Same day, August 27th, 2020, Al Fontenot, Associate director for Decennial Census Programs said, "All the indications are that we are on track."

So three professionals running the census and each said they are on track. And yet, chairwoman Maloney says we need an extension, Mr. Raskin says we need an extension, and their four witnesses today say we need an extension. So I just have a simple question, who should I trust, the--the partisan Democrats on this committee and the four witnesses they've asked to come in and testify for the people actually doing the job, the career professionals at the Census Bureau? Who do you think we should trust?

VON SPAKOVSKY:

Well, I think I would go with the professional career senior leadership at the--at the Census Bureau. They are the ones who live planned, implemented, supervised, and directed the entire Census Program and my experience my--experience both as a government employee and elsewhere is that their judgment is the one that ought to be trusted.

JORDAN:

Probably should trust the people doing the job and actually in the field working with the people in the field versus the partisans on--on the committee and the people they've asked to come in and testify. And oh, by the way, I should point out, those three statements made just two weeks ago were part of the Democrats investigation. So this wasn't Republicans going out and soliciting this information. This is Democrats bringing these individuals in under oath and all three of these individuals said we're on track to get the census done on time.

It seems to me that, you know, we've got this hearing, we've got four people coming in who aren't part of the census who have--through aren't doing it, aren't out their day-to-day working with the people who are hearing there saying we need an extension and yet, we have the folks doing the job that say no extension is necessary. In fact, we're going to be--we're going to be done on time.

And we are 86 percent--86 percent of the households have already been counted in the 2020 census now. Different subject, Mr. Von Spakovsky--Spakovsky. And you talked about this in your testimony, is as citizens vote diluted when illegal immigrants are counted in the apportionment number?

VON SPAKOVSKY:

They most certainly are. By including them in the apportionment count, you are devaluing the vote of those particular citizens individually, plus you are cheating particular states out of congressional representation in the House when other states get more representatives because of individuals who, like tourists, aren't supposed to be counted during the census for apportionment purposes.

JORDAN:

Yeah, it's common sense and it also happens to be the Reynolds case, which you cited I think in your opening statement. Is that right?

VON SPAKOVSKY:

That's right. And--and most importantly, the--the Franklin versus Massachusetts case, you know, gives the president some discretion in determining with these Commerce Department and secretary of Commerce, the Census Bureau who should be considered inhabitants of the state. And they made it clearer that having allegiance and other ties to a state is an important consideration.

JORDAN:

And that is exactly that logic, that common sense is--is exactly what's behind the president's July 21st, 2020 apportionment memorandum, where he says count everyone but provide the number of "citizens and legal residents" to the president and use that number for the apportionment of congressional seats. Is that right?

VON SPAKOVSKY:

That--that is absolutely correct.

JORDAN:

Yeah. And--and everyone understands that's how it should work, anyone with common sense. The court decisions understand that. The only people who are against that are Democrats. Isn't that amazing? Democrats want illegals to be part of the count to determine the number of members each state has in the United States House of Representatives.

Now, to me that's frightening, that's that their argument, that's their logic--your lack of logic, I should say. That goes against common sense, goes against the court ruling, goes against the memorandum, goes against what any person you'd go out and talk to on the street would say needs to happen when we're counting the people. Count everyone, but for the purposes of apportionment, we need to know the number of legal residents and citizens in this country. Does that make sense to you, Mr. Von Spakovsky?

VON SPAKOVSKY:

Yes, I agree with that 100 percent.

JORDAN:

Mr.--Madam Chair, I yield back.

MALONEY:

The gentleman yields back. Congressman Clay, you are now recognized.

CLAY:

Thank you so much, Madam Chair, for holding this important hearing. Let me say to Director Thompson, so good to see you again. And--and we had a--a great working relationship during the 2010 census. And you and I know that the census is a once in a decade government function enshrined in our Constitution and conducted since 1790. I would hope this would not be the census taken in our nation's long history that will be followed by an asterisk as incomplete or not a full count because of selfish political reason.

Director Thompson, and--and let's be very clear about one thing. The changes to the apportionment and redistricting deadlines was first requested by the Census Bureau and the Trump administration before the Trump administration's sudden reversal. How do we prevent a serious undercount or an incomplete census from occurring at this stage of this process?

THOMPSON:

Thank you, congressman. At--at this point, the Census Bureau simply needs more time to do its data collection and to do its post data collection process. So, for example, the Census Bureau had announced that, as of September 11th, which is tomorrow, they were going to go to what they call closeout in the entire country for the nonresponse follow operation.

And what closeout means is they send out people to get a last resort, last attempt, basic bare information on--on--on households, like maybe they'll just get a count of people in the household or a partial count, or maybe they'll only get that the household is--is occupied. That--that's tomorrow.

And you think there are some area census offices that the Census Bureau is publishing data for that right now are under 50 percent complete with nonresponse follow up, I would think that would be pretty scary to me. So, the Cens--the Census Bureau needs more time to do the data collection, and they certainly need more time to do the data processing.

CLAY:

And--and that is why it's so important that we extended these delivery dates, is that correct?

THOMPSON:

Exactly.

CLAY:

Let--let me go to Mr. Mihm. Mr. Mihm, why was it important for the bureau to delay census operations after the outbreak of the coronavirus?

MIHM:

Well, sir, like--like the rest of the country and certainly like the--the Congress, the--the Census Bureau just had to, in effect, shut down for--you know, nationally and not just in--in local areas. The spiking of the cases meant that it was very difficult to get people on board. This would be the census takers that would be, you know, actually doing the work.

It would be--they were quite certain that they would not be able to get participation from communities or people opening the doors. They had obviously stopped all of their in person partnership programs, and there's only so much you can do over WebEx and Zoom. You know, you--especially the--a partnership program.

So, the Census Bureau concluded that there was just no effective way at the--the peak of the COVID outbreaks, at least at--at that point in time, that they can carry on operations. They went-

-then went through a very disciplined process in June, you know, a very thoughtful one of--of using criteria of which offices would reopen when the based on local health conditions and--and the availability of the--of PPE for--for census takers. And so now, they're--they're open nationally.

CLAY:

Let--let me ask you, Mr. Mihm, on July 8th, 2020, Al Fontenot, the associate director for Decennial Census Programs, referring to the December 20--31st, 2020 deadline stated, and I quote, "We are past the window of being able to get those counts by those dates at this point." Mr. Mihm, do you agree with the bureau's public statement that the bureau is past the time where they can produce complete and accurate census data by their current deadlines?

MIHM:

Sir, I--I know Mr. Fontenot well. I talked to him often, as well as Ms.--Mr. Jarmon (SP) that--that Congressman Jordan referenced. And I have the utmost respect for them. I think it will be an enormous challenge for the Census Bureau to deliver accounts that meet the increasing historical demands or--for accuracy and completeness.

Each census has gotten better than the preceding one in a--in a general sense. And that's been a--a big achievement in an environment in which, you know, obviously society continues to change. Pub--public willingness to participate has--has gone down, yet we're still doing better with--with each census. I think the great worry that--now is whether or not this would be a census that take a step back if the--do the compressed time frames due to COVID-19 and the other challenges that they're running into.

CLAY:

I thank you for your responses. And Madam Chair, I yield back.

MALONEY:

Thank--thank you so much, Representative Clay, for your thoughtful questions. And in line with your questions, without objections, I would like to place into the record this internal document from census professionals that I released along with the other Democratic members last week.

And in it, the professional say they need more time. And in it, they say that this compressed schedule create risks for serious errors and being not--that would not be discovered from the--the data. So, I--I ask this. Without objection, it's in the record.

I now recognize Congressman Grothman.

GROTHMAN:

Thank you very much. Can you hear me?

MALONEY:

Yes, we can. Thank you.

GROTHMAN:

Very good. I--I got a couple of questions here for Mr. Von Spakovsky, kind of a follow up on what my colleague, Jim Jordan, had to say. It--it's apparent that one of the reasons people want to extend this, and is this what you get from the hearing, is they--they want to find more people. And particularly, it seems they want to find more illegal immigrants. Do you--you kind of get that sense here?

VON SPAKOVSKY:

Well, I don't know about that. I mean, I do--I do--look, just like everybody else, I do want an accurate count. But I think it's very important that aliens who are here illegally not be included in apportionment, that they not be included in redistricting, and that we know the number of noncitizens in order to be able to effectively enforce Section 2 of the Voting Rights Act, which is a very important statute.

GROTHMAN:

I--I think it's interesting in--in what we've seen so far here in this hearing, apparently people who want to extend it feel that there are people out there who haven't been counted. And I don't know how you can avoid being counted because it's so difficult. But do you think one of the problems we have as we let this thing drag on is you can have people double counted as they move about the country?

VON SPAKOVSKY:

Well, that's always been a problem with the census. And--and I would bring up history here. It--look, over the past few decades, every single census we have had, there have been huge cries and criticism saying, oh, it's not going to be accurate. People are going to be undercounted. And in every single one of those, that has proven not to be true.

GROTHMAN:

Okay. I--I'm thinking of over counting college students, people who moved, that sort of thing. Do you think that's in particular--particular where you'd find over counting?

VON SPAKOVSKY:

Yes, particularly because, as you know, so many students have been--have left their colleges and gone home. And many of them were still there on April 1st, and now may not be there and may get double counted.

GROTHMAN:

Is it possible that if you begin to look for people in October, September that you're also going to get people who are already counted in August, just people who in general have moved since that time?

VON SPAKOVSKY:

Most certainly, given the very high mobility of the American populous.

GROTHMAN:

Right. Do you think people who shouldn't be here at all are particularly mobile, or there's a particular danger that they could be over counted, at least I am under the impression a lot of times they do. Seasonal work, they may want to obey the law and leave the country or whatever. Do you think that's a particular problem with people who aren't here legally?

VON SPAKOVSKY:

Yes. I think that is a very big risk in particular because I think people tend to--aliens tend to move or leave when they see in the press and elsewhere that there are vigorous enforcement efforts going on by the Department of Homeland Security in their particular area.

GROTHMAN:

So in other words if we are worried about double counting and we begin to allow the census counting to go on say into October do you think disproportionately we will be over accounting illegal immigrants?

VON SPAKOVSKY:

You know I don't have enough--

GROTHMAN:

(INAUDIBLE) counting--

VON SPAKOVSKY:

--that question but I think--I think that is a substantial risk.

GROTHMAN:

Okay. And could you explain again the effect of counting illegal immigrants what effect this will have on individual states who may be even aggressively trying to recruit a legal immigrants, states that have a disproportionately high number California being an obvious one?

VON SPAKOVSKY:

Yeah, what it means is that states that incentivize illegal aliens to come to their states particularly by putting in sanctuary policies are using those populations to get more congressional seats and they are entitled to at the--at the cost of other states in the country that lose congressional seats which they ought to have because they don't have those large numbers of illegal aliens in their state so it distorts what should be the equitable political distribution of the U.S. House of Representatives.

GROTHMAN:

Okay and you--you feel I suppose that is true. Does it even create a perverse incentive for states to (INAUDIBLE) sanctuary policies to say we want to foil our immigration laws because we want more illegal people in our state. That is what it is encouraging?

VON SPAKOVSKY:

Yes, I think that is exactly what it does.

GROTHMAN:

Wow. That is really something. Well, thank you I'll--I'll yield the remainder of my time if I have any.

MALONEY:

Thank you. The gentleman yields back. Congressman Lynch, you are now recognized.

LYNCH:

Thank you, Madam Chair. I want to thank you for having this hearing and I appreciate the contribution of our witnesses. May I gently suggest (INAUDIBLE) hearing questioning you know we were into this hearing for an hour and 15 minutes before we got to questions.

I know we had some technical difficulty, things like that but if I could gently suggest that we might be able to streamline these a little bit. That might be helpful. I know how hard our staff works but that's a long time because now I'm going to be an hour late for my next hearing and I know there are a number of members on the committee in that position.

So just if we could kind of figure that out especially where we are starting to get into the normal flow of business again it will be problematic.

To save me a little bit of time and everybody else let me just associate myself with the articulate remarks of the gentleman from Maryland Mr. Raskin in his opening statement, his summation. I agree wholeheartedly with the concerns that he has raised and I appreciate the--the energy and the intellect that he has put into those remarks. I would like to just take a small piece of the problem and try to get at that in my question.

So I--I--with Congresswoman (INAUDIBLE) represent the Boston area. We both represent the City of Boston. We have got a huge number of universities and colleges here in the greater Boston area, Cambridge and all of that and my question is about and maybe--Ms. Carless you sound to be--you--you sound like you are the person that might be best able to answer this question.

But we have not been able to identify up to now students who--who are normally counted so these are not students on campus but the students who live which is the great majority live off-campus. We have not been able to get them in the count and part of that is we are not getting the full cooperation because of the pandemic that we normally get from the universities and also the curtailment of going out and getting these nonresponsive follow-ups, these NRFUs--in the tally.

So are there any thoughts that you have regarding how we might be better and I am sure look, there are a lot of college towns all across this country that are having the same problem and for that particular difficulty is there--do you have any recommendations about you know how we might best count that demographic?

Mr. Mihm from GAO you know we have also heard from the inspector general of the GAO concerns that off-campus college students are being undercounted. That is what we are finding in our area so I would just ask the witnesses if they might be able to help us out on that. What is a better way to get those people in the tally?

