

## Four approaches to determining or predicting citizenship for Census cases

- **Hot Deck:** Business Rules (BR) plus hot deck imputation (BR covers  $\approx$  91% of the data)
- **BR logistic:** BR plus logistic regression with BR data
- **ACS logistic:** BR plus logistic regression with NBR cases in the ACS sample that have a response to the ACS citizenship question
- **LC:** Latent class model

## Business Rules (BR) plus hot deck imputation (Hot Deck)

- Accept BR determinations
- For NBR cases, impute citizenship from nearest neighbor (on address list) within imputation cells defined by a cross-classification of
  - Race and detailed Hispanic origin (17 groups)
  - Whether or not the housing unit had a non-PIKed person within the unit
  - Age groups: 18 – 29, 30 – 49, 50+
- There are small numbers of resolved cases in some cells.
- Very few cases needing imputation are in units where all persons are PIKed

## Business rules plus logistic regression with BR data (BR logistic)

- Accept BR determinations using linked data that pass a record linkage quality threshold. (See slide #44 for details.)
- Logistic regressions used to predict probabilities of citizenship for NBR cases:
  - Fit logistic regression for **BR householders** using tract indicators, CVAP race and Hispanic origin categories, and age domains (under 29, 30 to 49 and 50+) as main effects). Use this model to predict citizenship for **householders without BR citizenship**.
  - Fit logistic regression for **other household members with BR citizenship** using relationship to householder (11 categories), CVAP race and Hispanic origin categories, and age domains. This was **done separately for the cases where householders were BR citizens and for the cases where householders were BR noncitizens (two models)**.
  - Predicted citizenship probabilities for **other household members without BR citizenship** were then obtained from
$$\Pr(\text{Other is Citizen}) = \Pr(\text{HH is citizen}) \times \Pr(\text{Other is Citizen}|\text{HH is citizen}) \\ + [1 - \Pr(\text{HH is citizen})] \times \Pr(\text{Other is Citizen}|\text{HH is noncitizen})$$
- A different logistic regression model was used for group quarters residents (for GQs, there is no householder)

## BR plus logistic regression with ACS data (ACS logistic)

- **Motivation:** As-reported ACS estimated citizen shares vary widely depending on
  - whether or not citizenship information can be linked to the person's survey record and,
  - if not, the reason why not, especially for race/ethnic groups that have higher noncitizen shares (Asians and Hispanics).
  - This suggests differences between the BR versus NBR data (**nonignorable missingness**).
- **Goal:** Use ACS data to address nonignorable missingness that can arise by using BR cases to develop predictions for the NBR cases.

## BR plus logistic regression with ACS data (ACS logistic, continued)

- Accept BR determinations using linked data that pass a record linkage quality threshold. (See slide #45 for details.)
- Fit logistic regression models to ACS data without BR determinations, but with ACS reported citizenship. Fit separate models to the following different groups of ACS cases:
  - NBR-PIK (no business rules but has PIK)
  - NBR-SS (no business rules and sent to PVS search for a PIK)
  - NBR-NSS (no business rules and not sent to PVS search for a PIK).
- The models use many regression variables including state indicators, age groups, race/ethnicity groups, sex, tenure, etc., plus citizenship status of householder interacted with relative vs. non-relative of householder.
- Apply fitted logistic regression model to CEF NBR cases to predict their citizenship probabilities.

## Latent Class model (LC)

- Treat true citizenship status as a latent variable ( $L$ ), imperfectly measured by multiple items from various data sources (Numident, passport data, USCIS data, ITINs, Bureau of Prisons and U.S. Marshall Service law enforcement data, ACS, CPS, AHS, SIPP).
  - $L$  has three possible states: U.S.-born citizen, foreign-born citizen, and noncitizen
- Fit the latent-class model in two stages for its two parts:
  - **Measurement model** – describes relationships between  $L$  and the items that measure it.
  - **Prevalence model** – describes how the distribution of  $L$  varies over the population in relation to predictors (e.g., logistic regression).
- Carry over fitting results from Stage 1 to Stage 2 via person-level Bayes factors, with their natural interpretation as odds multipliers (for states of  $L$ ).
- Compute probability of citizenship for each person based on all available items.

## Notes on the four approaches to estimation of citizenship

- The first three accept the BR determinations (covers  $\approx 91\%$  of the data); the latent class modeling does not, but it nearly replicates the BR determinations.
  - In initial test implementations, the first three approaches used slightly different versions of the BRs. This is being harmonized.
- The first two approaches (hot deck and BR logistic) effectively assume that the NBR cases are like the BR cases, conditional on certain information (Missing at Random). However, ACS data provide evidence against this assumption.
- The third approach (ACS logistic) assumes the NBR cases found in the ACS sample are like all the other NBR cases, conditional on certain information. It also accepts the ACS citizenship responses for these cases, which include some error.
- The latent class model draws information from both CEF and ACS BR and NBR cases, and other data sources, to provide information on the NBR cases.

## 2010 CEF Percent of Cases by PIK Group

	<b>Business Rules</b>	<b>NBR-PIK</b>	<b>NBR-SS</b>	<b>NBR-NSS</b>	<b>Population (1,000s)</b>
<b>Total</b>	<b>90.9</b>	<b>0.12</b>	<b>5.8</b>	<b>3.3</b>	<b>234,600</b>
NH White Alone	93.2	0.12	3.9	2.8	157,100
NH Black Alone	88.0	0.04	6.9	5.2	27,320
Hispanic	83.2	0.18	12.8	3.8	33,350
NH Asian Alone	89.1	0.22	7.2	3.5	11,290

NBR-PIK is no business rules and has PIK. NBR-SS is no business rules and sent to PVS search. NBR-NSS is no business rules and not sent to PVS search.  
 CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (C80R8-FY20-CE0006-0031).

27 2020CENSUS.GOV

Shape  
your future  
START HERE >

2020  
Census

## Estimated Percent Citizens from Four Approaches 2010 CEF, All Cases

Race/Ethnicity	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
<b>Total</b>	<b>91.4</b>	<b>91.4</b>	<b>91.1</b>	<b>90.8</b>	<b>91.5</b>
NH White Alone	98.3	98.1	98.2	97.8	98.3
NH Black Alone	95.0	94.9	95.0	93.7	95.3
Hispanic	64.0	64.8	62.5	63.3	65.7
NH Asian Alone	67.7	67.5	67.2	68.3	67.4

The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26.  
 CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review  
 Board approval (CBDRB-FY20-CE006-0031).

28 2020CENSUS.GOV

Shape  
your future  
START HERE >

2020  
Census

## Estimated Percent Citizens from Four Approaches 2010 CEF, BR Cases (91% of total pop)

Race/Ethnicity	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
<b>Total</b>	<b>92.6</b>	<b>92.5</b>	<b>92.6</b>	<b>92.5</b>	<b>93.0</b>
NH White Alone	98.4	98.4	98.4	98.4	98.5
NH Black	95.5	95.5	95.5	95.4	95.6
Hispanic	67.8	67.5	67.7	67.2	71.3
NH Asian Alone	69.4	68.9	69.4	69.4	69.7

Notes: The 2010-2012 ACS column uses the ACS citizenship values. BR in 2010-2012 ACS is the assignment rules used in BR + Hot Deck (using primary sources only) applied to the same 2010-2012 ACS records as in the 2010-2012 ACS column.

## Estimated Percent Citizens from Four Approaches 2010 CEF, NBR-SS Cases (5.8% of total pop)

Race/Ethnicity	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
<b>Total</b>	<b>75.3</b>	<b>76.7</b>	<b>67.0</b>	<b>64.8</b>	<b>73.1</b>
NH White Alone	95.9	94.9	93.6	83.3	95.1
NH Black	91.4	89.5	88.5	70.4	90.9
Hispanic	42.0	48.6	29.0	37.2	33.4
NH Asian Alone	53.2	54.8	41.2	55.5	47.3

NBR-SS is no business rules and sent to PVS search. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

## Estimated Percent Citizens from Four Approaches 2010 CEF, NBR-SS Cases (12.8% of Hispanic pop) Hispanics

Race/Ethnicity	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
<b>Hispanic</b>	<b>42.0</b>	<b>48.6</b>	<b>29.0</b>	<b>37.2</b>	<b>33.4</b>
Mexican	39.9	48.2	25.6	34.0	30.3
Puerto Rican	96.3	70.0	97.4	87.7	97.2
Cuban	59.9	60.4	58.3	49.7	62.8
Central American	28.2	39.3	15.3	31.6	19.2
Latin American	37.1	47.6	26.5	36.5	33.7
Other Hispanic	62.7	60.0	47.2	47.9	75.1

NBR-SS is no business rules and sent to PVS search. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides 420-26. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

## Estimated Percent Citizens from 4 Approaches 2010 CEF, NBR-SS Cases (7.2% of NH Asian pop) NH Asian Alone

Race/Ethnicity	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
<b>NH Asian Alone</b>	<b>53.2</b>	<b>54.8</b>	<b>41.2</b>	<b>55.5</b>	<b>47.3</b>
Asian Indian	47.0	49.7	36.9	53.0	40.7
Chinese	51.7	53.5	39.0	52.7	44.1
Filipino	62.9	61.6	54.5	61.0	63.3
Japanese	57.3	61.6	44.3	58.6	54.8
Korean	48.3	53.7	29.1	54.8	35.1
Vietnamese	64.5	59.7	62.7	61.8	65.3
Other Asian	53.6	54.6	39.7	55.5	47.4

NBR-SS is no business rules and sent to PVS search. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CE006-0031).