CARLESS:

Thank you for that question. I do think that one thing that could be done is a more concentrated effort on actually reaching out to colleges and universities and their administration to not only make sure that they are consistently sharing the message of the importance of the census for off-campus students and make sure that they are being counted but also providing them with quick and easy tools because they have a lot of things going on and if you give them the message to disseminate so that they can tweet it out to their students or you know email, whatever way they communicate I think that would make a world of difference but that has not been done to date as far as I know.

LYNCH:

Great. Mr. Mihm, have you got anything you want to add?

MIHM:

Yes, sir very--just very briefly there is actually two issues here as you are alluding to. One is the enumeration of students that are living on campus housing. There is about 40,000 of those nationally. The Bureau was able to reach out to universities and get what they feel is at least an okay count on that of about 82, 81.5 percent or so response for those.

The bigger challenge as you were mentioning is those that are living off campus yet still attending the University the Census Bureau doesn't have access necessarily to all of that information though what they did do is they--the Census Bureau director in the middle of June sent out a letter to about 1350 different universities saying hey, can you help us with some of the count here and they--they got some good response but they also said it had some uneven response.

They had quite a number of the universities wrote back and said we are not going to participate or cooperate as it were with helping you get a count of students that are living off campus and so to the extent we could kind of urge those universities to participate that would be very helpful.

Also the issue of course you know as has been discussed throughout the hearing is that it's--it's one thing if census date takes place when students are residing on their campus it is at least an easier kind of intellectual point to say this is their usual residence. If they are home and have been home for several weeks and are still home this is where you know where they would live outside the university.

It gets tougher to--you--you can see where there would be that--they would be missed in their university towns where if that is where they would normally attend and is their usual residence and where they should indeed be counted.

LYNCH:

Okay. My time is exhausted. I do want to say that it is wonderful to see Mr. DeSaulnier on--on the call and you look great there, Mark. And I yield back. Thank you.

MALONEY:

The gentleman yields back. Thank you for your remarks and we now recognize Representative Gosar. You are now recognized. Congressman Gosar, you are now recognized. He doesn't understand. I believe he is trying to unmute. Mr. Gosar, would you like help on muting? Okay.

GOSAR:

Sorry about that. I am traveling. Did that hit? Can you hear me now?

MALONEY:

Yes, we can hear you now.

GOSAR:

Thank you very much, Chairwoman. Census data reported that as of yesterday 80.8 percent of Arizona is enumerated. This is well below the majority of states. In just a few days prior to this report the Census Bureau stated that Arizona was just 76.2 percent enumerated.

This appears to be a very productive spike in a short number of days. Mr. Mihm do you think the Census Bureau's decision to move enumerators from high response areas to the southwest and southeast which is where a large portion of the nonresponsive follow-up is not completed contributed to this increase in my state?

MIHM:

I--I--sir, I am not able to speak specifically to the--the--that particular case. What I can say is more as a general rule the Bureau with each census has moved census takers to areas where they have been particularly, you know, then having problems either recruiting or had a particularly high nonresponse workload. It's not something that they like to do because it's obviously--it can

be costly and--and it's also there can be some data quality concerns. But it is something that's been tried and true as an enumeration technique and has shown itself to be successful. So it very well could be a situation in your case as well.

GOSAR:

Now, with that said, what role has technology played in the self-response rate, which is 5 percent higher than the bureau's goal and the 88.2 percent total enumerated rate?

MIHM:

Yeah, it's--it's been a great advantage to the Census Bureau. And obviously, credit to them for pulling it off. First, in terms of the initial response, the Internet option that many of us availed ourselves of worked and pretty much without a hitch and it was convenient and easy and it--it was very, very helpful to the Bureau, it reduces paper and all the rest. And so that was a big and important improvement.

Likewise, at this time being able to use technology in the enumeration as part of non-response follow-up is proving itself to be quite valuable. There's always, you know a set of kind of technical glitches that take place. But overall, that's proving to be very valuable as well.

So I think one of the stories notwithstanding some--some continuing concerns with the use of technology, but when this is over in terms of the fundamental bedrock enumeration is the--the use of technology is going to be a generally positive story.

GOSAR:

So it really would support broadband throughout the country?

MIHM:

It's--I'll take your point, Sir. It's not my brief, sorry.

GOSAR:

Sounds good. Mr. Mihm, in August, your strategic issues team released a report outlining concerns with the count. Given the large enumerated rates, operational changes made by the Bureau, help in staff layoffs and statements of confidence and accuracy meeting the September 30th deadline made by Mr. Fontenot, Olson (SP), and Jarmin, all senior level non-political census officials, do you still stand by your teams report?

MIHM:

Yes, sir. And as I mentioned is that I--I know Mr. Fontenot, I know Mr. Jarmin well and I--I have deep respect with them and it's an important data point. Their sense of confidence and their ability to produce the counts. Our concern is that the risks that are entailed in that. And does that mean that they--they will not present a count at the end? Of course not. I think they will.

What the challenge will be is--is the--is it going to be a better account than we have gotten in the past because each census has generally gotten better on that and will it need meet kind of the standards and the needs of the country for--for an accurate and complete count? That's the risk that's entailed in that. The risk also means that they could very easily do it. But there--it's going to be an enormous challenge for the Bureau.

GOSAR:

So one follow-up in regards to counting Native American tribe--tribal members, which are very large in my state. Like--like Navajo Nation, which was locked down, it wasn't easier to get a hold of people when they were in lockdown or was it harder?

MIHM:

It's--on the whole, it's--it's--you know, the--the issue with--with enumeration in--in tribal communities has been historical challenge for the Census Bureau. Some of it is--is dealing just with recruitment problems and the initial response rates are have tended to be quite low. And in fact, one of the areas that I know the Census Bureau is most concerned about is Window Rock in Navajo Nation. That has both low response that is a high workload for the follow-up as well as experiencing recruiting problems.

And so there's--there's traditionally been problems there. We--we heard the governor talk earlier about just the enormous challenges of--of how COVID has just been devastating in many of the tribal communities. That certainly makes things even more difficult both for those communities, obviously, and for the Census Bureau.

GOSAR:

Thank you very much and I yield back.

RASKIN:

We're going to recognize the gentleman from Virginia, Mr. Connolly for his five minutes.

CONNOLLY:

Thank you very much, Mr. Chairman, and I thank you and Carolyn Maloney for your diligence on this subject. And let me also welcome Mark DeSaulnier back. We're so glad to have you back. You've been in our prayers and we're glad to see you. Looking great.

Let me begin, Mr. Chairman, by saying that I find Mr. Jordan and--and Mr. Von Spakovsky's references to human beings as illegal aliens as offensive. I don't believe that kind of language ought to be part of our discourse in this committee.

It demeans human beings and makes them things rather than the human persons they in fact are whose status may be up in the air. There may be lots of reasons why somebody is undocumented in the United States, and that's always been the history case historically. Mr.--Mr. Mihm and Mr. Thompson, what does the constitution say with respect to who gets counted in the census? Mr. Thompson--Director Thompson.

THOMPSON:

Well, thank you, congressman. So first, let me state that I am not a constitutional lawyer. However, the advice that I got when I was at the Census Bureau as a career person and as director from some very good attorneys was that the purpose of the census was to count everyone residing in the United States, regardless of immigration status.

CONNOLLY:

Well, you don't need to be a constitutional lawyer to read the words. The words are all persons. Is that not correct?

THOMPSON:

Yes.

CONNOLLY:

Yes. So it doesn't say except for those who lack proper papers, is that correct?

THOMPSON:

Yes.

CONNOLLY:

And has it been the practice of the Census Bureau to in fact comply with the words of the constitution and count all persons to the best of their ability?

THOMPSON:

Throughout my long experience with the Census Bureau, they always counted--did their best to count everyone in the United States.

CONNOLLY:

And--and you know, it's also interesting to hear Mr. Von Spakovsky talk about diluting the votes of those who are legally in the United States. And I'm here to glad to hear that commitment from him and Mr. Jordan because I look forward to their joining us in opposing voter suppression that dilutes votes and purging voting rolls and making it harder to vote and eliminating early voting or curtailing it or changing precincts arbitrarily to make it hard for especially people in minority communities to vote. Those kinds of voter suppression issues are to be condemned and I'm certainly looking forward to their support in that condemnation.

Mr.--Mr. Mihm and Mr. Thompson, it has been the practice of the Census Bureau to try to get data early to states that undertake redistricting early. And two that come to mind are my home State of Virginia and the State of New Jersey because we have off-off year elections next year.

So we actually have legislative elections in 2021 and it's been the practice historically of the Census Bureau to try to get our data early so that we can undertake our redistricting appropriately in anticipation of those elections next year.

How it might the actions being proposed now in terms of curtailing the census or wrapping it up early, how might that affect the ability of the Census Bureau to get accurate data to those two states?

MIHM:

Mr. Connolly, thank you. The--as a resident of Virginia, obviously, this is an issue, you know, a very important issue for me personally. We have asked the Census Bureau that and we understand that they are due to come out with a plan within the next couple of days as to how they are going to be able to--to deliver the apportionment--or rather the redistricting data is that one of the--the tradeoffs that they're making in order to get the--due to the cutting of the amount of time that's available for processing, to get the apportionment data is they're focusing only on apportionment or almost exclusively on important data at this point.

There are other data, obviously, that's important for redistricting and, you know, obviously needed in a much lower geographic level. That's something in which they said that they're going to be providing a plan within the next few days and I understand on that that's something that we're going to be looking for. And obviously we would keep you and your office and the committee informed on any observation that we have on that plan.

CONNOLLY:

I do think it's important, in my final three seconds, to underscore that there are some states that are more effectively affected immediately than others in Virginia and New Jersey (INAUDIBLE). So thank you so much for that observation and I yield back, Mr. Chairman.

RASKIN:

Thank you very much, Mr. Connolly. We will now recognize Mr. Palmer for his five minutes of questioning. Mr. Palmer.

PALMER:

Thank you. And I too welcome Mr. DeSaulnier back to the committee. I have been greatly concerned for him. One of the things I wanted to point out is we've started talking about the unauthorized population.

The unauthorized immigrant population, according to Pew, has stabilized over the last decade or so and--and--but there is--I think they also found a consistent amount of transiency, that is people coming in and--and--and out of--of the country, staying for a short amount of time and then returning to their countries of origin. Pew reports that to be about 20 percent or less--are here less than five years, and almost 40 percent are here less than 10 years. And--and that doesn't include noncitizens who are here legally short-term, such as college students and--and guest workers.

So, I have some questions here that I--I'd like to ask to Governor Lewis. Should--actually, I'll start with Ms. Carless. Should we allow noncitizens to run for office?

CARLESS:

The Constitution would not allow noncitizens to run for office.

PALMER:

I--I know what the law is. I asked you--and these are yes or no questions. Should we allow noncitizens to run for office?

CARLESS:

No, we should uphold the Constitution.

PALMER:

Okay. Should we allow noncitizens to make campaign contributions to political candidates?

CARLESS:

No.

PALMER:

Should we allow noncitizens to vote in our elections?

CARLESS:

No.

PALMER:

Okay. Governor Lewis, the same questions. Should we allow noncitizens to run for office? Is he still with us?

LEWIS:

I--I am. Thank you, congressman. And--and as--as a Native American leader, we know. We have a history of not being considered citizens, even though we were the first--

PALMER:

--Well, sir--

LEWIS:

--Americans--

PALMER:

--I--I'm just asking you a--a straightforward yes or no question. Should noncitizens be allowed to vote?

LEWIS:

I would defer--

PALMER:

--Should they be allowed to run for office or should they be allowed--

LEWIS:

--Thank you--

PALMER:

--To make campaign contributions?

LEWIS:

I would defer to the Constitution--and--

PALMER:

--Then your answer would be no--

LEWIS:

--And what the Constitution says.

PALMER:

And--and thank you for that.

LEWIS:

Respectively.

PALMER:

I also have Native American heritage as well, so I--I really appreciate you being here.

I'd also ask that to Mr. Thomas. Should we allow--I think everybody's going to say no. Is that--is that fair to say, Mr. Thompson, Mr. Mihm?

THOMPSON:

I think that's a good assumption, congressman. I--I would uphold the Constitution.

PALMER:

Okay. Then let me ask this. If we don't allow them to run for office, if we don't allow them to make campaign contributions, and if we don't allow them to vote, why would we count them for apportionment purposes, particularly considering the transient nature of--of so many of them?

I mean, 20 percent who are here less than five years, that's over 2 million people, and that's not counting the people who are here legally on a short-term basis, like it says, college students and--and guest workers.

So, does it--does it make sense that we would count them for apportionment when it is so many of them won't even be here and--and be so dis--and that would be so disruptive of our system of apportionment that we literally would deny representation to--to citizens who are here legally. Mr. Von Spakovsky, could you respond to that?

VON SPAKOVSKY:

Well, I agree with you. And they should not be included in apportionment. If they can't vote, which I don't believe they should, if they can make campaign contributions, and if they can't run for office, then there's no reason to include them in apportionment.

And I might point out that in fact in 2015 the Congressional Research Service actually did a study saying if apportionment after the 2010 census had been based on citizen population, if they had not included noncitizens, Louisiana, Missouri, Montana, North Carolina, Ohio, Oklahoma, and Virginia would all today have an additional seat in the U.S. House of Representatives. They've been cheated.

PALMER:

Chairman Raskin, I want to--Chairman Raskin, I want to suspend my time to ask how much time I have left because the clock disappeared.

RASKIN:

We're counting 24 seconds, but we'll be liberal with that, as with all things, Mr. Palmer. The floor is yours.

PALMER:

You are always very kind to me, and I am grateful for that. Thanks, sir.