32 2020CENSUS.GOV

Shape  
your future  
START HERE >

2020  
Census  
2020

## Estimated Percent Citizens from Four Approaches 2010 CEF, NBR-NSS Cases (3.3% of total pop)

Race/Ethnicity	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
<b>Total</b>	<b>86.1</b>	<b>88.1</b>	<b>89.8</b>	<b>91.0</b>	<b>94.4</b>
NH White Alone	96.0	96.2	97.9	98.1	98.2
NH Black	91.7	92.2	95.1	94.9	96.6
Hispanic	54.6	63.1	61.7	68.6	69.2
NH Asian Alone	54.7	62.8	67.8	68.9	76.2

NBR-NSS is no business rules and not sent to PVS search. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

## Estimated Percent Citizens for 2010 CEF NBR-SS Group with Alternative Applications of the ACS Logistic Model by Training Sample and Source of Citizenship Status

Race/Ethnicity	ACS logistic approach model used				BR logistic	Hot Deck	Latent Class Model
	ACS NBR-SS Sample, ACS Citizenship	ACS BR Sample, ACS Citizenship	ACS BR Sample, BR Citizenship	CEF BR Sample, BR Citizenship			
<b>Total</b>	<b>69.0</b>	<b>76.6</b>	<b>77.9</b>	<b>77.3</b>	<b>76.7</b>	<b>75.3</b>	<b>64.8</b>
NH White Alone	93.6	95.0	95.1	95.0	94.9	95.9	83.3
NH Black Alone	88.5	89.6	89.8	89.6	89.5	91.4	70.4
Hispanic	29.0	48.2	51.3	50.0	48.6	42.0	37.2
NH Asian Alone	41.2	52.5	56.5	55.4	54.8	53.2	55.5

NBR-SS is no business rules and sent to PVS search, CEF = Census Edited File. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model, not including the alternatives for the ACS logistic approach used here) are discussed on slides #20-26. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CEDRB-FY20-CE0006-0011).

## Conclusions from comparing estimation approaches using 2010 CEF data as the frame

- The four approaches yield very similar results for citizenship estimates for the total 18+ population at the national level
- Some differences can be seen in (total 18+) national estimates for Hispanics, particularly Mexicans and Central Americans
- We have examined state level estimates in which we see similar patterns in the results though, as expected, with some variations across states. These results have not yet gone through a disclosure review.

## Some larger differences can be seen when the estimates are broken out by PIK status

- BR cases: minimal differences
- NBR-PIK: very large differences, but this is a very small group
- NBR-SS: Large differences for Hispanics and for NH Asians, especially for Mexicans, Central Americans, Latin Americans, and Koreans
  - An experiment that applied the model from the ACS logistic approach in alternative ways showed that the largest contributor to differences between the estimation approaches for the NBR-SS group was whether BR cases or ACS NBR cases were used as the “training sample” for making predictions.
- NBR-NSS: Some differences seen across approaches, but generally smaller than for NBR-SS

NBR-PIK is no business rules and has PIK. NBR-SS is no business rules and sent to PVS search. NBR-NSS is no business rules and not sent to PVS search. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CEDRB-FY20-CED006-0031).

## Further research planned and underway

- Apply the four approaches using 2018 ACS data as the frame, along with corresponding 2018 administrative sources. See if we get similar results to those shown here from using the 2010 CEF as the frame.
- Harmonize to a common set of business rules.
- Refine the models used, drawing on results of the analyses done to date.
  - Since the ACS provides a much smaller data set than a census, there can be some limitations on model refinement for the application to the 2018 ACS, especially as it relates to detailed population subgroups and geography.
  - For the Latent Class Model, this requires certain enhancements to the modeling software.
  - Research linking of administrative files to census housing unit records (where person records could not be linked)
- Refine the record linkage quality measure.

## Disclosure Avoidance

- Data in this presentation were protected using the Disclosure Review Board's current rules for legacy data at the national level
- The 2020 CVAP data product will be protected using the 2020 Disclosure Avoidance System
  - Using a privacy-loss budget determined by the Data Stewardship Executive Policy Committee and charged to the 2020 Census
  - Using the TopDown Algorithm
  - Constrained to be fully consistent with the geographic, race and ethnicity definitions used in Table P4 of the 2020 PL94-171 redistricting data

## Questions for the committee

1. Should we use the secondary data sources and EPIK linkages given the limited additional coverage that they provide?
2. Do you have suggestions for how we decide on which data to use as the "training sample" for developing citizenship predictions for the cases not covered by the Business Rules?
  - The BR cases themselves, or some subset – Issue: evidence that the BR cases differ from the non-BR cases.
  - ACS non-BR cases with ACS as-reported citizenship – Issues: evidence of reporting error in ACS, particularly for noncitizens, plus potential for 2020 ACS to be less comparable to the 2020 Census (than was the case in 2010).
  - Use the Latent Class model, which makes use of both these data sources, and others.
  - Formulate some mathematical comparison criterion?
  - Combine results from more than one estimator – how?
3. Do you have suggestions for explaining (primarily to a technical audience) how we made this decision?
4. Do you have suggestions for ways to convey uncertainty reflecting prediction error, which is not due to sampling error, and is partly due to certain systematic errors? (Note the second question.)

Note: We plan to release a report on this work by October 31, 2020 that will indicate which estimation approach we have chosen and why, so near-term responses to these questions are appreciated.

# Additional slides with more details follow

40 2020CENSUS.GOV

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CE006-0031).

Shape  
your future  
START HERE >

2020  
Census  
2020

# 2020 Decennial Census

- CUF (Census Unedited File) – to be used for record linkage
- CEF (Census Edited File)
  - serves as the frame for the CVAP estimates
  - we use other data sources to predict the probability of citizenship for each CEF person record (may be 0, 1, or in between) and then add up these predictions to tabulate estimated numbers of citizens

**2020 Census**

This is the official government form for the 2020 Census. It is to be filled out by the person or persons who are responsible for the household. It is to be filled out by the person or persons who are responsible for the household. It is to be filled out by the person or persons who are responsible for the household.

**Start Here**

1. Fill in the name of the person or persons who are responsible for the household. (If the household is a business or institution, fill in the name of the business or institution.)

2. Fill in the date of birth of the person or persons who are responsible for the household. (If the household is a business or institution, fill in the date of the business or institution.)

3. Fill in the date of birth of the person or persons who are responsible for the household. (If the household is a business or institution, fill in the date of the business or institution.)

4. Fill in the date of birth of the person or persons who are responsible for the household. (If the household is a business or institution, fill in the date of the business or institution.)

5. Fill in the date of birth of the person or persons who are responsible for the household. (If the household is a business or institution, fill in the date of the business or institution.)

6. Fill in the date of birth of the person or persons who are responsible for the household. (If the household is a business or institution, fill in the date of the business or institution.)

7. Fill in the date of birth of the person or persons who are responsible for the household. (If the household is a business or institution, fill in the date of the business or institution.)

8. Fill in the date of birth of the person or persons who are responsible for the household. (If the household is a business or institution, fill in the date of the business or institution.)

9. Fill in the date of birth of the person or persons who are responsible for the household. (If the household is a business or institution, fill in the date of the business or institution.)

10. Fill in the date of birth of the person or persons who are responsible for the household. (If the household is a business or institution, fill in the date of the business or institution.)

## Social Security Administration (SSA) Numident File



- Applications for Social Security Numbers (SSNs) and subsequent transactions
- Primary reference file for the Census Bureau's Person Identification Validation System (PVS) (Wagner and Layne, 2014)
- Information on nativity, citizenship and noncitizen legal status

### Strengths

- Covers large share of population – Nearly 90% of persons in the 2010 Census were successfully found in Numident (Rastogi and O'Hara, 2012)
- Numident report of citizenship can be accepted with high confidence

### Weaknesses

- Reports of non-citizenship are less reliable, because naturalizations are not always reported to SSA
- No coverage of those in the resident population without SSNs

42 2020CENSUS.GOV

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CE006-0031).

Shape  
your future  
START HERE >

2020  
Census

## Record Linkage Process

- Link records from other files to records in a Reference File constructed from SSA Numident records and occurrences of ITINs. This allows assignment of Protected Identification Keys (PIKs) to the other file records, which are then used for matching of records across the various files.
  - Probabilistic record linkage
  - SSN verification, then combinations of name, address, date of birth
- Unduplicate unlinked records with sufficient PII, put in Enhanced Reference File (ERF), and assign PIKs to as many ERF records as possible that do not already have PIKs (while maintaining record linkage quality)
  - For simplicity, we refer to these "enhanced process PIKs" as EPIKs
  - EPIK process incorporates noncitizens without SSNs
- 2020 Census records are assigned PIKs and EPIKs via linkage to the Reference File and the Enhanced Reference File
- Link administrative and survey records containing citizenship to the 2020 Census via the PIKs and EPIKs.

SSA = Social Security Administration. ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

43 2020CENSUS.GOV

Shape  
your future  
START HERE >

2020  
Census

## Record linkage quality threshold: Business rules plus logistic regression with BR data

Linkage process assigns a separate quality score for each linkage attempt (PVS module and pass)

Accept BR determinations using linked data that pass the following record linkage quality threshold.

- Quality threshold is  $\Pr(\text{correct link}) \geq .99$ , where the linkage probabilities were determined by a decision tree analysis applied to links between Numident foreign-born records and other source records that indicated noncitizen. Note that if another source says noncitizen and the Numident says they were U.S.-born, this is likely to be a linkage error.
- Variables used in making the decision tree were source, PVS module and pass combined indicator, and the record linkage score. This was done separately for each state.
- Decision tree predictor developed with noncitizen records was also used to predict probabilities of correct links for citizens.

## Record linkage quality threshold: Business rules plus logistic regression with ACS data

Accept BR determinations using linked data that pass the following record linkage quality threshold.

Create single quality score from logistic regressions with noncitizen observations in the file.

- Dependent variable = 1 if linked to foreign-born Numident record, = 0 if linked to U.S.-born Numident record
- Independent variables are linkage attempt and score
- Fitted logistic regression model is applied to linked records (whether indicating citizen or noncitizen) to predict the probability that the link is correct. (Where tables indicate "record linkage quality restriction" this mean links are accepted only if their predicted probability of being correct is  $\geq .99$ .)

## Conclusions about fitness for use of data sources

- Combining the primary administrative data sources provides reliable data on citizenship for a large percentage of the population (91% as estimated using 2018 ACS data)
  - SSA Numident, State Dept. passport data, USCIS lawful permanent residents and naturalizations, ITINs (with limited additional return from the ADIS, SEVIS, and WRAPS data)
- Additional data sources (SNAP/TANF, driver's licenses, BOP, USMS, ACS, AHS, CPS, and SIPP) provide very limited additional return due to:
  - Limited population coverage of most sources (for surveys, ACS is the one exception)
  - Overlap with the primary admin sources, especially for citizens (incremental coverage is just 0.03%, as estimated using 2018 ACS population)
  - Records for noncitizens that are out-of-date
  - Record linkage problems with some sources (assessing quality of record links is important)

ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. USCIS = U.S. Customs and Immigration Service. See slides #7-8 for definitions of the additional data sources. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CE006-0031).

# Shares of 2018 ACS Estimated Population by Source Citizenship Combinations

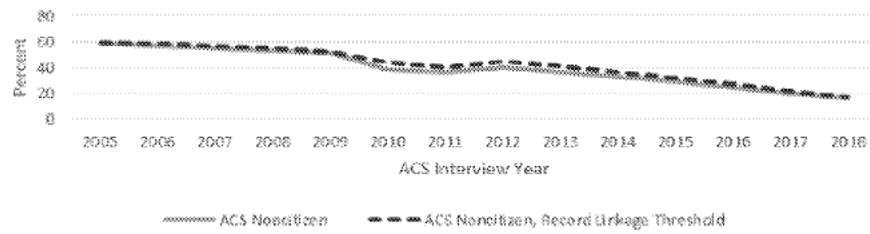
## Disagreements

Numident	U.S. Passport	USCIS	ITIN	% of 2018 ACS Estimated Population	
				No restrictions on record linkage	With record linkage quality restrictions
Noncitizen	Citizen	Citizen	Absent	1.97	1.68
Noncitizen	Absent	Citizen	Absent	0.27	0.26
Noncitizen	Citizen	Noncitizen	Absent	0.23	0.12
Noncitizen	Citizen	Absent	Absent	0.08	0.41
<b>Cumulative Total</b>				<b>2.55</b>	<b>2.47</b>
Citizen	Absent	Noncitizen	Absent	0.09	0.04
Citizen	Citizen	Noncitizen	Absent	0.67	0.16
Missing Citizenship, Foreign-Born	Citizen	Noncitizen	Absent	0.11	< 0.01
<b>Cumulative Total</b>				<b>3.42</b>	<b>2.68</b>
Missing Citizenship, U.S.-Born	Absent	Noncitizen	Absent	< 0.01	D
Missing Citizenship, U.S.-Born	Citizen	Noncitizen	Absent	< 0.01	D
Absent	Citizen	Citizen	Noncitizen	0.00	0.00
Absent	Citizen	Noncitizen	Noncitizen	0.00	0.00
Absent	Citizen	Absent	Noncitizen	0.00	0.00
<b>Total disagreements</b>				<b>3.43</b>	<b>2.68</b>

Notes: This uses the 2018 ACS voting-age sample and its sampling weights. The total number of observations is 3,989,000.

"With record linkage quality restrictions" indicates links are accepted only if the predicted  $P(\text{link is correct}) \geq .99$ ; see slide #45. "D" indicates that the number is suppressed due to disclosure restrictions. USCIS (U.S. Customs and Immigration Service) citizens are from naturalization records; USCIS noncitizens are from lawful permanent resident, refugee, and asylee records. ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CIBDRB-FY20-CF 0006-0031).

## Percent ACS Noncitizens That Are 2020 Business Rule Citizens, by ACS Interview Year



The number of observations is 2,156,000 without a record linkage threshold, and 1,273,000 with one.

## Estimated Percent Citizens from Four Approaches 2010 CEF, NBR-SS Cases (5.8% of total pop) by observable characteristics

Characteristic	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
Householder Citizen	88.4	81.6	79.5	71.4	79.3
Householder Noncitizen	24.1	22.2	13.3	37.9	14.2
Difference	64.4	59.5	66.1	33.5	65.1
English Form	76.4	77.1	72.7	67.8	79.7
Non-English Form	30.0	37.8	7.6	23.4	13.8
Difference	46.5	39.9	65.1	44.4	65.9

NBR-SS is no business rules and sent to PVS search. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (C8D8B-4Y20-CE0006-0031).

49 2020CENSUS.GOV

Shape  
your future  
START HERE >

2020  
Census

## Estimated Percent Citizens from Four Approaches 2010 CEF, NBR-SS Cases (5.8% of total pop) by observable characteristics (continued)

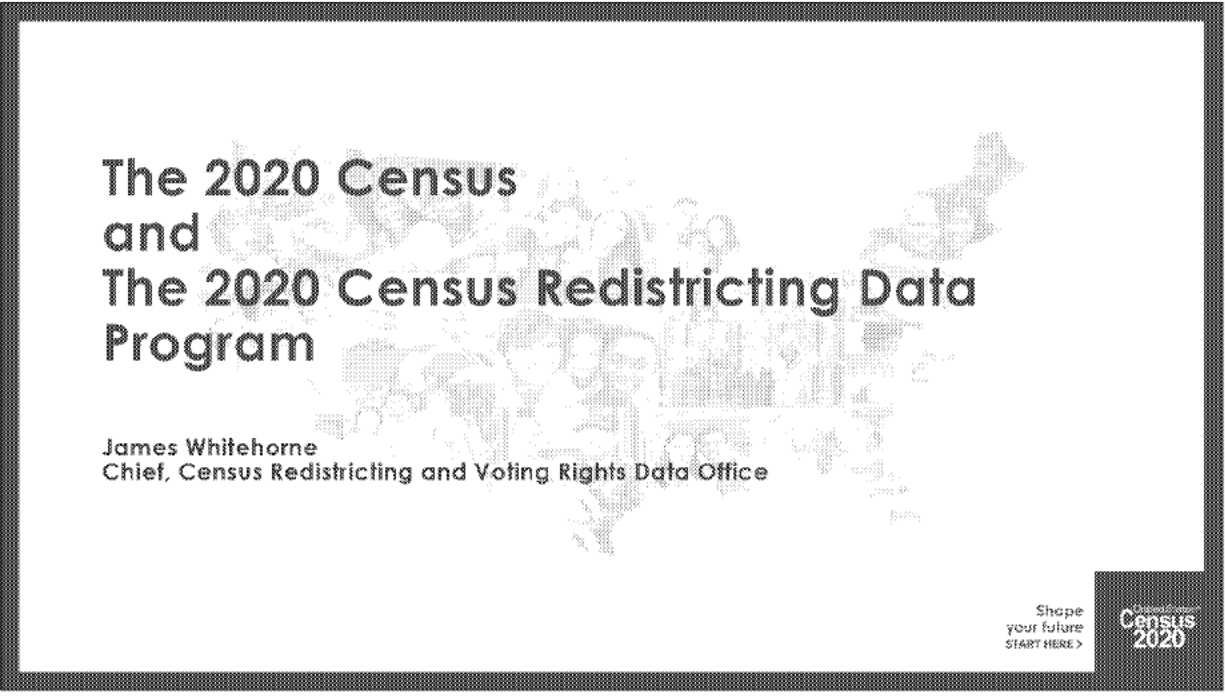
Characteristic	Hot Deck	BR logistic	ACS logistic	Latent Class Model	2010-2012 ACS
Non-Relative and HHLDR a Citizen	88.0	73.4	81.4	71.7	84.8
Non-Relative and HHLDR a Noncitizen	23.9	16.6	14.4	37.2	14.2
Difference	64.1	56.8	67.0	34.5	70.6

NBR-SS is no business rules and sent to PVS search. HHLDR is householder. The four estimation approaches (Hot Deck, BR logistic, ACS logistic, and Latent Class Model) are discussed on slides #20-26. CEF = Census Edited File. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CE0006-0031).

---

**From:** James (b) (6)  
**Sent:** 9/18/2020 2:25:59 PM  
**To:** James Whitehorne (CENSUS/ADDC FED) [James.Whitehorne@census.gov]  
**Subject:** NCSL September presentation  
**Attachments:** 2020\_09\_18\_NCSL\_September\_Update.pptx

# The 2020 Census and The 2020 Census Redistricting Data Program



James Whitehorne  
Chief, Census Redistricting and Voting Rights Data Office

Shape  
your future  
START HERE >

Census  
2020

## Agenda

- Current activities
- Progress monitoring tools
- Editing and imputation
- Redistricting Data Program
- Disclosure Avoidance
- Citizenship by Voting Age by Race and Ethnicity special tabulations

Good morning and thank you to NCSL for once again providing us with a forum in which we can provide information and address questions and concerns from our stakeholders. Today's presentation is a little disjointed in that I have some topics that are not always addressed in the same setting. I will talk a little bit about progress on the 2020 Census, imputation and editing or response data, a few reminders from the redistricting data program, our plans for disclosure avoidance, and finally the CVAP special tabulations.

## 2020 Census

### Status

The Census is happening now. You can respond online, by phone, or by mail.

- <https://my2020census.gov/>
- Census takers are following up. Even if you've responded, a census taker may still visit to verify your address or response. We encourage cooperation as it helps ensure an accurate count.