All right. The reason that we don't allow noncitizens to--to participate in our elections is because it could have a deleterious impact on our ability to govern ourselves as a representative republic. That's the reason why we shouldn't count noncitizens for apportionment, because it will have a--a very negative impact on our ability to continue this great experiment in representative government.

And I--again, I thank the chairman for extending my time. Your kindness is noted and appreciated. I yield back.

RASKIN:

Thank you very much, Mr. Palmer, for--for those very interesting questions. And I will now recognize myself for my five minutes of questions.

And Director Thompson, I want to start with you. Some people seem to be a little cavalier, at least to my ears, about losing 3 percent of the population in a census count. How many people is 3 percent of the American population?

THOMPSON:

Well, congressman, right now there's about 340 million, 350 million people in the United States, so 3 percent of that would be millions of people.

RASKIN:

It would be around 10 million, or perhaps over 10 million people, right?

THOMPSON:

Exactly.

RASKIN:

And if you look at our committee, I think 10 million people is more than 16 of the states that are represented on our committee. I just went through--I saw Alabama would be less than that, Arizona, Kentucky, Louisiana, North Dakota, South Dakota, South Carolina, Tennessee, Texas, West Virginia, Wisconsin, my home State of Maryland, the District of Columbia, and on and on.

Well, what do--so, 3 percent may not seem like a big deal, although of course we know lots of elections are settled by 3 percent of the vote. Well, what do you think about the proposition that a group of Americans the size of these states, and in some cases combinations of them--10 million is more than the combined populations of Tennessee, West Virginia, and North Dakota. Well, what do you make of the proposition that that's no big deal and we should just go ahead and blow the whistle and stop counting and run the risk that millions of people might not be counted?

THOMPSON:

So, I--I--I think that would be really, really bad to--to miss that many people, especially the national level. And I would say that it wouldn't be the same in every state. It would vary considerably. I would think the issues right now that would be at greatest risk of those issues where--

RASKIN:

--It could hit every state, right--

THOMPSON:

--the--

RASKIN:

--it could hit all of our states.

THOMPSON:

I--it--it would affect every state, some more than others. In fact, in those states right now that have very low completion rates for nonresponse follow-up, I think they're at--they're at--they're at great risk right now.

RASKIN:

All right. Well, let me follow up with this, because I feel like we've been kind of speaking past(PH) each other today, the way we sometimes do. But the--the--most of the experts that we've heard from, as well as document that the--the chair referred to that was released by the Census Bureau from August 3rd, say that the Census Bureau needs more time to do an accurate account, and yet our colleagues on the other side of the aisle come back and say that we shouldn't be counting undocumented aliens.

Isn't that basically changing the subject? Regardless of where you stand as a matter of constitutional law or statutory law on their argument that, in future censuses, undocumented aliens shouldn't be counted for the first time in American history, regardless of where you stand on that, isn't that an irrelevant distraction from what we're really here to talk about today, which is whether the Census Bureau needs more time to count millions of Americans who may be lost if we don't give them an extension?

THOMPSON:

I--I think that's the interpretation you are making, congressman.

RASKIN:

Well, it's definitely the interpretation making. But I guess what I'm saying is, is there anything logically connected between the two? I mean, you know, I could go to some of the other witnesses who--who might feel free to opine on that. I don't know. Well, let--let--let me continue.

Let's see. The--the Census Bureau document that was referenced by the--Chairwoman Maloney was dated August 3rd. And census officials warned Commerce Secretary Wilbur Ross that a push to deliver census data before December 31st would cause data products to be "negatively

impacted." They said that the loss of activities eliminated under the new schedule would reduce accuracy. It would create risk for serious errors not being discovered in the data and so on.

Mr. Mihm, let me come to you. Just GAO's independent analysis also show that the compressed procedures under the new schedule in the midst of this pandemic would reduce accuracy and create a risk of serious errors not being discovered?

MIHM:

Yes, sir is that we--we are concerned both from the pressure that is put to get out of the field you know the reduction by one month from the end of October to the end of September and the reduction of about from 150 days to about 90 days in order to do the processing. Both of those, either one of them would be a very difficult lift, the two of them together could be an extraordinary one for the Census Bureau.

One other point just very quickly serve is that you were mentioning about the 10 million is that obviously the salient point there is that is not evenly distributed or would not be evenly distributed across the country.

If it were we could probably--we could probably live with it and census geeks like Mr. Thompson and myself would worry about it but the problem of course is that it is not evenly distributed. It is disproportionate in certain communities and certain localities, geographic and demographic areas and so that is the big challenge in terms of the distribution of federal funds, in terms of the appropriate distribution of political power and representation.

RASKIN:

I got you. We are not going to lose an entire state but we could have a state lose an entire congressional district and it could affect state legislative redistricting and of course the distribution of money. Let me just ask you director Mihm before I turn it over to Mr. Comer do you agree that--that the contested question about whether people should be counted even if they can't vote like undocumented people or children or prisoners and so on that that question doesn't need to be re-dissolved in order to deal with the analytically distinct question of whether the census bureau needs more time to count all Americans?

MIHM:

The short answer to that is yes sir in the sense that you know our-- obviously as a support agency to the Congress we don't have a position on the policy question about you know who should be included or included--

RASKIN:

It is a separate issue.

MIHM:

That is a separate issue for us. Our concern is the operational implications.

RASKIN:

I appreciate that. I am going to--

MALONEY:

The gentlemen's time has expired. The gentleman's time has expired.

RASKIN:

I am going to recognize Mr. Comer for his five minutes of questioning.

MALONEY:

Okay. Congress--Congressman Rouda is now recognized. Mr.--Mr. Comer wanted to defer to Mr. Rouda, to another Democratic witness so, Mr. Rouda, you are now recognized.

ROUDA:

Thank you, Madam Chairwoman. Can you confirm you can hear me?

MALONEY:

We can hear you.

ROUDA:

Great. Thank you very much. As we know the impacts of the census are wide reaching, census data affects congressional representation in the allocation of trillions of dollars in federal funding.

Earlier this year we learned the damage that can be done to our communities by just a 1 percent undercount. In fact in orange county in my district we learned that there is a 1 percent undercount of low income students schools could lose over a quarter million dollars in federal funding, the equivalent of all of the textbooks that nearly 1000 students would need in an entire school year.

And a 1 percent undercount of low income workers in my district means a loss of approximately \$160,000 in federal funding for job-training programs, apprenticeship programs and career counseling. Clearly rushing to complete the census and eliminating crucial data and quality control measures could have real consequences for students and workers across the country.

It's not just the distribution of federal funds that could be impacted by an incorrect or incomplete 2020 census. The area that has the most devastating affects is on the American businesses and the U.S. business community has come out strongly in favor of extending the statutory deadline for completing this census.

In an August letter 87 business groups and companies wrote that population and demographic data from the census is quote vital to businesses across America to promote economic development, identify potential customers and create jobs. They went on to say that rushing the census would quote drastically undermined the quality of the data that we rely upon so dearly and harm every state, every business and every industry in the country relying upon resulting data. Madam Chairwoman I asked unanimous consent to have this letter into the record, to enter it into the record.

MALONEY:

Without objection.

ROUDA:

Thank you. Mr. Thompson, this letter from members of the business community specifically mentions the American community survey and the economic census as to Census Bureau programs on which it quote directly depends. Is it accurate that the data from the decennial census is used for both of these programs?

THOMPSON:

Well, the data from the decennial census is used somewhat for the economic census but it is critical for the American community survey to be fully representative. The census data are carried forward each year in the form of population estimates and those data are used to make sure that the American community survey is very representative.

So if these census data were to have a 10 percent undercount in it for example that would be carried forward and that 10 percent underrepresentation would be reflected in the American community survey for 10 years.

ROUDA:

So what you are basically saying is if we don't get this correct businesses across the United States, big businesses, medium-size businesses, small businesses who relied on the quality of this data being correct would be making business decisions that could be wrong because the data is wrong which could cost cities and states millions and millions of dollars in tax revenue. In addition it could put these companies that risk of making poor decisions. Is that correct?

THOMPSON:

That--that is correct, congressman.

ROUDA:

And that is why Chambers of commerce from across the country including the California Chamber of Commerce, the Texas Chamber of Commerce, the West Virginia Chamber of Commerce, they Minnesota Chamber of Commerce and commerce is all in between across our great country join this letter to express their concerns about a rushed and inaccurate census. Governor Lewis and Ms. Carless would it be fair to say that a rushed census stands to have a negative impact on businesses in your communities? Governor Lewis, would you like to go first?

LEWIS:

This is Governor Lewis. Yes, definitely. For tribes and for the Gila River Indian Community we rely on our businesses for 75 percent of our revenue and that was especially critical as we were moving through the pandemic. This would have a devastating effect on--on the nation building of economy that we--that we are trying to maintain through this pandemic and of course the numbers are going to be for a decade and this would definitely have--it would have a devastating effect not only to the Gila River Indian Community but to tribes across Indian country.

ROUDA:

Thank you. And Ms. Carless?

CARLESS:

Thank you. I would cosign with the other witness. It would have a devastating effect on North Carolina as well. Our business community definitely relies on accurate census data in regards to where to place factories or as how to plan for growth and jobs in our community so it would have a devastating impact.

ROUDA:

Well, thank you very much. This is just another are manufactured to make by this administration and I yield back.

MALONEY:

The gentleman yields back. Also, with Representative Comer's request, I'm going to another Democratic representative. Debbie Wasserman Schultz you are now recognized. Please unmute yourself. Okay, she is working on it.

WASSERMAN SCHULTZ:

Thank you, Madam Chair, and I'm sorry that wasn't the problem. I (INAUDIBLE) so (INAUDIBLE)--okay. Thank you so much. In Florida we--we have faced an uphill battle to counteract the trump administration's effort to (INAUDIBLE) minority and immigrant communities.

The most recent figures available Florida ranks 43rd of among states in the percent of the population that has been enumerated. The self response rates in South Florida communities that I represent are behind where they were in 2010.

We are at serious risk of an undercount of (INAUDIBLE) for rural, Black, and immigrant communities the very Floridians that are most in need of political representation and federal dollars especially in the aftermath of the COVID-19 pandemic.

Mr. Mihm in its August report the GAO raised concerns about the risk created and late design changes to the 2020 census. In particular, the report states and I quote we have previously reported that late design changes can introduce new risk, delays the resulting compressed time frames, the implementation of untested procedures and continuing challenges such as COVID-19 that escalate census cost and undermine the overall quality of the count.

Mr. Mihm in your view was the decision in early August to cut a month out of field operations and two months out of data processing a quote late design change?

MIHM:

Yes, ma'am.

WASSERMAN SCHULTZ:

Okay. And what are some of the risk that arise out of the Census Bureau making these schedule cuts in August?

MIHM:

I think there are actually two of them. One is that certainly the schedule compression, the reduction in fieldwork by one month and the reduction over 60 days in terms of the processing at the backend to make sure that there are no errors or problems with the data that could be corrected before the apportionment counts go out. So those were the two major areas that we expressed concern.

WASSERMAN SCHULTZ:

Okay. By contrast, Mr. Mihm, I want to ask about why Congressional action (INAUDIBLE) extend the statutory deadline as a different (INAUDIBLE) consider giving the Census Bureau an extension to finish field operations and data processing the type of "late design change" that the GAO has warned about?

MIHM:

I'm sorry, ma'am. I regret I didn't hear the first part of your question.

WASSERMAN SCHULTZ:

Okay. What I said was by contrast, I want to ask why congressional action to extend the statutory deadlines is a different type of change. Do you (INAUDIBLE) giving extension (INAUDIBLE) design change that the GAO has warned about?

MIHM:

Well certainly, the--the--you know, the Census Bureau has a--has told us that, you know, that to the extent that they would get additional time or that--that was certainly the plan that they had been operating on up until the end of July, the very first part of August that--that they would have an additional four months.

That would allow them to be into the field through the end of October as they would plan. It would allow them to begin or have the processing running to January yes, again, as they had planned on that.

WASSERMAN SCHULTZ:

Just to clarify what I mean, it sounds like your more detailed answer indicates no. It is not (INAUDIBLE) by a late (INAUDIBLE) is that right?

MIHM:

Well, the late design change is the ones that cause concern are those that, you know, end up compressing the time or that introduce new and untested procedures. Obviously, to the extent that they have some more time and that would give them an opportunity to--to go through the data, to have additional time in the field, and that had been the plan that the Census Bureau had been operating under for--for a number of months.

WASSERMAN SCHULTZ:

Thank you. Mr. Thompson, you (INAUDIBLE) 2020 census. Can you (INAUDIBLE)

THOMPSON:

I'm sorry, congressman. I didn't catch what you--congresswoman, I didn't catch what you said.

WASSERMAN SCHULTZ:

Okay (INAUDIBLE)

MALONEY:

We're having--we're having technical difficulties. Debbie, we can't even hear you. You're going in and out. So I think the gentlewoman's time has expired. Congresswoman Miller, you are now recognized. Congresswoman Miller.

MILLER:

Muted now?

MALONEY:

We can hear you.

MILLER:

Can you hear me?

MALONEY:

Yes, we can.

MILLER:

Good because there been technical issues as well.

MALONEY:

Yeah, a lot.

MILLER:

Thank you, Chairwoman Maloney and Ranking Member Comer and all of you witnesses for being here today to discuss the census. As the census is only a few months from being legally required to be completed, my district could have been a representation of how difficult it can be to get an accurate account.