The enumeration of transitory and temporary locations (ETL) is underway.

- August 31 to September 28
- ETL enumerates those living in housing such as RV parks, campgrounds, marinas, and temporary housing such as hotels and motels. The operation also counts people living at racetracks, carnivals and circuses.

The enumeration of service-based locations (SBE) begins next week

- September 22 to September 24
- SBE enumerates people without conventional housing and people who may be experiencing homelessness.
  - Emergency and transitional shelters; Soup kitchens; Regularly scheduled mobile food van stops; pre-identified non-sheltered outdoor locations

I want to start with the most important message that you can take away from today and share with your constituents, friends, and family. It is not too late to respond to the Census. You can still respond online, by phone, or by paper if you still have the paper questionnaire we sent earlier. In addition, if you have already responded and you get a visit from a census worker, please work with them. There are many reasons why an enumerator may revisit an address that has responded, most of which involve quality assurance work. Your cooperation with these hard working folks is important and valuable.

Secondly, I would like to point out that we have two operations that have started up in September – enumeration of transitory locations and enumeration of service based locations. I will talk about these a little more in a few slides.

## Completed Operations

**Remote Alaska** - Began on January 21, 2020. Completed on August 28, 2020, enumerating 33,749 housing units, 681 group quarters, and 131 transitory locations. It is conducted in the outlying areas of Alaska, including approximately 220 Alaska Native villages, with the following objectives:

- Verify and update the address list and feature data for tabulation of the 2020 Census.
- Determine the type and address characteristics for each living quarter.
- Enumerate respondents at housing units (HUs), group quarters (GQs), and transitory locations (TLs) in those areas.

**Update Enumerate** - Began on June 14, 2020. Completed on August 31, 2020. Enumerators updated the address list and enumerated the respondents at 7,587 housing units, using paper questionnaires. The work occurred in very remote areas like the northern parts of Maine and Southeast Alaska.

**Update Leave** - Began on May 6, 2020. Completed on August 13, 2020. Completed 6.8M housing units. Enumerators updated the address list and left a paper questionnaire. We do this in areas where the majority of households may not receive mail at their home's physical address (like households that use PO boxes or areas recently affected by natural disasters).

**Group Quarters Enumeration** - Group Quarters data collection began April 2, 2020 and closed out on August 26, 2020. Over 215,000 group quarter facilities were enumerated with a completion rate of close to 100-percent. GQE types include: college/university student housing, residential treatment centers, nursing facilities/skilled-nursing facilities, group homes, military barracks, correctional facilities, and workers' dormitories.

Lets talk about some of the work that has already been completed.

The Census was able to successfully complete our Remote Alaska Operation. This is almost like a mini census for those outlying areas of Alaska and covers address listing, housing unit and group quarters enumerations and transitory location enumeration.

We also completed our Update Enumerate operation where, just like we all picture, enumerators went door to door updating address lists and enumerating households in very remote areas like northern parts of Maine and Southeast Alaska. 7,587 households

We completed our update leave operation where enumerators update our address list an drop off paper form for areas where households may not receive mail at their physical address or were affected by natural disasters. 6.8 million housing units

Finally, we have finished our group quarters enumeration. These are things like correctional facilities nursing homes military barracks. This is an important one for redistricting as this decade we have a group quarters table in the P.L. 94-171 Redistricting Data files.

## Enumeration at Transitory Locations (ETL)

The goal of the ETL operation is to enumerate individuals in occupied units at transitory locations who do not have a Usual Home Elsewhere (UHE). A transitory location is a location that is comprised of living quarters where people are unlikely to live year round, due to the transitory/temporary/impermanent nature of these living quarters. Enumerators will canvass a transitory location in one visit to enumerate all occupied transitory units. Data collection for the ETL operations began on August 31, 2020 and will be completed by September 28, 2020.

**Transitory locations include:** Recreational Vehicle Parks, Campgrounds, Racetracks, Circuses, Carnivals, Marinas, and Hotels.



### Enumeration at Transitory Locations Progress – As of September 15, 2020

Initial Workload	Cases Added	Total Workload	Completed & Closed Cases	Current Workload	Percent Completed & Closed
61,853	627	62,480	47,947	14,533	76.7%

As I mentioned, we have a couple of operations going on this month. One that started on August 31 is the enumeration at transitory locations. This operation goes through September 28th and covers RV parks, campgrounds, racetracks, marinas, and the like where people may reside temporarily but also may not have a usual home elsewhere. As you can see by the workload listed in the table, this operation is well on its way to successfully completing its work.

## 2020 Census Service-Based Enumeration (SBE) Overview

### Background

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

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

### Consulted With Major Stakeholders

- In late May/early June we consulted with 67 national and local organizations to assist the Census Bureau in determining the best date to conduct SBE/TNSOL.
- Based on the feedback from our stakeholders, input from Census experts, and consultation with operational team leads, we have selected September 22 – 24 as the dates to conduct SBE and TNSOL.

### Current Status

- Updating TNSOLs locations and making appointments with service providers.
- Current SBE workload: 49,045 (as of September 15, 2020)
  - TNSOLs: 33,604
  - Emergency and Transitional Shelters: 9,726
  - Soup Kitchens: 5,081
  - Regularly Scheduled Mobile Food Vans: 634

6 2020CENSUS.GOV

Shape  
your future  
START HERE >

2020  
Census

Another September operation that occurs next week is the Service Based Enumeration operation. This is how Census captures people experiencing homelessness. This is done by doing a rapid canvassing of locations where services are provided, like shelters and soup kitchens, but also by enumerating locations where people experiencing homelessness are likely to congregate. These dates were selected in consultation with our partner organizations as the best for them to be able to support the operation and where the population profile is similar to that expected in an April timeframe.

## Nonresponse Followup Field Operations – Current Status

### Workload (as of September 15, 2020):

National Workload: 62,962,757 Cases

Completed Workload: 51,645,019 Cases

- 82.0% Percent Complete
- 77.8% Percent Goal

### Productivity:

Average Hours worked per Week: 19.3\*

Average Cases Completed per Hour: 2.13

Planned Cases Completed per Hour: 1.55

\*September 3, 2020 – September 9, 2020



The main operation at this time that has most of the public's attention is our Non-Response Followup operation or NRFU. NRFU is going well. As of Tuesday the 15th we were 82% complete which exceeds our goal for that date of 77.8%. Enumerators are working hard averaging 19.3% hours per week from the week of September 3rd to 9th.

## 2020 Census Status -- Tools for monitoring Census progress

### Total Response Rates by State

- The Top Five States
- <https://2020census.gov/en/response-rates.html>

Top Five States (Total Enumerated as of 9/12/2020)		
1	Idaho	99.2%
2	West Virginia	99.0%
3	Hawaii	97.8%
4	Washington	97.3%
5	Maine	96.8%

### 2020 Census Housing Unit Enumeration progress by State

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

## 2020 Census Housing Unit Enumeration Progress by State

Sort by: State		Report Date: 9/15/2020		
		As of 9/15/2020, percentage of housing units:		
State	Self-Response	Enumerated in NRFU	Enumerated	%
U.S. Total	89.8	26.8	91.8	97
Alabama	85.4	26.8	89.0	92
Alaska	83.0	46.1	90.0	92
Arizona	80.9	22.4	88.0	91
Arkansas	80.0	24.8	84.8	90
California	86.0	25.8	94.8	95
Colorado	85.0	22.8	91.8	93
Connecticut	85.7	28.4	96.2	95
Delaware	83.0	26.0	90.0	92
District of Columbia	82.3	27.1	90.4	91
Florida	82.0	24.2	86.7	90
Georgia	81.2	22.8	83.8	89
Hawaii	82.3	35.8	97.8	95
Idaho	88.8	36.8	95.2	94
Illinois	79.4	24.2	90.4	91
Indiana	80.8	27.0	90.8	92
Iowa	79.5	26.2	90.7	91
Kansas	80.1	27.7	90.8	91
Kentucky	87.8	24.2	90.0	91
Louisiana	80.0	25.1	88.1	90
Maine	87.6	38.2	96.8	95
Maryland	78.0	22.0	90.8	91
Massachusetts	80.0	25.0	90.0	91
Michigan	78.0	26.9	91.2	91
Minnesota	74.4	26.9	90.3	90
Mississippi	79.4	24.4	89.0	90
Missouri	85.1	28.0	94.0	93
Montana	80.1	24.0	89.0	90
Nebraska	71.1	21.0	86.0	89
Nevada	85.5	25.3	90.7	91
New Hampshire	86.1	21.2	90.3	91
New Jersey	88.1	25.3	94.6	93
New Mexico	86.0	28.0	90.0	91
New York	85.8	26.0	91.3	91
North Carolina	81.0	24.0	86.0	90
North Dakota	86.0	21.2	90.2	91
Ohio	80.8	23.7	89.8	90
Oklahoma	86.0	28.7	88.7	90
Oregon	86.4	27.8	90.2	91
Pennsylvania	84.0	24.8	90.8	91

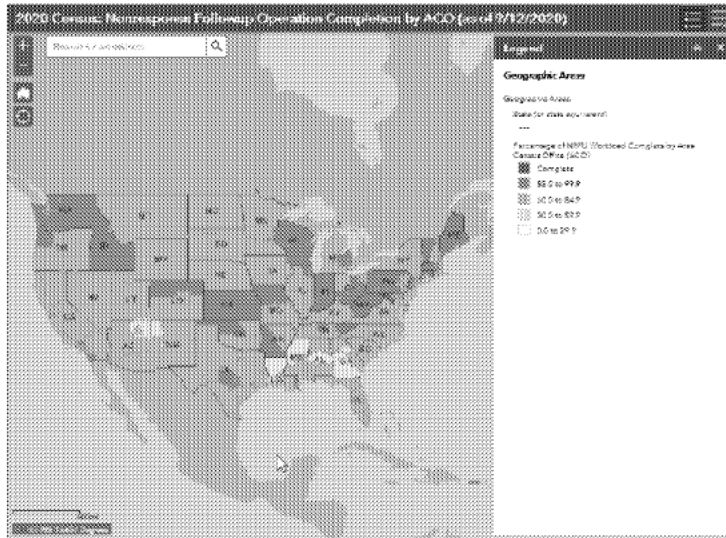
Note: Percentages may not total 100% due to rounding. A limited number of areas have not yet been fully enumerated. Percentages for the U.S. Total do not include housing units in Puerto Rico.