Four of my 18 counties in the district had 100 percent of the population living in hard to count neighborhoods. I've spent the last two years visiting each of these counties and I can tell you from first-hand experience how truly rural they are. West Virginia is one of the states that is a success story for the Census Bureau and their non-response follow up operation.

After having one of the lowest at self-responses rates in the country, West Virginia has had over 97 percent of all households enumerated ranking second among all the states with 21 days left to finish the enumerate--enumeration, the census workers in my states are doing a fantastic job and I applaud the Census Bureau for diligently completing this important duty in a particularly difficult area to count.

However, instead of giving the Census Bureau the time needed to implement (INAUDIBLE) strategies, this committee seems to have spent our hearings attacking our duly elected president

and his constitutional and lawful actions to protect the census, our elections, and accurately apportioning congressional seats. And--and it would directly affect me. American citizens deserve fair and accurate representation in Congress and it is the duty of the federal government to ensure apportionment is completed correctly.

Counting people living in the United States illegally in apportionment is an attack on our democratic institution and seeks to take away the voice of the American citizens. I strongly support what President Trump has done in trying to protect the sanctity of our congressionally mandated apportionment process and I urge my colleagues to stop hindering the census any further. Mr. Von Spakovsky, why should Americans be concerned about vote dilution?

VON SPAKOVSKY:

Look, vote--vote dilution is something that all Americans should be concerned about. Almost all of the cases filed under the Voting Rights Act under section two of the Voting Rights Act over the last three decades, particularly when it comes to redistricting have been vote dilution cases. We don't want the votes of individual Americans, no matter what their race or ethnic background from being diluted and devalued and--and to have--to be less of a value than that of other voters.

But that's exactly what happens when you include non-citizens, when you include aliens not only in the apportionment process, but also in the redistricting process. And this is particularly true also you could--you could see the importance of this in the lawsuits that have been filed, as I've said before, by both Republican and Democratic Justice Department to enforce section two of the Voting Rights Act.

When they are coming up with a remedy, which often is a majority-minority district, one in which minority voters are actually majority of the voters, they--they try to use citizen voting age population because otherwise, they're not going to be able to put in an effective revenue remedy and that's why it is extremely important that the population count, yes, be accurate, but that we also have account of the citizens and non-citizens in the country.

MILLER:

Well, how does the president's memorandum on apportionment mitigate the damage of vote dilution?

VON SPAKOVSKY:

Well you know, he's issued two memorandums. One directing the entire executive branch to forward all records that they have on citizenship status to the Census Bureau. And second, do not include--it's not that we're not going to count aliens who are in this country illegally, but they should not be included in the apportionment process.

And as I said, that is within statutory authority, it's within the precedent set by the Supreme Court. And if I may just say very quickly in response to an earlier comment, the term illegal alien is the correct legal term. That is a term used in federal immigration law and it is a term used in U.S. Supreme Court decisions.

MILLER:

What issues do you see arising because this administration was blocked from asking the constitutional citizens citizenship question on this year's census?

VON SPAKOVSKY:

Well look, the big issue is will the records produced by the executive branch produce enough information to give us an accurate count of the non-citizens in that country? From everything I've seen, I think the answer to that is yes. It's amazing how much data and information the federal government has on the American population already in individual citizens and non-citizens and I think the initial estimate was they would have information on citizenship status on at least 90 percent of the population and they've apparently been working to get that as close to 100 percent as possible.

MILLER:

Okay, thank you. I yield back my time.

MALONEY:

The gentle lady yields back. Congressman Sarbanes, you are now recognized.

SARBANES:

Thank you very much, Madam Chair. Can you hear me?

MALONEY:

Yes, we can.

SARBANES:

Appreciate the hearing. Obviously, a number of us, as you can tell, or alarmed at this prospect of shortening the time for the non-response follow up from the end of October to the end of September and also the transmission--the collection and transmission of the apportionment data where--where we and the Trump administration in its original posture felt that extending those deadlines to the end of April and the end of July respectively made a lot more sense.

So here's the question. Help me understand this, Mr. Thompson, and I may go to Mr. Mihm as well. But what is the downside of keeping the collection or the response effort underway through the end of October and what is the downside or risk associated with the extension in terms of the apportionment data being collected and analyzed in and transmitted at those later dates in 2021? Because I--I haven't heard anybody point to a significant risk or downside or negative to--to allowing for the non-response follow-up to continue through the end of October or to allow the apportionment data to be transmitted at those later dates. So, Mr. Thompson, do you see any significant negatives associated with that?

THOMPSON:

Thank you, congressman. No, I--I don't see any negatives. That, in fact, is the--the initial plan that the Census Bureau career staff had developed in the face of dealing with the COVID-19 pandemic, so it would be implementing their plan.

SARBANES:

And Mr. Mihm, do you see any significant negatives with extending that--those dates?

MIHM:

I agree, congressman. I agree with Mr. Thompson that that had been the Bureau's plan, to expand the--to extend the dates, you know, those four months and--and had been behind the--and the request for legislative relief on that. The only, as it were, downside, or at least something that we've urged the bureau to make sure that they consider and do evaluations on is the notion of recall bias.

Obviously, the farther you get away from Census Day, the problems of memory and recollection about where people were may have been residing and who else was in the household become an issue for them. We just believe that that ought to be looked into. But nevertheless, as--as Mr. Thompson said, the--the bureau's plan was to have that additional time in order to--to--and that was, on balance, the appropriate way to go that they had concluded.

SARBANES:

Well, in the original timeline in terms of collecting the data having the questionnaires responded to was the end of October. So, it was certainly within the window of what was considered needed from inaccuracy standpoint.

THOMPSON:

Yes, sir.

SARBANES:

The move has been (INAUDIBLE) the end of October to the end of September, correct?

THOMPSON:

Yes, sir. Yes, sir.

SARBANES:

Right. So, if you look at the ledger here, on the--on the side of the ledger that says downsides and risks associated with carrying the follow-up effort through to the end of October and making sure that the apportionment data goes according to that more extended deadline, under that column in terms of risks and downsides to that approach, there's nothing in that column.

In the other column in terms of risks and negatives and challenges posed by trying to move these deadlines up in a significant way, you have a whole litany of things that, Mr. Thompson, you have detailed. And Mr. Mihm, you have detailed some of those as well. So, it--it's not even a close call here in terms of how we should be handling it. And it's clearly a call that the--the administration recognized itself when it initially asked for that extension in terms of the apportionment data.

The other thing I want to point out is sometimes censuses are conducted on the cusp of a presidential election and sometimes they are not. And this (INAUDIBLE) at the moment of a presidential election. And whatever you have that, the day after the election, regardless of whether in this case the incumbent stays in or there's a new president coming in, there's always a lot of change over a personnel because people who have been there for four years decide to move on, etc.

It strikes me that this is the worst time to be taking time and flexibility away from the Census Bureau in view of that particular dynamic that you could possibly choose.

And so, for all those reasons, we need to keep that deadline for the--the response follow-up. We get--we need to have that extended through the end of October and we need the collection of the

apportionment data and its transmission to be extended into 2021, which is what we're trying to do to make sure that the census is conducted in a fair and accurate way. And with that, I yield back my time.

MALONEY:

Thank you for your question. Congressman Comer, you are now recognized.

COMER:

Thank you, Madam Chair. And my questions will be all referred to Mr. Spakovsky. First, I want to thank you for testifying today. You're an expert on constitutional and voting rights law. And I also want to emphasize the point I made in my opening statement.

Career Census Bureau staff have told the committee in transcribed briefings that, as of now, the 2020 census can be accurately completed by September 30th. These career staff are moving heaven and earth to ensure an accurate census. I wish the hearing today supported the effort of the hard-working women and men at the Census Bureau, but that's not the purpose of this hearing.

The hearing today is a coordinated assault on the 2020 census from the Democrats and their left-wing allies who are suing the administration. Sir, this weekend a liberal judge in Northern California issued a temporary injunction preventing the administration from executing a complete census count by September 30th. Are you familiar with this injunction?

VON SPAKOVSKY:

I am.

COMER:

Do you believe, given the current circumstances, a nationwide injunction is merited?

VON SPAKOVSKY:

I--I do not. In fact, I think the judge was--was going outside of her very limited jurisdiction in her particular district in California.

COMER:

The current statute has strict deadlines for delivering an apportionment count to the president and redistricting files to the states. To my knowledge, Congress has not enacted and the president has not signed any legislation changing the deadlines. What legal basis is there to challenge the current statute when Congress has not acted to change the statutory deadline?

VON SPAKOVSKY:

Well, I don't think there is one. In fact, that's why I think this judge is acting in a way that's not justified by the facts or the law that she has in--in front of her.

COMER:

If this judge issues a longer-term injunction, it will mean the Census Bureau and the judge himself will be violating the law. Is that correct?

VON SPAKOVSKY:

That's right.

COMER:

We've seen a lot of legal interest in the 2020 census, obviously, including a lawsuit against adding a citizenship question to the 2020 census. This case was ultimately decided last year by the Supreme Court. What did the Supreme Court recently rule with regard to the constitutionality of a citizenship question being asked on the questionnaire?

VON SPAKOVSKY:

Look, that--that decision was in--misinterpreted and I think misreported by a lot of the media. It's very important to understand the Supreme Court said that it is both constitutional to have a citizenship question on the census and that the executive branch has the statutory authority to ask a citizenship question.

The only thing that they decided at the end was that they had not gone through the correct procedures under the Administrative Procedure Act to explain why they were adding a citizenship question. I--I think that was an error. But the point is constitutionally and statutorily you can have a citizenship question on the census. In fact, we've had one on there starting in 1820.

COMER:

Well, I think that's a very important point, and that's counter to what several of my colleagues on the other side of the aisle have been saying throughout these census hearings. So, I appreciate you--

VON SPAKOVSKY:

--Right--

COMER:

--Bringing that--bringing that out. Do you believe the Supreme Court ruling on administrative process grounds is plot--problematic?

VON SPAKOVSKY:

Yeah, I--I--I think it's very problematic. In fact, I agree with the dissent written by Clarence Thomas, in which he said that once the majority determined it was both constitutional and statutorily legal, that should have been the end of the analysis. I think he's exactly right about that.

COMER:

One last question. Is it fair to say this decision opens new avenues for legal challenges based on procedural grounds?

VON SPAKOVSKY:

Yeah, I think it does, and I think it's a misinterpretation of--of the APA. And I might just quickly point out, look, the American Community Survey, which the--the--the Census Bureau sent out every year, it currently has a citizenship question on it.

COMER:

Exactly. And--and I--I said my last question. I'm--I'm just going to throw in one more because there have been so many different statements between the Republicans and Democrats on this congressional reapportionment issue, which the--the president supports and I personally support. But sir, is it a fair statement to say that, if persons here illegally are counted towards congressional apportionment, then states that have promoted sanctuary cities would be rewarded with more congressional representation?

VON SPAKOVSKY:

Yes, that--that is clearly the case.

COMER:

Well, that's a big difference--

VON SPAKOVSKY:

--Yes--

COMER:

--In ideology between the Republicans on this committee and the Democrats on this committee. But regardless, I appreciate your testimony here today and thank you again for being here. With that, Madam Chair, I yield back the remainder my time.

MALONEY:

(OFF-MIC) you. The gentleman yields back. Congresswoman Speier, you are now recognized, Jackie Speier.

SPEIER:

Jackie Speier, but thank you, Madam Chair. You know, I think that old adage about not changing the spots on a leopard really applies here. What we have seen by President Trump, from his January 26th recognition that the COVID-19 pandemic was serious and troublesome but refused to make that--

SPEIER:

--apparent to the American people to his efforts to undermine the FDA, the CDC, and the intelligence community and to bend their decision-making to his interest has taken many persons who in professional positions within our various departments and either they become whistleblowers sore they bend to the presidents wishes.

So the fact that on August 3 a memo to Secretary Ross is provided that says the accuracy and completion of the censuses will be jeopardized if we speed up this process should give all of us pause but my colleagues on the Republican side feel compelled not to focus on what the issue of the day is but on apportionment and reapportionment. The data processing has taken anywhere from 140, 185 days.

This administration now is going to reduce it to 92 days. So Mr. Mihm in your analysis by the GAO is cutting 60 days out of data processing schedule going to increase the risk of the inaccuracy and incompleteness of the census?

MIHM:

The short answer ma'am is yes. I mean one of the things to keep in mind and we had a bit of a discussion or Mr. Thompson talked about this earlier was the--the importance of the subject matter review process within the Census Bureau and this is where experts that know the data within individual states after there's been data run have an opportunity to step back and see if there's any anomaly.

Do the sex ratios look bad? Is there a population change that can't be explained by other ways? To just give an indication of this there were 46 reruns that they had to do of state data out of 52 states and territories in 2010 and so this is not something that just as an aside that has to take place at that.

They also use this opportunity to clean up the data. One of the things that they do is they look for where there are multiple responses from the same household. That's--that's an important part of their data strategy or making sure that they get complete and accurate data. In 2010 they had 14 million housing units, about 10 percent of the housing units that had to be de-duplicated and so these aren't just numbers along the margin that are taking place. These are very important steps that the Bureau goes through.

One final thing is that much of the data processing and the cleanup there at the end has to be sequential in nature. It's not something that - make some of it can be done at the same time but a lot of it has to be done sequential that they can't move to a second step until they've done the first and so all of this puts time compression this does increase the risk.

SPEIER:

So that being the case what is the motivation in your estimation?

MIHM:

Ma'am, I really can't speak to you know the motivation. I mean we look at the operational decisions or implications of decisions that are being made and motivations for how and why things get done is a little bit beyond my remit.

SPEIER:

I--I understand that but I am still trying to understand why we want the census data that is relied on for the next 10 years to be incomplete or inaccurate and how does that help us, any of us Republicans or Democrats alike, is there a basis on which losses will then be brought when it becomes apparent that it is incomplete and inaccurate?

MIHM:

Well, what I can certainly speak to is that you know one of the risk in this data processing at the end is that as I have been discussing there's issues that they are kind of the known unknowns in which they find something and they say this is an anomaly, we need to make sure that we can explain it and they spend the time trying to do the root cause so one set of risk is will they have that time to do that.

The second is are there--could there be things that would show up that they will not know in real time, that they will not have an opportunity to adjust on or rather make a determination and try and find out what the story is. We won't find out until we do what is called the post enumerations survey which is kind of the big check on the accuracy of the data but that doesn't come out until 2022. And so there are two kind of buckets of concerns that we have there with the constricted processing time.

SPEIER:

So lawsuits being filed subsequently could very well be in the offing. Is that correct?

MIHM:

That is not something that--that I can speak to. I mean I know in the past there have been challenges both politically and through the courts the accuracy and completeness of census data.

SPEIER:

Are it. Madam Chair, I can't tell how much time I have left. Has my time expired?

MALONEY:

Yes, it has. Yes, it has. But you had a very important line of questioning. The gentle lady yields back, her time is expired. Congressman Keller. Congressman Keller, you are now recognized. We can hear you.

KELLER:

Keller?

MALONEY:

Keller.

SPEIER:

Oh, Keller. Oh, sorry.

KELLER:

Thank you, Madam Chair. According to Census Bureau, as of September 8, nearly 90 percent of housing units have been enumerated nationwide including 91 percent in my home State of Pennsylvania. This leaves the rest of the month to collect the remaining data. So I--I have a question for Mr. Spakovsky. Can you explain what is meant by housing unit? What do the figures I just mentioned indicate of about how much of the country has been counted?

VON SPAKOVSKY:

By housing unit, I am assuming they are referring to households whether they are living in the single-family residence or whether they are living in an apartment or a condominium or--or something like that.

KELLER:

Okay. So a housing unit one housing unit be a building that might have 100 apartments in it?

VON SPAKOVSKY:

Well, I assume so but all of the figures I have seen on--on where the Census Bureau was saying how much they have completed they talked about how souls though in one housing unit if it's an apartment there might be 100 households.

KELLER:

So--so as far as housing units do we know how much of the country has been counted as far as individuals? What percentage 90 percent, 90 percent housing units but what does that refer to as far as the population that we think is (INAUDIBLE)?

VON SPAKOVSKY:

All of the figures I have seen refer to house--the number of households that have been--that have been counted.

KELLER:

Okay. Are there any communities that we may have missed?

VON SPAKOVSKY:

Well, look, that's a problem that the census faces in every single census is getting to people who are in more remote areas of the country particularly out West and that is something that they elaborately planned for so it's not as if that is a new problem or a new phenomenon. It is something that the Census Bureau takes into effect the professionals there, the professionals and this for a long time. That is something they take into account when they are planning how they are going to carry out the census.

KELLER:

Okay. We have heard a lot about (INAUDIBLE) apportionment today's hearing and in past hearings. Has this changed with the people will be counted in a (INAUDIBLE) census?

VON SPAKOVSKY:

Know, there seems to be some confusion about that. It's not that the (INAUDIBLE)--

KELLER:

Does it change which people are going to be (INAUDIBLE)

VON SPAKOVSKY:

It's not. It's just that the population that is used for apportionment is not necessarily the same total population counted by the U.S. Census Bureau.

KELLER:

Okay. The Census Bureau is on track to complete its field operations on time and produce (INAUDIBLE) I would like to sort of switch gears and I want to talk to Mr. Mihm. The area I represent in the Commonwealth of Pennsylvania would by census standards be hard to count. I understand that technology has played a big part in the 2020 census even in rural communities like mine. Can you speak to how enumerators are using technologies in those places and if there have been any takeaways that might inform our data collection going forward was 20-- operations?

MIHM:

Yes, sir. As I think that there is a good use of technology in two levels. One is it is part of the original or initial enumeration. That is allowing the Internet option this time around. That has certainly been overall a very positive story that tens of millions of Americans certainly myself included use that option in order to respond to the census than that is both certainly much cheaper for the Census Bureau in terms of paper and processing and it also helps ensure more accurate data.

At the back end that you're talking about--I shouldn't say the back end, that is more in the follow up and where they don't have a response from a household, the census takers, the enumerators aren't using technology so they don't have the old paper registers that they had in the past.

This allows both of them to--to collect the data and kind of get it into the system immediately. It also allows tracking or is your tracking of census taker productivity making sure that they're actually going to where they should be going, and that is something that the Census Bureau looks at--looked at.

There's an old term for classification called curb stoning. This is something that's--it's how technology is making sure that that is minimized and, you know, and in fact pretty close to illuminated.

MALONEY:

The gentleman's time has expired. Thank you. Congresswoman Kelly, you are now recognized. Congresswoman Robin Kelly.

KELLY:

Thank you, Madam Chair. The wide reaching impact of census data cannot be overstated. But among the most important goals of the census is to accurately determine the apportionment of seats in the House of Representatives. And it is very important, to be clear about something here, this is not about political gains or games. It's not about one party trying to come out on top. Apportionment is a critical process enshrined in the constitution to ensure that every citizen at the United States receives a fair representation in Congress.

Last year, the Urban Institute release projections that about 4 million people could be undercounted in the 2020 census and that it could lead to the worst undercount of black and Latino populations in the United States since 1990.

Mr. Thompson, at the time the projections are released, you were quoted in a 2019 NPR article saying that these horrific estimates "May be a little bit on the conservative side." Given all that is happened since those projections were released in 2019, do you think that currently the Census Bureau faces an even higher risk of undercount in black and Latino communities?

THOMPSON:

Thank you, congressman. I am of the opinion that there is a great risk, that people in all communities, including black and Latino will see under accounts that were larger than in previous census is.

KELLY:

Why do you think communities of color are often undercounted in census data?

THOMPSON:

Well, for example, if you look at the current situation, you notice that in the low responding, self-responding areas of the United States Census tracks, they are the black and Latino populations are more represented in those tracks great that is that they are they are overrepresented in those low responding census tracks. And so that means that the work to get a complete count for those communities is going to be harder than in other communities because there is a much larger nonresponse follow-up workload to carry out.

KELLY:

And what are the consequences of being undercounted in terms of congressional representation?

THOMPSON:

Well, I could go on forever about the importance of the census--

KELLY:

(INAUDIBLE)

THOMPSON:

--But it's just used for so many important components of our democracy, including representation, allocation of funds, planning for businesses, making surveys fully represented. So undercounts, it means that you're underrepresented and you're not receiving your full share of all those benefits.

KELLY:

Right. And I know in my area, it's \$1400 or person who's undercounted every year for 10 years. In addition to the congressional representation, census data is also used to determine local boundaries for things like city councils and school boards, isn't that correct?

THOMPSON:

Yes, congresswoman. That is correct.

KELLY:

So for populations that are undercounted, may not only stand to lose congressional seat, but also at the local level as well, isn't that correct?

THOMPSON:

That is correct, congresswoman.

KELLY:

So Black and brown communities have a lot to lose if all of us are not counted. I just want to thank you, Mr. Thompson. The stakes could not be higher. Our founders knew how important it was for congressional representation to be fairly divided based on an accurate census. We should not risk to depriving citizen under representation guaranteed to them by the constitution. We

should give the Census Bureau the time it needs to conduct a complete and accurate census. And with that, I yield back.

GOMEZ:

Thank you, Ms. Kelly. I'm filling in for Chair Maloney. I greatly appreciate everybody here. I recognize myself for five minutes for questions.

One of the things that we--we know is that this account is extremely crucial. Yet, 4 in 10 households had yet to be counted. A move like this will likely lead to an undercount among historically hard to count populations and communities of color, immigrants, and those in the urban areas. That means communities like the ones I represent are going to be undercounted. My Congressional District so far is only at 50 percent self-response rate and enumeration rate combined. Despite--so I'm extremely concerned that people in my district are also completely concerned.

Despite four former Census Bureau director's warning us that earlier deadline was "result in a serious and complete enumeration of many areas across the country but," the Trump administration has dramatically accelerated the census for political gains.

On August 27th and 28th, this committee interviewed three top officials from the Census Bureau. The first official stated, I quote, "more time is always a good thing." The second official stated, I quote, "any time you have more time, it reduces risk, and that will have reduced our risk." The third official said, I quote, "absolutely," when he was asked whether he agreed with the first two officials. So my question is, Mr. Thompson, do you agree with these officials?

THOMPSON:

Well, I know those officials pretty well and I agree with those statements.

GOMEZ:

Why--why is that?

THOMPSON:

Well, right now, there simply isn't enough time in my opinion to complete a really good and accurate data collection and there's not enough time to--to process the data after the data collection ends and do it in an accurate way. So I think that those--those raise very serious concerns and I detailed a lot of those in my testimony.

GOMEZ:

In a sworn declaration filed with a federal court on September 4th, Mr. Fontenot, associate director of the 2020 census stated that if a federal court were to stop the Census Bureau from proceeding with its new rushed schedule, I quote, "we would evaluate all the changes we've made for their re-planned schedule and determine which to reverse or modify.

We would go through each and every aspect of the remaining operations and determine how best to use the remaining time to maximize the accuracy and completeness of this census results.

In other words, the Census Bureau stands ready to un-crash it's scheduled. If Congress gives it the time it needs, it can decide how to do that. Mr. Thompson, do you have confidence that the Census Bureau has the ability to make use of the statutory extension from Congress if passed?

THOMPSON:

I certainly think the Census Bureau could make great use of it.

GOMEZ:

And in the past three census, none of which took place during a pandemic, the Bureau has needed five months to accurately--accurately and completely delivered apportionment and redistricting data theory is that correct?

THOMPSON:

At least five months.

GOMEZ:

At least--at least five months. What is the preferred amount of time?

THOMPSON:

Well, for this census, I think the preferred amount of time is the time that the Census Bureau developed when it was on the basis of its extensive planning and research, which--which in this case would be five months.

GOMEZ:

Mr. Thompson, so why is it important for the Bureau to have adequate amount of time to process the data?

THOMPSON:

Well, you don't--if you don't have adequate amount of time, the problem is you can make a computer errors that are not detected and they--they immediately--and they would probably carry it through into the apportionment and the redistricting. So there's just a high risk of computer errors.

GOMEZ:

I greatly appreciate your answers. One of the things that we heard from my colleagues on the other side of the aisle is that they're--they're almost convoluting two different arguments, one, that undocumented immigrants should not be counted; two, that we shouldn't extend the deadline to make sure that everybody is accurately counted.

If we're extend--if we extend the deadline to count everybody and then the Republicans and this president are trying to back out undocumented immigrants, I don't understand why they wouldn't extend the deadline unless they don't want U.S. citizens or minority communities or urban areas not to be counted as well.

So, I have suspicions. The motivations of this administration, when they tried to add the citizenship question, it was rejected by the Supreme Court. It was--Judge Roberts just rejected it flatly as something that was contrived. So, with that, I urge my colleagues to--on the other side of the aisle to support the extension as--of the--of the deadlines for the Census Bureau.

Thank you and I yield--I yield my own time. And now I would like to recognize Ms. Tlaib for five minutes. Let me see here. I'd like to recognize Ms. Porter for five minutes. I--Ms. Porter?

PORTER:

Yes, hello. How are you? I apologize.

GOMEZ:

Don't worry about it; technical difficulties on all sides. Ms. Porter, you're recognized for five minutes for your questioning.

PORTER:

Thank you. Mr. Mihm, you said in your August report that it would be especially difficult for the Census Bureau to get accurate counts of college students if census operations were not extended to make up for time lost. I was a professor at the University of California Irvine before being elected to Congress, and my district is home to a university with more than 35,000 students, as well as a number of smaller colleges. Mr. Mihm, when are college students normally counted?

MIHM:

Ma'am, college students are normally counted at their university, either in their dorm or if they're living off campus, that is under census rules their usual residence.

PORTER:

I'm sorry. What time of year? What time of year?

MIHM:

I'm sorry, ma'am? Oh, time of year?

PORTER:

What time of year do we usually count--

MIHM:

--It would--it would be--

PORTER:

--count them?

MIHM:

It would be sent--you know, at or around Census Day. So, it would be--

PORTER:

--Okay--

MIHM:

--And this time it would have been in the spring.

PORTER:

So, around April?

MIHM:

Yes.

PORTER:

Exactly. So around April because in a normal year, seniors are graduating in the spring. And in your report, you noted that when campuses shut down, many students went home and could not be contacted.

So, my question is we're missing a bunch of graduating seniors. That's as many--could be as much of a quarter of students in a school, like 5,000, 6,000, 7,000 students in many places. Is that correct if we fail to count college seniors?

MIHM:

Yes, ma'am. And it--the--the risk is actually on two sides, and we won't actually know until later.

UNKNOWN:

Well, when (INAUDIBLE) forgot to call me?

MIHM:

I'm--I'm sorry, ma'am.

Yeah, the risk is on two sides. We put a--we could end up missing them or we could end up having to be double counted, both at the university and if they're back home. And the point is is that we will not know that until much later.