Source: U.S. Census Bureau

Stacy  
9/15/2020  
2020

The Census Bureau has put together some tools to help the public track the progress of the NRFU operation. Our response rate by state page has the self response, the enumerated in NRFU response, and the total enumeration rate for each state, the District of Columbia, and Puerto Rico. The tables on my slide are from the 12th but as of today we have two states that have crossed the 99% mark, Idaho and West Virginia, which is the census stated quality goal for each state. In addition Hawaii is 0.1% away from also hitting this mark.

## 2020 Census Status – Tools for monitoring Census progress



### 2020 Census Nonresponse Followup Operation Completion by ACO

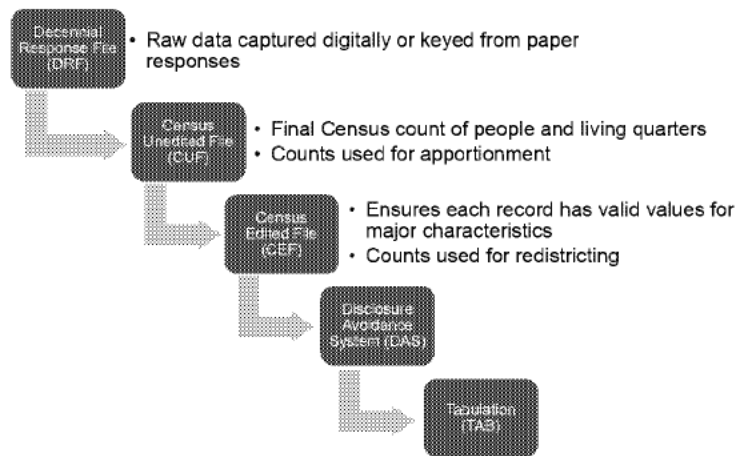
- <https://2020census.gov/en/response-rates/nrfu-completion.html>

Shape  
your future  
START HERE >

2020  
Census

For those of you who are not aware, the field enumerations are run through our area Census offices (ACOs). We are also providing a map that allows you to look at the NRFU progress by ACO.

## 2020 Census Generalized Flow Of Response Data



10 2020CENSUS.GOV

Shape  
your future  
START HERE >

2020  
Census  
2020

So now I am going to switch gears a little to talk about what happens once we have the data in house. The Census responses go through a series of transformations before they get returned as data to the public. This is an overly simplified description of that typical flow.

## 2020 Census Imputation and Editing

- Count Imputation
  - The process used to estimate missing or misreported data.
  - Conducted during the construction of the Census Unedited File
  - Uses other data to replace missing count information from housing units identified as occupied
- Characteristic Imputation and Editing
  - Conducted during the construction of the Census Edited File
  - The process used to ensure valid responses to a subset of required fields
  - Characteristic imputation and Editing begins post-data collection after the household population is established and does not add people to the Census.
  - Edits are used to ensure certain consistencies among characteristics.
  - Characteristic imputation is used to ensure that each person and housing unit on the final census file has valid values in the person and housing items.
  - Administrative records are used to improve data quality in characteristic imputation.

When transforming responses into the subsequent formats is when we encounter the activities/concepts of imputation and editing. These show up as essentially two types of actions. We have count imputation and we have characteristic editing and imputation.

Count Imputation is used to replace missing count information from housing units that have been identified and verified as occupied. Count Imputation is conducted during the construction of the Census Unedited File or the CUF. The completed CUF provides us with the first official counts from the decennial Census, the total population counts. These are the counts that are used for apportionment.

Once the CUF is complete, the next stage is to construct the Census Edited File or the CEF. As part of creating the CEF, edits and characteristic imputation are used to ensure that every record has a valid response for the person and housing responses in the Census.

It's important to understand the purpose of edits and characteristic imputation. The purpose is to ensure that every respondent has a valid response. Edits and characteristic imputation do not add people to the Census. As I mentioned earlier, the total population counts for the Census are finalized with the CUF. The edits ensure consistency among characteristics such as a person being identified as a parent not being younger than a young child. The characteristic imputation ensures that each person and housing item has a valid response such as an occupied housing unit without a tenure status indicated, is it rented or owned. Administrative records will be used to improve the quality of the characteristic imputation.

## 2020 Census Imputation and Editing

### Types of Characteristic Imputation:

- **Assignment:** Assignment occurs when responses are either missing or inconsistent with other responses AND missing item values can be determined based on other information provided for that same person or household.
- **Allocation:** Allocation occurs when responses are either missing or inconsistent with other responses AND the missing item value can not be determined based on information provided for that same person. A response from another person within the housing unit or from a person in a nearby housing unit is used.
  - **Substitution:** Substitution is a special type of allocation when all of the person characteristics - relationship, sex, age, date of birth, race and ethnicity - for every person record in a housing unit are missing and must be imputed.

There are different types of characteristic imputation:

Assignment is when responses are missing or inconsistent with others data supplied for that person or household can be used for that missing or inconsistent response. The simplest of these is when either birthdate or age is missing. The one you do have can be used to calculate that information.

Allocation is when you have the same situation but you can not make a determination for the missing or inconsistent response based on the already supplied person or household data. In these cases a response from another person within the housing unit or a nearby housing unit may be used.

Substitution is a special type of allocation. It is used when we know we have person records but all of the person characteristics for all of the person records in that housing unit must be imputed.

Overview – 2010 Census Imputation Rates

**Overall Imputation Rates**

	Person-Level Items					Household -Level Item
	Relationship	Sex	Age/Date of Birth	Hispanic Origin	Race	Tenure
Imputed	2.1	1.6	5.1	4.5	4.1	3.5
Assigned	0.5	1.3	1.5	1.7	1.2	n/a
Allocated	1.7	0.3	3.6	2.8	2.9	3.5
Substituted	1.9 percent of all persons					

Now that we know the 3 types of characteristic imputation, we can break out the 2010 rates by type and by the characteristic which you can see remain fairly small.

## 2020 Census

### Imputation and Editing

#### 2010 Census Age and Date of Birth Imputation Method

##### Age Only Reported

If age was reported but not date of birth, we keep the age value and assign a date of birth using a random number of possible dates for that age.

##### Date of Birth Only Reported

If date of birth was reported but not age, we calculate age based on the reported date of birth.

##### Inconsistent Age and DOB, 2+ Years

If both age and date of birth are reported, but the age calculated from the reported date of birth is inconsistent with reported age by two or more years, edits will determine which of the two is more consistent (using relationship, for example). The less consistent reported value will be edited.

##### Age Adjusted for Household Consistency

It may be necessary to adjust the age for householder/spouse to account for the number of children in the household.

##### Allocated from Hot Deck

In 2010, allocation came from 11 matrices. All spouses (including parents and parents-in-law) were considered opposite sex relationships. In all but the last two matrices, an age difference is allocated rather than an exact age.

To help conceptualize these edits and characteristic imputation, I have a few examples around age and date of birth. The first scenario I mentioned earlier, one is provided and the other is missing – if age was reported but not the date of birth, we generate a random birthdate for that reported age. If it's the date of birth that was reported we calculate the age.

If both the age and date of birth are reported but they are inconsistent by 2 or more years, then we use edits to determine which is more consistent with other reported data and edit the other.

We may need to edit an age for consistency like the child/parent relationship from the previous slide.

Finally – if necessary an allocation from a hot deck can be used. A hot deck assigns a missing value from a record with similar characteristics. The characteristics in the hot deck vary depending on the nature of the unanswered questions.

Once all of this review and editing and imputation are completed, and remember, the majority of records need none of this work- this is a small percentage of the overall Census returns, then we have the completed CEF. This is the full census records with characteristics. We can now move to the next stage of the processing, the Disclosure avoidance system.

## 2020 Census Disclosure Avoidance

- All 2020 Census data products released after apportionment will have formal privacy protections applied through the use of differential privacy.
  - For the P.L. 94-171 Redistricting Data this will be through the use of the Top Down Algorithm (TDA)
    - The TDA is being streamlined to focus solely on the P.L. 94-171 Redistricting Data and the characteristics reported in that file. (Race, Age of 18+, Ethnicity, etc.)
  - The Census Bureau, using the 2010 Census as the data source, has been releasing interim output from the TDA as demonstration products
- <https://www.census.gov/programs-surveys/decennial-census/2020-census/planning-management/2020-census-data-products/2020-das-metrics.html>

To answer the question we get most often right off the bat, Yes the P.L. 94-171 Redistricting Data will have disclosure avoidance techniques applied, as has been done for the last several decades. The important difference is that this decade we are moving to something called formal privacy which injects noise into the data to protect respondents while still maintaining the data as fit for use by our data users. There is a lot of information about this on our website and I know the NCSL Redistricting listserv has sent message pointing that out and I believe maintains its own page about the subject. What I am going to point out today is the materials we are producing as our technique is refined for the public to use and evaluate. We have been producing demonstration data products created using the 2010 Census data as its source. This data has been made available publicly periodically so data users can apply their use cases to this data to see how the outcomes would have been affected by this new technique.

## 2020 Census Disclosure Avoidance

- October 29, 2019 – 2010 Demonstration Data Product Baseline
  - Test running system at scale and progress to date
- July 14, 2020 – Release interim output showing improvements (metrics released earlier on 5/27/2020)
  - Released as Privacy Protected Microdata File (PPMF)
  - Tables created by IPUMS/NHGIS
    - <https://www.nhgis.org/privacy-protected-demonstration-data#v20200527>
  - Series of metrics added for review and comparison
- September 17, 2020 – Release interim output showing improvements
  - Released as Privacy Protected Microdata File (PPMF)
  - Tables expected to be created by IPUMS/NHGIS
  - Tailored specifically and only to the P.L. 94-171 Redistricting Data characteristics
  - Revised series of metrics coming soon for review and comparison
- TBD – a final PPMF is expected prior to publishing the official data

16 2020CENSUS.GOV

Shape  
your future  
START HERE >

2020  
Census

We released the initial run as a full demonstration data product back in October of last year. This was to show that we could run this at scale and to demonstrate our progress to date.

We followed this with what we call a PPMF which looks like individual census records but is actually privacy protected records that have been processed through our protection system. Since it is difficult to work with a 300 million + record file, the folks at IPUMS/NHGIS converted this PPMF into tables that data users would recognize and would be easier for them to work with.

We have a newer version coming any day now that will show not only the progress to date but also the change to focus solely on the P.L. 94-171 Redistricting Data file for this version.

We do expect to produce at least one more PPMF prior to the Data Stewardship Executive Policy Committee making its final decision on where to set the Epsilon value which controls the trade off between accuracy and privacy.

Redistricting Data Program  
Phase 3 – P.L. 94-171 Redistricting Data Geographic Products

2020 Census P.L. 94-171 Redistricting Data Geographic Products	
Product Type	Census Web Address
Shapefiles	<a href="https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.html">https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.html</a>
Maps	<a href="https://www.census.gov/geographies/reference-maps.html">https://www.census.gov/geographies/reference-maps.html</a>
Block Assignment Files	<a href="https://www.census.gov/geographies/reference-files.html">https://www.census.gov/geographies/reference-files.html</a>
Block to Block Relationship Files	<a href="https://www.census.gov/geographies/reference-files/time-series/geo/relationship-files.html">https://www.census.gov/geographies/reference-files/time-series/geo/relationship-files.html</a>

- Shapefiles – geographic information system geometry files
- Maps (PDF only) – County Block; State Legislative with Voting District; Tract; School District
- Block Assignment Files – tables identifying the blocks used to build different geographic entities
- Block to Block Relationship Files – Crosswalk of 2010 blocks to 2020 blocks

17

Shape  
your future  
START HERE >

2020  
Census

Now that we have discussed collection, processing, and disclosure avoidance, I would like to briefly remind folks about the data products. We are still planning to produce the suite of products we identified in the 2018 End-to-End Test prototype products. This includes <see list> . The timing of this delivery is still somewhat in flux due to current events but we are very hopeful that we can get these geographic materials to the states by late February/Early March of 2021.

Redistricting Data Program  
Phase 3 – P.L. 94-171 Redistricting Data Tabulation Product

**2020 Census P.L. 94-171 Redistricting Data Tabulations**

Table P1 – Race

Table P2 – Race for the Population 18 Years and Over

Table P3 – Hispanic or Latino, and not Hispanic or Latino by Race

Table P4 – Hispanic or Latino, and not Hispanic or Latino by Race for the Population 18 and Over

Table H1 – Occupancy Status (Housing)

**New Table**

Table P5 – Group Quarters Population by Group Quarters Type

- All tables produced at multiple geographies including census block
- Group Quarter types: Correctional Institutions for Adults, Juvenile Facilities, Nursing Facilities/Skilled Nursing, Other Institutional, College/University Student Housing, Military quarters, and other non-institutional
- Group quarters is total population only, no demographic breakdown

## Redistricting Data Program

### Phase 3 – P.L. 94-171 Redistricting Data Products Delivery Timing

#### Phase 3 – Prototype Data

Activity	Date
Prototype geographic support products	February 2019 (Complete)
Prototype P.L. 94-171 Redistricting Data	March 2019 (Complete)

#### Phase 3 – Official Data

Activity	Original Planned Dates	New Planned Date
Geographic support products	Nov. 20, 2020 – Feb. 1, 2021	No later than April 1, 2021*
P.L. 94-171 Redistricting Data	Feb. 18, 2021 – March 31, 2021	No later than April 1, 2021*

\* Statutory deadline, planned date still TBD

## Redistricting Data Program

### Citizen Voting Age Population by Race and Ethnicity (CVAP)

- Annual Tabulation using the American Community Survey 5-year estimates for 2011 through 2020 publications
  - Typically released in the 1<sup>st</sup> week of February each year
- 2020 Census CVAP Special Tabulation
  - Calculated using administrative records and released by the P.L. 94-171 deadline

Content
Total
Hispanic or Latino
Not Hispanic or Latino
White alone
Black or African American alone
American Indian and Alaska Native alone
Asian alone
Native Hawaiian and Other Pacific Islander alone
Some Other Race alone*
Black or African American and White
American Indian and Alaska Native and White
Asian and White
American Indian and Alaska Native and Black or African American
Remainder of Two or More Race Responses

20 2020CENSUS.GOV

Geography
Nation
State
Congressional District
State Legislative District, Upper Chamber
State Legislative District, Lower Chamber
County
Minor Civil Division (for CT, MA, ME, MI, MN, NH, NJ, NY, PA, RI, VT, and WI)
Tract
Block Group
Block*

\* only for the 2020 Census Special Tabulation

Shape  
your future  
START HERE >

2020  
Census

## Redistricting Data Program Citizen Voting Age Population by Race and Ethnicity (CVAP)

- Internal Expert Panel is developing the methodology and is expected to publish their final methodology report by October 31, 2020
- The current status of this project is being presented at the Census Scientific Advisory Committee (CSAC) meeting today, 9/18/2020, at 1:25pm. This meeting is being recorded and will be made available here:
  - CSAC main page: <https://www.census.gov/about/cac/sac.html>
  - CSAC specific meetings page: <https://www.census.gov/about/cac/sac/meetings.html>
- There are essentially four different techniques being considered
  - 3 techniques rely on a combination of business rules and modeling
  - 1 technique relies on a latent class model for the full population

# Thank You

James Whitehorne  
Chief, Census Redistricting & Voting Rights Data Office  
Email: [rdo@census.gov](mailto:rdo@census.gov)  
Phone: 1-301-763-4039  
Web: [www.census.gov/rdo](http://www.census.gov/rdo)

---

**From:** Kathleen M Styles (CENSUS/ADDC FED) [kathleen.m.styles@census.gov]  
**Sent:** 8/30/2020 3:44:00 PM  
**To:** Victoria Velkoff (CENSUS/ADDP FED) [Victoria.A.Velkoff@census.gov]  
**Subject:** Re: Assistance with a Declaration JUST TORI

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

(b)(6)

(301) 763-0235 Office

(b)(6)

Cell

---

**From:** Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>  
**Sent:** Sunday, August 30, 2020 11:36 AM  
**To:** Cannon, Michael (Federal) <MCannon@doc.gov>  
**Cc:** Heller, Megan (Federal) <MHeller@doc.gov>; Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov>  
**Subject:** Re: Assistance with a Declaration

Mike

See attached for a few thoughts about the Hillygus declaration.

Tori

**Victoria Velkoff, PhD**

Associate Director for Demographic Programs

U.S. Census Bureau

o: 301-763-1372

**Shape your future. START HERE** >[2020census.gov](https://2020census.gov)

[census.gov](https://census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

---

**From:** Cannon, Michael (Federal) <MCannon@doc.gov>  
**Sent:** Sunday, August 30, 2020 10:22 AM  
**To:** Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>  
**Cc:** Heller, Megan (Federal) <MHeller@doc.gov>; Kathleen M Styles (CENSUS/ADDC FED)

<kathleen.m.styles@census.gov>

**Subject:** Re: Assistance with a Declaration

Many thanks

Sent from my iPhone

On Aug 30, 2020, at 10:04 AM, Victoria Velkoff (CENSUS/ADDP FED) <[Victoria.A.Velkoff@census.gov](mailto:Victoria.A.Velkoff@census.gov)> wrote:

OK. I will take a look and get back to you.

**Victoria Velkoff, PhD**

Associate Director for Demographic Programs

U.S. Census Bureau

o: 301-763-1372

**Shape your future. START HERE** >[2020census.gov](https://2020census.gov)

[census.gov](https://census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

---

**From:** Cannon, Michael (Federal) <[MCannon@doc.gov](mailto:MCannon@doc.gov)>

**Sent:** Saturday, August 29, 2020 10:40 AM

**To:** Victoria Velkoff (CENSUS/ADDP FED) <[Victoria.A.Velkoff@census.gov](mailto:Victoria.A.Velkoff@census.gov)>

**Cc:** Heller, Megan (Federal) <[MHeller@doc.gov](mailto:MHeller@doc.gov)>; Kathleen M Styles (CENSUS/ADDC FED) <[kathleen.m.styles@census.gov](mailto:kathleen.m.styles@census.gov)>

**Subject:** FW: Assistance with a Declaration

CUI//PRIVILEGE//FED ONLY

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thanks!