PORTER:

You said in your report that the Census Bureau has requested administrative data from around 1,400 colleges in larger towns and cities. When you publish that report on August 27th, only 51 percent of colleges have agreed to share that information. Where is that number now?

MIHM:

I don't have an update on that, ma'am. But I will check and get that to your office as soon as I can get the--the better number.

PORTER:

Right. But the--well, as of a month--a couple weeks ago, we were at half of all colleges being counted, which is not a good place to be.

I want to turn to Mr. Johnson now and ask, if there is not an extension of the census, does--what does that mean for what the census calls hard to count areas?

THOMPSON:

Thank you, congressman. So, that--those are going to be the areas that--that--that would be affected the most by--by not allowing the Census Bureau the proper time that they requested initially to complete their work. Though--those communities have lower response rates and therefore they have greater amount of work to do in a nonresponse follow-up. That's where the biggest challenges are to getting a complete and accurate count. So--so, those communities would be affected the most.

PORTER:

And I--I think some people might be really surprised to learn about what our hard to count areas. We often think of them as rural areas, places without broadband access, places where there might be language barriers. I want to show people an example of--this is a picture of Big Sur, California. Mr. Johnson, is Big Sur hard to count?

THOMPSON:

Excuse me, Con--is Big Sur hard to count?

PORTER:

Yes.

THOMPSON:

Well, there are--there are certain rural areas in Big Sur that are very hard to--to get to. I happen to have actually been there for a while. So, yes, there are parts--portions of it that would be hard to count.

PORTER:

So, the self response rate in this beautiful area was 35 percent less census. It's down by more than 10 points so far in this cycle. This part of California is almost 100 percent Spanish-speaking, and broadband is really limited. And that's two big factors to enumeration. And one consequence of less funding, of course, is--of the lack of a count is less federal funding for this amazing bridge that goes over Highway 1.

I also wanted to ask you about other hard to--does this look like a hard to count area to you? This is San Clemente, California in the southern part of Orange County. Is this hard to count?

THOMPSON:

Congresswoman, I--I would really have to--to--to look. There--there are areas in Southern California that are certainly on--show up on the bureau's hard to count indicator. I'd--I would have to study that a little bit more--

PORTER:

--And in (INAUDIBLE)--

THOMPSON:

--to answer that.

PORTER:

--San Clemente just north of there is 65 percent renters, 20 percent immigrants, and that helps explain why the response rate is below 60 percent. If they don't get counted, the local school district loses education.

I want to show one more hard to count area. This is the University of California Irvine. Is this a hard to count area?

THOMPSON:

I would think that any area right now with a large college student population is going to face some challenges in getting an accurate enumeration simply because of--of all the displacement of college students, as--as one--I shouldn't say simply. I should say that's one component of whites going to be difficult.

PORTER:

Would extra time help count these--would extra time help in these hard to count areas with giving us an accurate count?

THOMPSON:

It certainly would.

PORTER:

Thank you very much. With that, I yield back.

GOMEZ:

Thank you, Member Porter. Now I recognize Representative Plaskett for five minutes.

PLASKETT:

Thank you very much, Mr. Chairman. I hope that I can be heard at this time. Am I available? Yeah, thank you.

So, I have heard a lot of discussion that's been going on about the bureau's plan and operations related to rural areas and to Native American tribes--tribes. James Tucker, vice chair of the U.S. Census National Advisory Committee, has said "We're probably looking at historic undercount.

It's not going to be enough time." Senior Census Bureau officials admitted that they're struggling to enumerate these areas.

For example, Tim Olson, the associate director for Field Operations stated, "In Indian country, particularly Montana, Arizona, New Mexico, those are the three primary states where we have challenges, where specific tribal governments on their lands, on their reservations have shut down to the public to come into their sovereign nation to prevent, you know, a horrible outcome of coronavirus."

My first question is to you, Governor Lewis. You have given some excellent testimony to us. Tribal nations are considered hard to count even during a census that does not--is not taking place during a pandemic. Can you explain why that is?

LEWIS:

Excuse me. Yes. First of all, we (INAUDIBLE) still have an Internet--I would say broadband provider. There was discussion about technology and the Internet option, and that just isn't the case.

At least from the Gila River Indian Community where we are still trying to you know to distribute broadband infrastructure and this was even brought to an even more critical point during this pandemic as well and I know other tribes--

PLASKETT:

Do you know start--excuse me. Governor, do you know how many families are without? What is the percentage of families without broadband or even sloppy broadband in your area?

LEWIS:

Well, we have about 2200 households on the community and we have identified hundreds of--of households that just don't have access to broadband because of their location. You know we--we are just south of Phoenix but we are in a very remote area in the Sonoran Desert, beautiful Sonoran Desert but none the less you know so we have identified not only no connectivity but also just the infrastructure available for broadband and so that has really hampered our areas as well and also because this goes to the reality right now on Indian reservations has to do with street addresses versus PO boxes.

We have a number that are post office boxes that--that our community members have versus street addresses and that also goes against and it has really been a barrier for those enumerators going because you have to have that geographic locator number. And if you don't have a street address it is hard and that has also contributed in the past to the vast under counting of--of Native Americans.

Even early on in this--this latest 2020 census some of my community members, some of the enumerators have come and they have just put their--the--the information on their--on their fences you know and if they have blown away put them you know just on--on some of their near their house you know and so those are the realities you know and we lose a vast number of those two these logistical barriers which is a reality.

PLASKETT:

I know. Listen, I understand. In the Virgin Islands we are just now still even giving street names to areas where people live so people have post office boxes, there are streets that are not named and unfortunate for those of us in the smaller territories we are not even able to do these census online.

There is no online drop box for any for the Virgin Islands or Guam or American Samoa an area that already has very few or has been you know the inequities that we have in federal funding people are aware of is going to be even greater. My time is about to run out and I wanted to ask Mr. Thompson why world hard to count--why are areas that are rural hard to count during a normal census and what are the increase risk to undercount the rural communities under a truncated schedule and if you answer that question I will yield back Mr. Chairman.

THOMPSON:

Thank you, congresswoman. So rural areas have unique challenges. You really have to have a deep understanding of the rural area to properly count it. You need to understand what is a road, what is a driveway, what is just a logging trail for example but you have to be accepted by the world community you have to understand how to approach people in the right way. There--there are a whole lot of unique features that rural areas have that make many of them hard to count.

PLASKETT:

Thank you.

THOMPSON:

And--and--and to finish the answer and it takes time. It just doesn't happen overnight. It takes a lot of hard work to get the work done because you have to travel over greater distances and the like.

GOMEZ:

Thank you, Ms. Plaskett. Now I recognize Ms. Tlaib for five minutes.

TLAIB:

Thank you, Chairman, and thank you all so much for this. I know so many of my colleagues are politicizing this and making this about apportionments and representation in Congress but as someone that represents the third poorest congressional district in the country it really is about the \$1.5 trillion of federal money that gets distributed and the fact that even during the pandemic if anything had expose the fact that my district, my state saw 40 percent of the African-American population impacted directly by COVID-19 with death so the number of people that have died from COVID-19 that are my black neighbors made up 40 percent even though they make up the total population of the state is 15 percent.

You know Medicaid state children's CHIP program, a number of programs like WIC are so critically important again to my district and so I--I really want to be honest with this. You know I always prep for these and then I listened to many of my colleagues and I am so taken aback by you know we are getting ask about a lot of about our undocumented immigrant neighbors, we are getting ask about apportionment and how congressional districts are--are made up but we never actually talk about the people that rely on this data and misinformation for their services.

When you think about mobile testing during COVID they looked at the census. Public health research they look at the census. Class sizes they look at the census. So Mr. Thompson, Director Thompson I--I really want to be honest here. When they decide to shorten this doesn't it impact majority communities of color?

THOMPSON:

Those--it--it--those are some of the communities congresswoman that are certainly affected as the previous congresswoman noted rural areas can also be particularly challenging in that would be for--for both people of color and people that are of color. So--so yes hard to count communities which contain people of color are certainly affected by a shortened time frame.

TLAIB:

Well, you know what I hear from my colleague I just don't think they want people that look like me counted and so governor you as someone that you know some of the most vulnerable populations that you represent, right?

Many of the people you fight for those are the people that are going to be left out. I mean what I am hearing from my colleagues is shortening the time is okay because brown and black folks are not going to get counted big deal, indigenous communities not going to get counted (INAUDIBLE) do you feel that way? I mean I am hearing again (INAUDIBLE) coming out of the other side of the aisle.

LEWIS:

Congresswoman, definitely. I--I think it was discussed earlier what will be lost. What will be lost our numbers from our underserved communities and you know and just to go into some of the time frame I mean I am aware that the Census Bureau will generally return to areas with current anomalies in the count however given the condensed timeframe between the end of September and the end of December when recording is due the Bureau will only have three months to qualify, control to--to qualify control for quality control rather instead of the normal six-month period.

Common sense was--was talked about earlier, common sense indicates that there is an adequate time for a return to verify counts in under--undercounted areas to perform quality control and to provide apportionment and redistricting--redistricting reports in three months. So--

TLAIB:

(INAUDIBLE) you are not even thinking about--but you are not even thinking about congressional districts. You are thinking about resources. You are thinking about how do I make sure that my folks are not left out.

LEWIS:

Definitely.

TLAIB:

(INAUDIBLE) most of my neighbors, most of my residence in my district governor they are not asking me about that. You know what they are saying is Rashida we've got to make sure we get counted because we know these are thousands of dollars that come to our city that gets you know again when I get access to it when we don't get counted.

LEWIS:

I'm thinking about, congresswoman, within my elders worried about their--their services you know their nutrition services. I am thinking about my children our--our children in our community going to these schools both on the reservation and off the reservation that will be affected as well from this undercount. And for 10 years, for you know for--that we will be living with this--with this drastic undercounting.

TLAIB:

Yeah. Ms. Stacey just with you if you are still on I you know I think we are being asked a lot of these questions about constitutional law you know the first thing I kept thinking about is--I'm sorry? Ms. Stacey--Ms. Carless is it?

CARLESS:

Carless, yes.

TLAIB:

Yes, Ms. Carless. I'm so sorry. I wanted to ask you know much of the questions that were ask of you earlier in the hearing you know it was very alarming but I--I want to ask you one very directly. Do you think people that look like you and I are going to--I mean that it's intentional on the part of reducing the timeline that it's intentional to make sure that people that look like you and I are not counted?

CARLESS:

I do think it is somewhat intentional. You know research has shown that NRFU has been impactful in making sure that Black and brown people are counted as well as you know the great pivot that we have had to make in that doesn't allow trust in messengers to build appropriate relationships with our community members to teach them about the census to make sure that black and brown people are accounted. So any effort to reduce our time or ability to connect with community members I think is intentional.

TLAIB:

Thank you so much. I yield.

GOMEZ:

Thank you, Ms. Tlaib. I want to first take a moment to thank our witnesses for testifying today. Without objection, all members will have five legislative days within which to submit additional written questions for the witnesses to the chair, which will be forwarded to the witnesses for their response. I ask our witnesses to please respond as promptly as you are able to. This hearing is now adjourned.

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WITNESSES:

HERITAGE FOUNDATION SENIOR LEGAL FELLOW HANS A. VON SPAKOVSKY

NC COUNTS COALITION EXECUTIVE DIRECTOR STACEY CARLESS

GILA RIVER INDIAN COMMUNITY GOVERNOR STEPHEN ROE LEWIS

CENSUS BUREAU FORMER DIRECTOR JOHN H. THOMPSON

GOVERNMENT ACCOUNTABILITY OFFICE STRATEGIC ISSUES TEAM MANAGING
DIRECTOR J. CHRISTOPHER MIHM

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Alissa A. Bonner
Congressional Liaison
Office of Congressional and Intergovernmental Affairs
U.S. Census Bureau
Office 301.763.8923
Cell (b)(6)

Alissa.a.bonner@census.gov
[census.gov](https://www.census.gov)

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Robert E. Pittman, BPharm, MPH
Deputy Director
Office of Public Health Support
Indian Health Service
5600 Fishers Lane
Mail Stop: (b) (6)
Rockville, MD 20857
Phone: (301) 443-0977
Email: Robert.Pittman@ihs.gov

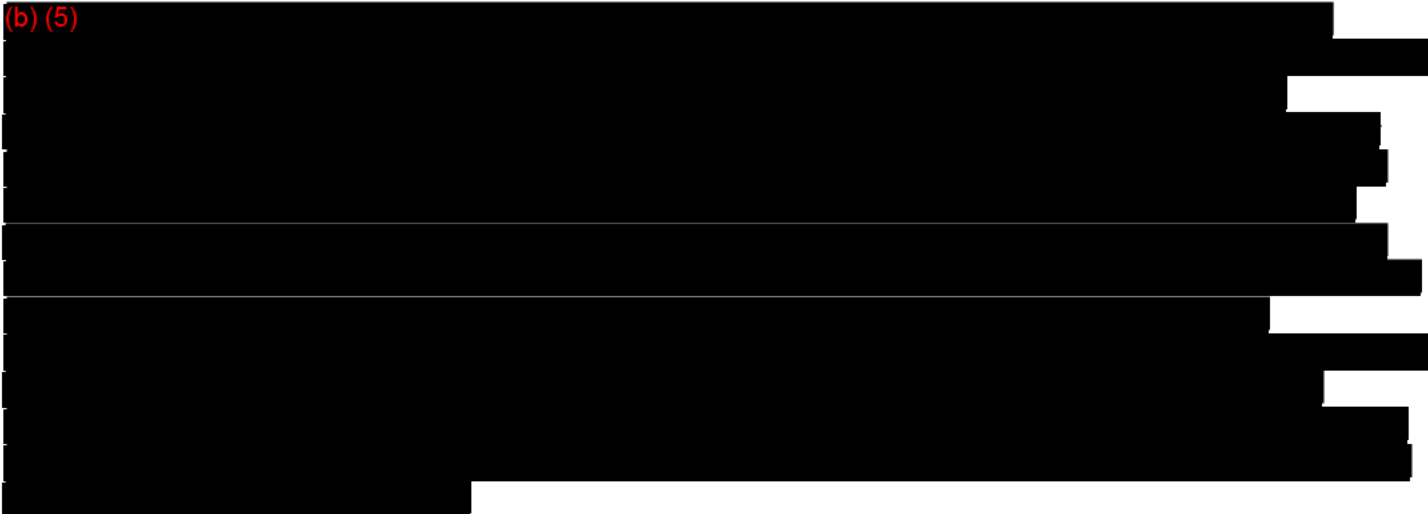
From: Michael A Berning (CENSUS/ERD FED) <Michael.A.Berning@census.gov>
Sent: Thursday, September 3, 2020 1:51 PM
To: Pittman, Robert (IHS/HQ) <Robert.Pittman@ihs.gov>
Subject: Re: Response Requested - Request for Follow-on use of IHS Data