Mike

Michael A. Cannon

Chief Counsel for Economic Affairs

Office of the General Counsel

U.S. Department of Commerce  
Telephone: (202) 482-5395  
Cell: (b) (6)  
Email: [mcannon@doc.gov](mailto:mcannon@doc.gov)

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

---

**From:** Cannon, Michael (Federal)  
**Sent:** Wednesday, August 26, 2020 10:53 PM  
**To:** Velkoff, Victoria A <[victoria.a.velkoff@census.gov](mailto:victoria.a.velkoff@census.gov)>  
**Cc:** Lamas, Enrique <[enrique.lamas@census.gov](mailto:enrique.lamas@census.gov)>; Jones, Christa D <[christa.d.jones@census.gov](mailto:christa.d.jones@census.gov)>; Heller, Megan (Federal) <[MHeller@doc.gov](mailto:MHeller@doc.gov)>; Kourkouvelis, Aristidis (Federal) <[AKourkouvelis@doc.gov](mailto:AKourkouvelis@doc.gov)>; DiGiacomo, Brian (Federal) <[bDiGiacomo@doc.gov](mailto:bDiGiacomo@doc.gov)>; Creech, Melissa L <[melissa.l.creech@census.gov](mailto:melissa.l.creech@census.gov)>; Ryan, Miles F III <[miles.f.ryan.iii@census.gov](mailto:miles.f.ryan.iii@census.gov)>; Styles, Kathleen M <[kathleen.m.styles@census.gov](mailto:kathleen.m.styles@census.gov)>  
**Subject:** Assistance with a Declaration

CUI//PRIVILEGE//FED ONLY

(b) (5)



Best,

Mike

Michael A. Cannon  
Chief Counsel for Economic Affairs

Office of the General Counsel  
U.S. Department of Commerce  
Telephone: (202) 482-5395  
Cell: (b) (6)  
Email: [mcannon@doc.gov](mailto:mcannon@doc.gov)

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

Mike











---

**From:** Victoria Velkoff (CENSUS/ADDP FED) (b) (6)  
**Sent:** 8/30/2020 4:09:14 PM  
**To:** Kathleen M Styles (CENSUS/ADDC FED) [kathleen.m.styles@census.gov]  
**Subject:** Re: Assistance with a Declaration JUST TORI

(b) (5)

Victoria Velkoff, PhD  
Associate Director for Demographic Programs  
U.S. Census Bureau

301-763-1372

On Aug 30, 2020, at 11:44 AM, Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov> wrote:

(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

---

**From:** Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>  
**Sent:** Sunday, August 30, 2020 11:36 AM  
**To:** Cannon, Michael (Federal) <MCannon@doc.gov>  
**Cc:** Heller, Megan (Federal) <MHeller@doc.gov>; Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov>  
**Subject:** Re: Assistance with a Declaration

Mike

See attached for a few thoughts about the Hillygus declaration.

Tori

**Victoria Velkoff, PhD**

Associate Director for Demographic Programs

U.S. Census Bureau

o: 301-763-1372

**Shape your future. START HERE** >[2020census.gov](https://2020census.gov)

census.gov | @uscensusbureau

---

**From:** Cannon, Michael (Federal) <MCannon@doc.gov>

**Sent:** Sunday, August 30, 2020 10:22 AM

**To:** Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>

**Cc:** Heller, Megan (Federal) <MHeller@doc.gov>; Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov>

**Subject:** Re: Assistance with a Declaration

Many thanks

Sent from my iPhone

On Aug 30, 2020, at 10:04 AM, Victoria Velkoff (CENSUS/ADDP FED) <[Victoria.A.Velkoff@census.gov](mailto:Victoria.A.Velkoff@census.gov)> wrote:

OK. I will take a look and get back to you.

**Victoria Velkoff, PhD**

Associate Director for Demographic Programs

U.S. Census Bureau

o: 301-763-1372

**Shape your future. START HERE** >[2020census.gov](https://2020census.gov)

census.gov | @uscensusbureau

---

**From:** Cannon, Michael (Federal) <MCannon@doc.gov>

**Sent:** Saturday, August 29, 2020 10:40 AM

**To:** Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>


**Cc:** Heller, Megan (Federal) <MHeller@doc.gov>; Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov>

**Subject:** FW: Assistance with a Declaration

CUI//PRIVILEGE//FED ONLY

(b) (5)

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



Thanks!

Mike

Michael A. Cannon  
Chief Counsel for Economic Affairs  
Office of the General Counsel  
U.S. Department of Commerce  
Telephone: (202) 482-5395  
Cell: (b) (6)  
Email: [mcannon@doc.gov](mailto:mcannon@doc.gov)

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

---

**From:** Cannon, Michael (Federal)

**Sent:** Wednesday, August 26, 2020 10:53 PM

**To:** Velkoff, Victoria A <[victoria.a.velkoff@census.gov](mailto:victoria.a.velkoff@census.gov)>

**Cc:** Lamas, Enrique <[enrique.lamas@census.gov](mailto:enrique.lamas@census.gov)>; Jones, Christa D <[christa.d.jones@census.gov](mailto:christa.d.jones@census.gov)>; Heller, Megan (Federal) <[MHeller@doc.gov](mailto:MHeller@doc.gov)>; Kourkouvelis, Aristidis (Federal) <[AKourkouvelis@doc.gov](mailto:AKourkouvelis@doc.gov)>; DiGiacomo, Brian (Federal) <[bDiGiacomo@doc.gov](mailto:bDiGiacomo@doc.gov)>; Creech, Melissa L <[melissa.l.creech@census.gov](mailto:melissa.l.creech@census.gov)>; Ryan, Miles F III <[miles.f.ryan.iii@census.gov](mailto:miles.f.ryan.iii@census.gov)>; Styles, Kathleen M <[kathleen.m.styles@census.gov](mailto:kathleen.m.styles@census.gov)>

**Subject:** Assistance with a Declaration

CUI//PRIVILEGE//FED ONLY

(b) (5)



(b) (5)



Best,

Mike

Michael A. Cannon  
Chief Counsel for Economic Affairs  
Office of the General Counsel  
U.S. Department of Commerce  
Telephone: (202) 482-5395  
Cell: (b) (6)  
Email: [mcannon@doc.gov](mailto:mcannon@doc.gov)

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

Mike





























---

**From:** Victoria Velkoff (CENSUS/ADDP FED) [Victoria.A.Velkoff@census.gov]  
**Sent:** 8/4/2020 7:16:25 PM  
**To:** Karen Battle (CENSUS/POP FED) [karen.battle@census.gov]  
**Subject:** Re: Committee statement

Thanks.

**Victoria Velkoff, PhD**

Associate Director for Demographic Programs

U.S. Census Bureau

o: 301-763-1372

**Shape your future. START HERE >**[2020census.gov](https://2020census.gov)

[census.gov](https://census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

---

**From:** Karen Battle (CENSUS/POP FED) <karen.battle@census.gov>  
**Sent:** Tuesday, August 4, 2020 3:06 PM  
**To:** Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>  
**Subject:** Fw: Committee statement

Your name is mentioned in the press release below.

**Karen Battle**

Division Chief

Population Division

U.S. Census Bureau

karen.battle@census.gov

Office 301.763.2071

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

Connect with us on [Social Media](#)

**From:** "Alissa A Bonner (CENSUS/OCIA FED)" <Alissa.A.Bonner@census.gov>  
**Date:** August 4, 2020 at 10:39:28 AM EDT  
**To:** "Van R Lawrence (CENSUS/OCIA FED)" <Van.R.Lawrence@census.gov>, "Dee A Alexander (CENSUS/OCIA FED)" <Dee.A.Alexander@census.gov>, "Leatha M Lamison White (CENSUS/AT FED)" <Leatha.M.Lamison.White@2020census.gov>, "Sylvia Y Doyle (CENSUS/OCIA FED)" <sylvia.y.doyle@census.gov>, "Sabrina McNeal (CENSUS/OCIA CTR)" <sabrina.e.mcneal@census.gov>  
**Subject:** Fw: Committee statement

<https://oversight.house.gov/news/press-releases/oversight-chair-denounces-partisan-manipulation-of-the-2020-census>

# Oversight Chair Denounces Partisan Manipulation of the 2020 Census

Aug 4, 2020

Press Release

Chair Maloney Introduces Legislation to Block Partisan Efforts, Committee to Conduct Transcribed Interviews Washington, D.C. (Aug. 4, 2020)—Today, Rep. Carolyn B. Maloney, Chairwoman of the Committee on Oversight and Reform, issued the following statement denouncing the Administration’s decision to shorten its timeline for 2020 Census operations, and announced the introduction of updated legislation to support a fair and accurate 2020 Census and protect it from unconstitutional, partisan interference:

**“The Trump Administration has tried to manipulate the 2020 Census for the last four years and is continuing those attempts with the changes announced last night. The Fair and Accurate Census Act would ensure that the 2020 Census is conducted according to the expert advice of career staff in a nonpartisan manner. We should leave the experts in charge. This new bill would give the career staff at the Census Bureau the time they need to conduct a full, fair, and accurate count of every American resident.”**

The updates to the Fair and Accurate Census Act include:

- Preventing the Trump Administration from purposefully rushing to complete the 2020 Census by delaying the delivery of the apportionment data; and
- Ensuring the Census Bureau can count every community by maintaining the Bureau’s previously released schedule for Self-Response and Non-response Follow Up operations that was designed by Census Bureau career staff and professional statisticians.

Chairwoman Maloney also sent a letter today to Census Bureau Director Steven Dillingham, requesting the appearance of senior Census Bureau staff for transcribed interviews, including:

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

In April, after delays due to the coronavirus pandemic, the Trump Administration requested that Congress delay the statutory deadlines for the delivery of apportionment and redistricting data in order to ensure the delivery of accurate data.

On July 21, 2020, President Trump issued an unlawful memorandum directing the Secretary of Commerce to exclude undocumented immigrants from congressional reapportionment.

Last night, the Administration reversed its position on delaying the statutory deadlines and announced that it was cutting short non-response and self-response operations at the end of September—operations designed to reach the hardest to count communities—in order to deliver the data by the end of 2020.