(b) (5)

Berning, Assistant Division Chief for Data Acquisition and Curation
Economic Reimbursable Surveys Division
U.S. Census Bureau
O: 301-763-2028 | M: (b)(6)
census.gov | @uscensusbureau

From: Pittman, Robert (IHS/HQ) <Robert.Pittman@ihs.gov>
Sent: Thursday, September 3, 2020 10:24 AM
To: Michael A Berning (CENSUS/ERD FED) <Michael.A.Berning@census.gov>
Subject: (b) (6), (b) (5)

(b) (5)



Robert E. Pittman, BPharm, MPH
Deputy Director
Office of Public Health Support
Indian Health Service
5600 Fishers Lane
Mail Stop: (b) (6)
Rockville, MD 20857
Phone: (301) 443-0977
Email: Robert.Pittman@ihs.gov

From: Michael A Berning (CENSUS/ERD FED) <Michael.A.Berning@census.gov>
Sent: Thursday, August 20, 2020 11:53 AM
To: Pittman, Robert (IHS/HQ) <Robert.Pittman@ihs.gov>; Greenway, Kirk (IHS/HQ) <Kirk.Greenway@ihs.gov>
Cc: Nicole S Adolph (CENSUS/ERD FED) <Nicole.S.Adolph@census.gov>
Subject: Request for Follow-on use of IHS Data

Good morning Robert and Kirk,

We sincerely appreciate your support in providing data for our efforts under the July 2019, Executive Order 13880 to tabulate the citizenship status of the 2020 Census respondents. Based on a July 2020, Presidential Memorandum on Excluding Illegal Aliens from the Apportionment Base following the 2020 Census, we are asking for your priority review and approval to use the IHS data that you have provided for the 2019 EO project to also be used to support the Census Bureaus response to the 2020 Presidential Memorandum. We ask for the signed, attached request to be returned to me and Nicole Adolph (cc'd) as soon as possible but prior to August 27, 2020

Thank you again for all of your assistance with this project.

Mike Berning, Assistant Division Chief for Data Acquisition and Curation
Economic Reimbursable Surveys Division
U.S. Census Bureau
O: 301-763-2028 | M: (b)(6)
census.gov | @uscensusbureau

From: Ehrlich, Stephen (CIV) [Stephen.Ehrlich@usdoj.gov]
Sent: 9/12/2020 3:51:47 PM
To: Kathleen M Styles (CENSUS/ADDC FED) [kathleen.m.styles@census.gov]
Subject: RE: Thank you
Attachments: (b) (5)

(b) (5)

Stephen Ehrlich
Trial Attorney
U.S. Department of Justice
Civil Division | Federal Programs Branch
(b) (6) stephen.ehrlich@usdoj.gov

From: Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov>
Sent: Saturday, September 12, 2020 10:38 AM
To: Ehrlich, Stephen (CIV) (b) (6)
Subject: Thank you

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

Kathleen M. Styles
Chief, Decennial Communications and Stakeholder Relationships
U.S. Bureau of the Census
(b)(6)

(301) 763-0235 Office

(b)(6) Cell

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO, *et al.*,

Plaintiffs,

v.

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

Defendants.

No. 8:19-cv-02710-PX-PAH-ELH

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND.....	2
I. Constitutional and Statutory Authority for the Census.....	2
II. 2020 Census Procedures.....	3
LEGAL STANDARDS.....	4
ARGUMENT.....	5
I. Plaintiffs’ Claim is Barred by the Political Question Doctrine	5
A. The census deadline is textually committed to Congress.	6
B. There are no judicially manageable standards for determining the appropriate census period.	9
II. Plaintiffs Lack Standing	13
A. Plaintiffs’ alleged injuries are not redressable by a court order.....	13
B. Plaintiffs’ alleged injuries are not traceable to Defendants.	17
C. Plaintiffs’ alleged injuries are entirely speculative.	19
III. Plaintiffs Cannot Prevail on their Enumeration Clause Claim	24
IV. Plaintiffs Cannot Satisfy the Other Preliminary-Injunction Factors.....	30
A. Plaintiffs cannot establish any imminent and irreparable harm.....	31
B. The public interest and harm to the government weigh heavily against a preliminary injunction.....	33
V. Plaintiffs Cannot Sidestep the Three-judge Court	34
CONCLUSION.....	37

TABLE OF AUTHORITIES

Cases

<i>6th Dist. Republican Comm. v. Alcorn</i> , 913 F.3d 393 (4th Cir. 2019)	13
<i>Allstate Ins. Co. v. McKinney</i> , 2018 WL 4186421 (W.D.N.C. Aug. 31, 2018)	21
<i>Alperin v. Vatican Bank</i> , 410 F.3d 532 (9th Cir. 2005)	6
<i>Baker v. Carr</i> , 369 U.S. 186 (1962)	5
<i>Carey v. Klutznick</i> , 508 F. Supp. 420 (S.D.N.Y. 1980)	15
<i>Carey v. Klutznick</i> , 637 F.2d 834 (2d Cir. 1980)	14
<i>Carey v. Klutznick</i> , 653 F.2d 732 (2d Cir. 1981)	11, 15, 26
<i>Citizens United v. FEC</i> , 558 U.S. 310 (2010)	14
<i>City of Chicago v. Int’l Coll. of Surgeons</i> , 522 U.S. 156 (1997)	36
<i>City of New York v. Dep’t of Commerce</i> , 713 F. Supp. 48 (E.D.N.Y. 1989)	15, 16
<i>City of New York v. U.S. Dep’t of Commerce</i> , 34 F.3d 1114 (2d Cir. 1994), <i>rev’d sub nom. Wisconsin</i> , 517 U.S. at 1	28
<i>Clapper v. Amnesty Int’l USA</i> , 568 U.S. 398 (2013)	13, 19, 23
<i>Corrie v. Caterpillar, Inc.</i> , 503 F.3d 974 (9th Cir. 2007)	6

<i>Dep’t of Commerce v. New York</i> , 139 S. Ct. 2551 (2019).....	<i>passim</i>
<i>Dep’t of Commerce v. U.S. House of Representatives</i> , 525 U.S. 316 (1999).....	<i>passim</i>
<i>El-Shifa Pharm. Indus. Co. v. United States</i> , 378 F.3d 1346 (Fed. Cir. 2004).....	6
<i>Fed’n for Am. Immigration Reform v. Klutznick</i> , 486 F. Supp. 564 (D.D.C. 1980)	21
<i>Forest Guardians v. Babbitt</i> , 174 F.3d 1178 (10th Cir. 1999).....	14
<i>Franklin v. Massachusetts</i> , 505 U.S. 788 (1992).....	<i>passim</i>
<i>Gilligan v. Morgan</i> , 413 U.S. 1 (1973).....	6
<i>Gonzalez v. Gorsuch</i> , 688 F.2d 1263 (9th Cir. 1982).....	14
<i>Gordon v. Exec. Comm. of Democratic Party of City of Charleston</i> , 335 F. Supp. 166 (D.S.C. 1971)	36
<i>Grand River Enter. Six Nations, Ltd. v. Pryor</i> , 481 F.3d 60 (2d Cir. 2007)	31, 32
<i>Hagans v. Lavine</i> , 415 U.S. 528 (1974).....	36
<i>Japan Whaling Ass’n v. Am. Cetacean Soc’y</i> , 478 U.S. 221 (1986).....	5, 10
<i>Karcher v. Daggett</i> , 462 U.S. 725 (1983).....	12, 26
<i>Klutznick v. Carey</i> , 449 U.S. 1068 (1980).....	15

<i>La Unión Pueblo Entero v. Ross</i> , 353 F. Supp. 3d 381 (D. Md. 2018).....	16
<i>Lewis v. Casey</i> , 518 U.S. 343 (1996).....	17
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992).....	14, 17, 19
<i>Lujan v. Nat’l Wildlife Fed’n</i> , 497 U.S. 871 (1990).....	17
<i>Made in the USA Found. v. United States</i> , 242 F.3d 1300 (11th Cir. 2001)	6
<i>Mazurek v. Armstrong</i> , 520 U.S. 968 (1997).....	31, 32
<i>McConnell v. FEC</i> , 540 U.S. 93 (2003).....	14
<i>McCulloch v. Maryland</i> , 17 U.S. 316 (1819).....	12
<i>Mountain Valley Pipeline, LLC v. 6.56 Acres of Land</i> , 915 F.3d 197 (4th Cir. 2019).....	31
<i>Munaf v. Geren</i> , 553 U.S. 674 (2008).....	30
<i>NAACP v. Bureau of Census</i> , --- F. Supp. 3d ---, 2020 WL 1890531 (D. Md. Apr. 16, 2020).....	26, 30
<i>NAACP v. Bureau of the Census</i> , 399 F. Supp. 3d 406 (D. Md. 2019), <i>aff’d in part, rev’d on other grounds</i> , 945 F.3d 183 (4th Cir. 2019).....	7, 17
<i>Nat. Res. Def. Council, Inc. v. Hodel</i> , 865 F.2d 288 (D.C. Cir. 1988).....	7
<i>Nat’l Law Ctr. on Homelessness & Poverty v. Kantor</i> , 91 F.3d 178 (D.C. Cir. 1996).....	17, 18, 20, 32

<i>New York v. Trump</i> , ---F. Supp. 3d ---, 2020 WL 5422959 n.21 (S.D.N.Y. Sept. 10, 2020)	35
<i>Nken v. Holder</i> , 556 U.S. 418 (2009).....	32, 33
<i>NLRB v. Noel Canning</i> , 573 U.S. 513 (2014).....	12
<i>Page v. Bartels</i> , 248 F.3d 175 (3d Cir. 2001)	35, 36
<i>Pashby v. Delia</i> , 709 F.3d 307 (4th Cir. 2013)	5
<i>Profiles, Inc. v. Bank of Am. Corp.</i> , --- F. Supp. 3d ---, 2020 WL 1849710 (D. Md. Apr. 13, 2020)	31
<i>Raines v. Byrd</i> , 521 U.S. 811 (1997).....	13
<i>Ridge v. Verity</i> , 715 F. Supp. 1308 (W.D. Pa. 1989).....	21
<i>Rucho v. Common Cause</i> , 139 S. Ct. 2484 (2019).....	5
<i>Schneider v. Kissinger</i> , 412 F.3d 190 (D.C. Cir. 2005).....	6
<i>Sharrow v. Brown</i> , 447 F.2d 94 (2d Cir. 1971)	21
<i>Simon v. E. Ky. Welfare Rights Org.</i> , 426 U.S. 26 (1976).....	18
<i>South Carolina v. United States</i> , 907 F.3d 742 (4th Cir. 2018).....	14
<i>Spokeo, Inc. v. Robins</i> , 136 S. Ct. 1540 (2016).....	13, 19

<i>Summers v. Earth Island Inst.</i> , 555 U.S. 488 (2009).....	19
<i>Taylor v. Freeman</i> , 34 F.3d 266 (4th Cir. 1994)	5
<i>Thomas v. Bryant</i> , 919 F.3d 298 (5th Cir. 2019)	36
<i>Thomas v. Reeves</i> , 961 F.3d 800 (5th Cir. 2020)	36
<i>Tucker v. U.S. Dep’t of Commerce</i> , 135 F.R.D. 175 (N.D. Ill. 1991)	11
<i>Tucker v. U.S. Dep’t of Commerce</i> , 958 F.2d 1411 (7th Cir. 1992)	11
<i>U.S. Dep’t of Commerce v. Montana</i> , 503 U.S. 442 (1992)	10, 20, 27
<i>United States v. Munoz-Flores</i> , 495 U.S. 385 (1990)	5
<i>United States v. Richardson</i> , 418 U.S. 166 (1974)	24
<i>Utah v. Evans</i> , 536 U.S. 452 (2002)	<i>passim</i>
<i>Vieth v. Jubelirer</i> , 541 U.S. 267 (2004)	5
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964)	10
<i>Whitmore v. Arkansas</i> , 495 U.S. 149 (1990)	19
<i>Williamson v. Maciol</i> , 2020 WL 4449527 (N.D.N.Y. Aug. 3, 2020)	21

<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	4, 30, 31, 33
<i>Wisconsin v. City of New York</i> , 517 U.S. 1 (1996).....	<i>passim</i>
<i>Young v. Ditech Fin., LLC</i> , 2017 WL 3066198 (D. Md. July 19, 2017).....	4
<i>Young v. Klutznick</i> , 497 F. Supp. 1318 (E.D. Mich. 1980).....	15
<i>Young v. Klutznick</i> , 652 F.2d 617 (6th Cir. 1981).....	15
<i>Zivotofsky ex rel. Zivotofsky v. Clinton</i> , 566 U.S. 189 (2012).....	5, 9

Constituional Provisions

U.S. Const. art. I, § 2, cl. 3.....	2, 6, 25, 28
U.S. Const. art. III, § 2.....	13

Statutes

2 U.S.C. § 2a	3, 8, 20, 35
13 U.S.C. § 2	3
13 U.S.C. § 4	3
13 U.S.C. § 141	<i>passim</i>
28 U.S.C. § 1253	16, 25
28 U.S.C. § 2284	34 ,35, 37
42 U.S.C. § 1396d	20, 32
49 U.S.C. § 5305	20, 32
An Act to Amend the Act for Taking the Fifth Census, 4 Stat. 439 (1831).....	7

An Act to Extend the Time for Completing the Third Census, 2 Stat. 658 (1811)	7
An Act to Provide for Taking the Fourth Census, 3 Stat. 548 (1820)	8
An Act to Provide for Taking the Fourth Census, 3 Stat. 643 (1821)	7
An Act to Provide for Taking the Sixth Census, 5 Stat. 452 (1841)	7, 8
An Act Providing for the Taking of the Seventh and Subsequent Censuses (1841), 9 Stat. 445.....	8
An Act to Provide for Taking the Tenth and Subsequent Censuses, 20 Stat. 473 (1879)	8
Census Act of 1790, 1 Stat. 101 (1790).....	7
Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, 133 Stat. 13	8, 9
<u>Other Authorities</u>	
11A Charles Alan Wright & Arthur R. Miller, <i>Federal Practice and Procedure</i> § 2949 (3d ed. 2002)	21
13A Charles Alan Wright et al., <i>Federal Practice & Procedure</i> § 3531.6 (3d ed. Apr. 2018 update)	13
Black’s Law Dictionary, “Action” (11th ed. 2019).....	36
H.R. 6800, 116th Cong. § 70201(a) (2020)	4, 8, 12
H.R. 7034, 116th Cong., § 2 (2020).....	4, 8, 12
H.R. 7974, 116th Cong., § 2 (2020).....	4, 8, 12
Letter from Carolyn B. Maloney to Mitch McConnell <i>et al.</i> (Sept. 2, 2020).....	8
S. 4048, 116th Cong., § 2 (2020).....	4, 8, 12
Thomas R. Lee, <i>The Original Understanding of the Census Clause: Statistical Estimates and the Constitutional Requirement of an “Actual Enumeration,”</i> 77 Wash. L. Rev. 1 (2002).....	26
U.S. Census Bureau, Statement on 2020 Census Operational Adjustments Due to COVID-19 (Apr. 13, 2020)	19

INTRODUCTION

Plaintiffs' preliminary-injunction motion presents a simple question: is this Court empowered to disregard a statutory deadline enacted under Congress's "virtually unlimited discretion" to regulate the decennial census? *Wisconsin v. City of New York*, 517 U.S. 1, 19 (1996). The answer is equally simple: no. While Congress has largely delegated its plenary authority over the census to the Secretary of Commerce, it has nonetheless required that the Secretary finish the census before year's end. 13 U.S.C. § 141(a)–(b). In light of the disruptions caused by the COVID-19 pandemic, the Commerce Department and Census Bureau requested a congressional extension of the December 31, 2020 deadline. But Congress has not yet acted, forcing the Secretary and the Bureau to adjust their planned operations in order to meet the statutory requirement. Nevertheless, the Bureau is confident that, following this plan, it can deliver a complete census within the allotted time.

Plaintiffs clearly harbor concerns about both the Census Bureau's operational plan and the statutory timeline. But they should take those concerns to the branch of Government that can address them: Congress. Contrary to what Plaintiffs may think, neither the Secretary nor the Census Bureau are free to casually disregard a statutory deadline to pursue some ethereal notion of a better census. And this Court should not countermand the Census Bureau's entire operational plan—a decade-long, 15.6-billion-dollar endeavor culminating in one of the largest peacetime mobilizations in American history—simply because Plaintiffs are frustrated with Congress's inaction.

That frustration is evident from Plaintiffs' motion, which is long on facts but short on law. They rebuke the Census Bureau's extraordinary efforts to meet an unmovable statutory deadline in the face of an unprecedented pandemic, and then proclaim that the statutory deadline must yield to their notions of a better count. Pls.' Mot. at 33, ECF No. 112-1. That would surely be news to Congress, which has plenary authority over the census and has exercised its exclusive power to set and reset deadlines, as needed, from

the earliest days of our Republic. It would also be news to 230 years of litigants, who, in Plaintiffs' view, could have simply run to court and demanded extra time whenever they desired a last-minute change in census procedures. Perhaps unsurprisingly, that theory has garnered no support from the Supreme Court. In the only two instances where district courts brazenly ordered the Census Bureau to disregard § 141(b)'s statutory deadline, the Supreme Court swiftly stayed those decisions before they were later reversed on appeal.

Put simply, Plaintiffs cannot succeed on the merits of their Enumeration Clause claim. Absent an extension of § 141(b)'s deadline—a statutory timeline they do not challenge—the Census Bureau has no choice but to meet that congressional requirement. So Plaintiffs' claim is barred by the political question doctrine and they fail meet any of the Article III standing requirements. But even if this case were theoretically justiciable, it wouldn't matter. The Supreme Court has never found a violation of the Enumeration Clause, and the Census Bureau's accelerated person-by-person headcount easily clears whatever standard applies under that deferential review.

Merits aside, Plaintiffs also fail to establish irreparable injury or harms that weigh in their favor. To the contrary, the public interest weighs squarely against ordering the Census Bureau to again replan a massive operation that is designed and run by scientists and statisticians to achieve the best possible results within Congress's established parameters. Plaintiffs' preliminary-injunction motion should be denied.

BACKGROUND

I. CONSTITUTIONAL AND STATUTORY AUTHORITY FOR THE CENSUS

The Constitution's Enumeration Clause requires an "actual Enumeration" of the population every ten years and vests Congress with the authority to conduct that census "in such Manner as they shall by Law direct." U.S. Const. art. I, § 2, cl. 3. Through the Census Act, Congress has delegated to the Secretary of Commerce the responsibility to conduct the decennial census "in such form and content as he may determine." 13 U.S.C.

§ 141(a). The Census Bureau assists the Secretary in the performance of this responsibility. *See id.* §§ 2, 4.

Notably, however, Congress has required the Secretary to report to the President the “tabulation of total population by States . . . within 9 months after the census date,” defined as April 1 of the census year. 13 U.S.C. § 141(b). That is, the Secretary must provide the final census report to the President by December 31, 2020. After receiving the Secretary’s report, the President calculates “the number of Representatives to which each State would be entitled,” and transmits the resulting information to Congress. 2 U.S.C. § 2a(a).

II. 2020 CENSUS PROCEDURES

The goal of the decennial census is to count each resident of the United States once, only once, and in the right place. Fontenot Decl. ¶ 19. As detailed in the declaration of Albert E. Fontenot, Jr., Associate Director for Decennial Census Programs at the Census Bureau, the 2020 Census is a massive undertaking. It is the culmination of an estimated \$15.6 billion, over a decade of research and testing, and meticulous planning by thousands of Census Bureau employees to count about 330 million people across 3.8 million square miles. *See id.* ¶¶ 12, 16. To enumerate all persons, great efforts and the most resources are expended on populations that are most difficult to count. *Id.* After extensive testing and various iterations, the latest published version of the Census Bureau’s operational plan is Version 4.0, which was issued in December 2018. *See Id.* ¶¶ 12, 76–77.

As the gravity of the COVID-19 pandemic emerged in March 2020, the Census Bureau adjusted its operational plans for the census, contingent on a four-month extension of § 141(b)’s deadline. Fontenot Decl. ¶¶ 83–85. In April 2020, the Secretary and Bureau Director requested such statutory relief from Congress and announced a new plan to meet that extended schedule (the “COVID-19 Plan”). *Id.* ¶ 86. At various times throughout the pandemic, legislation has been introduced to modify § 141(b)’s deadline

consistent with the Secretary's plan. See H.R. 6800, 116th Cong. § 70201(a) (2020) (extending deadline for 2020 Census under § 141(b) from December 31, 2020 to April 30, 2021); H.R. 7974, 116th Cong., § 2 (2020) (same); H.R. 7034, 116th Cong., § 2 (2020) (same); S. 4048, 116th Cong., § 2 (2020) (same). But none of those proposals were enacted into law.

Once it became apparent in late July that Congress may not alter the December 31, 2020 statutory deadline, the Secretary directed the Bureau to present a plan for how it could accelerate operations to meet that deadline. Fontenot Decl. ¶ 87. Senior managers in the Census Bureau considered various operational adjustments, "evaluat[ing] the risks and quality implications of each suggested time saving measure and select[ing] those that [the Census Bureau] believed presented the best combination of changes to allow [it] to meet the statutory deadline without compromising quality to an undue degree." *Id.* ¶ 88. The Census Bureau formalized its plan (called the "Replan") and presented it to the Secretary on August 3, 2020. *Id.* ¶ 87. Later that day, the Secretary approved, and Director Dillingham announced, the Replan. Since that time the Bureau has been working tirelessly to conduct the census under the Replan, mindful of its need to meet the statutory deadline. *Id.* ¶¶ 87–98. The Bureau "is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline following the Replan Schedule." *Id.* ¶ 97.

LEGAL STANDARDS

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of

equities tips in his favor, and that an injunction is in the public interest.”¹ *Id.* at 20. Where, as here, a plaintiff seeks a “preliminary injunction [that] is mandatory rather than prohibitory in nature,” *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013), relief is especially disfavored and “warranted only in the most extraordinary circumstances.” *Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir. 1994).

ARGUMENT

I. PLAINTIFFS’ CLAIM IS BARRED BY THE POLITICAL QUESTION DOCTRINE

Plaintiffs’ entire preliminary-injunction motion is built on the faulty premise that the Census Bureau’s extraordinary efforts to meet § 141(b)’s statutory deadline will lead to an inaccurate census. *See, e.g.*, Pls.’ Mot. at 21–34. But the Court cannot entertain that speculation because Congress, not the judiciary, is constitutionally tasked with deciding whether any particular timeline will ensure an acceptable (though unknowable) level of census accuracy.

“The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch.” *Japan Whaling Ass’n v. Am. Cetacean Soc’y*, 478 U.S. 221, 230 (1986). The doctrine is “primarily a function of the separation of powers,” *Baker v. Carr*, 369 U.S. 186, 210 (1962), and “is designed to restrain the Judiciary from inappropriate interference in the business of the other branches of Government,” *United States v. Munoz-Flores*, 495 U.S. 385, 394 (1990). The Supreme Court has identified several hallmarks of nonjusticiable political questions. *Id.* Foremost among these are “a textually demonstrable constitutional commitment of the issue to a coordinate political department,” or “a lack of judicially discoverable and manageable standards for resolving” the dispute. *Vieth v. Jubelirer*, 541

¹ “The standard for granting either a TRO or a preliminary injunction is the same.” *Young v. Ditech Fin., LLC*, 2017 WL 3066198, at *8 (D. Md. July 19, 2017) (Xinis, J.).

U.S. 267, 277–78 (2004) (internal citation omitted); *see Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012); *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019) (finding partisan gerrymandering nonjusticiable for lack of administrable standards). Although either hallmark alone renders a case nonjusticiable, *see Schneider v. Kissinger*, 412 F.3d 190, 194 (D.C. Cir. 2005), Plaintiffs’ motion runs headlong into both.

A. The census deadline is textually committed to Congress.

The Enumeration Clause grants Congress the authority to conduct the “actual Enumeration” in “such Manner as they shall by Law direct.” U.S. Const. art. I, § 2, cl. 3. Courts routinely recognize the nonjusticiability of cases grounded in far less explicit constitutional language. Most notably, courts acknowledge that a variety of actions implicating foreign relations can present nonjusticiable political questions, even when the actual text of the Constitution is far from clear. *See, e.g., Made in the USA Found. v. United States*, 242 F.3d 1300, 1313–14 (11th Cir. 2001) (explaining that the Constitutional commitment of “foreign relations . . . to the executive and legislative” rests on various textual provisions and established case law); *El-Shifa Pharm. Indus. Co. v. United States*, 378 F.3d 1346, 1367 (Fed. Cir. 2004) (holding that the Constitution, “in its text and by its structure, commits to the President the power to make extraterritorial enemy property designations”); *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 983 (9th Cir. 2007) (“Whether to grant military or other aid to a foreign nation is a political decision inherently entangled with the conduct of foreign relations.”); *Alperin v. Vatican Bank*, 410 F.3d 532, 545 (9th Cir. 2005) (surveying cases applying the political question doctrine in the foreign-relations context). But where, as here, the Constitution explicitly commits an issue to Congress or the Executive, the political-question determination is straightforward. *See, e.g., Gilligan v. Morgan*, 413 U.S. 1, 5–11 (1973) (noting Congress’s explicit power to “organiz[e] . . . the Militia” in holding that a suit to restrain the Governor’s use of National Guard troops presented a nonjusticiable political question).