Multiple Census Bureau career staff in charge of conducting the 2020 census operations have stated publicly that delivering accurate census data by the end of the year is impossible.

- On July 8, 2020, Al Fontenot, Associate Director for Decennial Census Programs, stated of the December 31, 2020, statutory deadlines: “We are past the window of being able to get those counts by those dates at this point.”
- On May 26, 2020, Tim Olson, Associate Director for Field Operations, said publicly: “We have passed the point where we could even meet the current legislative requirement of December 31. We can’t do that anymore.”

The Committee held an emergency hearing on July 29, 2020. During the hearing, the Committee asked for information about the Trump Administration’s political interference in the 2020 Census. Four former Census Bureau Directors testified that the President’s legal memo was unconstitutional and called on Congress to extend the statutory deadlines for the delivery of census data products to ensure accuracy of the data.

Click [here](#) to read the updated Fair and Accurate Census Act.

Click [here](#) to read Chairwoman Maloney’s letter to Census Bureau Director Steven Dillingham.

###

Issues:

[Census](#)

116th Congress

## **News**

- [Press Releases](#)
- [Reports](#)
- [Stay Connected](#)
- [News Archive](#)
- [Letters](#)



Share

**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)

Connect with us on [Social Media](#)

---

**From:** Alan Lang (CENSUS/OCIA FED) <alan.lang@census.gov>

**Sent:** Tuesday, August 4, 2020 10:30 AM

**To:** Alissa A Bonner (CENSUS/OCIA FED) <Alissa.A.Bonner@census.gov>; Bina K Saafi (CENSUS/OCIA FED) <bina.k.saafi@census.gov>; Camille F Murray (CENSUS/OCIA CTR) <camille.f.murray@census.gov>; Cathleen E Deloach (CENSUS/OCIA CTR) <cathleen.e.deloach@census.gov>; Douglas E Haynes (CENSUS/OCIA CTR) <douglas.e.haynes@census.gov>; Eduardo I Guity (CENSUS/PH FED) <eduardo.i.guity@census.gov>; Lavita M Gardner (CENSUS/OCIA FED) <lavita.m.gardner@census.gov>; Lewis H Footer (CENSUS/OCIA CTR) <lewis.h.footer@census.gov>; Mark G Dorsey (CENSUS/ADCOM FED) <mark.g.dorsey@census.gov>; Stuart P Durst Jr (CENSUS/OCIA FED) <Stuart.P.Durst.Jr@census.gov>

**Subject:** Committee statement

FYI

<https://oversight.house.gov/news/press-releases/oversight-chair-denounces-partisan-manipulation-of-the-2020-census>

**FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS

SEP 30 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NATIONAL URBAN LEAGUE; LEAGUE  
OF WOMEN VOTERS; BLACK  
ALLIANCE FOR JUST IMMIGRATION;  
HARRIS COUNTY, Texas; KING  
COUNTY, Washington; CITY OF LOS  
ANGELES, California; CITY OF  
SALINAS, California; CITY OF SAN  
JOSE, California; RODNEY ELLIS;  
ADRIAN GARCIA; NAVAJO NATION;  
NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED  
PEOPLE; CITY OF CHICAGO, Illinois;  
COUNTY OF LOS ANGELES, California;  
GILA RIVER INDIAN COMMUNITY,

Plaintiffs-Appellees,

v.

WILBUR L. ROSS, in his official capacity  
as Secretary of Commerce; UNITED  
STATES DEPARTMENT OF  
COMMERCE; STEVEN DILLINGHAM, in  
his official capacity as Director of the U.S.  
Census Bureau; UNITED STATES  
CENSUS BUREAU,

Defendants-Appellants,

and

STATE OF LOUISIANA; STATE OF  
MISSISSIPPI,

No. 20-16868

D.C. No. 5:20-cv-05799-LHK  
Northern District of California,  
San Jose

ORDER

Intervenor-Defendants.

Before: RAWLINSON, CHRISTEN, and BUMATAY, Circuit Judges.

Order by Judges RAWLINSON and CHRISTEN, Dissent by Judge BUMATAY

On August 3, 2020, the United States Census Bureau (Bureau) adopted a census plan (Replan) that dramatically advanced critical deadlines for conducting the 2020 census. Appellees challenged this action pursuant to the Enumeration Clause of the United States Constitution and the Administrative Procedure Act (APA). On September 24, 2020, the district court entered a preliminary injunction staying the Replan's schedule for completion of census field operations and for reporting the census results to the President and enjoining the government from implementing these deadlines. The government has filed an emergency motion to stay the preliminary injunction pending appeal, and a request for an immediate administrative stay pending resolution of the stay motion. In this order, we consider only the request for an administrative stay.

The decennial census is an enormous and complex nationwide operation. It requires nearly a decade of planning and hundreds of thousands of dedicated workers to accomplish. In 2018, after years of planning and testing, the Bureau adopted a plan to complete the 2020 census. The plan called for an extraordinary

effort on the part of the government including hiring 340,000–500,000 field staff. For reasons stated in the record, the district court found that due to significant challenges encountered in the wake of COVID-19, the Bureau suspended field operations in March 2020. When operations resumed, the Bureau was unable to recruit sufficient numbers of field staff. In July 2020, the Bureau estimated that it only retained 38% of the field staff required to complete an accurate and timely census.

As a result of these serious challenges, the district court found that as early as April 2020, the Bureau, the Department of Commerce, and even the President had all publicly acknowledged that the December 31 deadline was no longer attainable. The Bureau adopted a new census plan in April to accommodate the delays caused by COVID-19 (“COVID-19 Plan”). The COVID-19 plan extended the deadline for each step in the process and contemplated that the Bureau would ask Congress for a 120-day extension of the December 31, 2020 delivery deadline for the completed census report. The Bureau’s work proceeded according to the COVID-19 Plan until August 2020.

In early August, a “senior Department [of Commerce] official” directed the Bureau to change course and prepare a new plan for completing the census by the December 31, 2020 statutory deadline. Senior Bureau staff were given just four to five days to develop this “Replan.” On August 3, 2020, the Bureau announced its

adoption of the Replan, and its central feature: accelerating the COVID-19 Plan's deadline for the completion of field work and data collection from October 31 to September 30. On September 24, the district court entered a preliminary injunction preventing the Bureau from implementing the September 30 deadline to stop field work and data collection. The government requests an immediate administrative stay of the district court's injunction.

## I

The government has filed a single emergency motion seeking a stay pending appeal, and also seeking an administrative stay pending resolution of the motion for stay pending appeal. We recently established that an administrative stay "is only intended to preserve the status quo until the substantive motion for a stay pending appeal can be considered on the merits, and does not constitute in any way a decision as to the merits of the motion for stay pending appeal." *Doe v. Trump*, 944 F.3d 1222, 1223 (9th Cir. 2019). Based on our preliminary review of the record, we conclude that the status quo would be seriously disrupted by an immediate stay of the district court's order.

As explained above, until August of this year, the Bureau had been operating for several months under the COVID-19 plan. That plan represented a revised schedule to account for the challenges caused by the COVID-19 pandemic. It included extended deadlines based on the understanding that the Bureau would

need additional time to complete the necessary field work and data processing to produce an accurate census report. The district court's September 5 temporary restraining order and September 24 preliminary injunction preserve the status quo because they maintain the Bureau's data-collection apparatus pending resolution of the appeal. By the time the district court entered its order, the Bureau had already begun winding down its field operations and terminating census field workers in anticipation of the Replan's accelerated September 30 deadline. The process of disbanding thousands of census workers will resume if an administrative stay is put in place, eliminating the Bureau's ability to conduct field work. Accordingly, on the facts of this case, staying the preliminary injunction would upend the status quo, not preserve it.

We are mindful of the potential harms faced by both parties. Here, not only would the status quo be upended by an administrative stay, the Bureau's ability to resume field operations would be left in serious doubt. Thousands of census workers currently performing field work will be terminated, and restarting these field operations and data collection efforts, which took years of planning and hiring efforts to put in place, would be difficult if not impossible to accomplish in a timely and effective manner. Granting the administrative stay thus risks rendering the plaintiff's challenge to the Replan effectively moot.

We also recognize that missing the December 31 statutory deadline risks

serious harm to the government. However, the record does not demonstrate that the Bureau's ability to meet that deadline is affected by the district court's injunction. Rather, the evidence in the administrative record uniformly showed that no matter when field operations end—whether September 30 under the Replan or October 31 under the COVID-19 Plan—the Bureau will be unable to deliver an accurate census by December 31, 2020. The President, senior Bureau officials, senior Department of Commerce officials, the Office of Inspector General, the Census Scientific Advisory Committee, and the Government Accountability Office have all stated that delivering a census by December 31 without compromising accuracy is practically impossible, and has been for some time. As the district court recognized, after the Bureau realized the pandemic would prevent it from adhering to its original schedule, the Bureau made two requests to Congress: first, it requested the December 31 deadline be extended to April 2021. When no final congressional action had been taken on that request in July, the Bureau requested \$443 million to cover the additional cost to complete the census by year's end. Contrary to the dissent's repeated assertion, the only undisputed fact in this sequence was that Congress has not given the Bureau the extension or the additional funding it needs to meet the statutory deadline.

The government did not counter the Appellees' showing on this point. Citing the chorus of statements made by the Bureau and other officials, the district

court found that the Bureau could not meet the December 31 deadline. Indeed, despite the government's persistent argument in the district court and before our court that the September 30 deadline for terminating field operations is essential to meeting its December 31 statutory deadline, the administrative record compellingly supports the district court's conclusion that moving the October 31 deadline to September 30 will not allow the Bureau to complete the census on time.

Finally, we note that notwithstanding the pendency of the government's emergency request for an immediate administrative stay to allow the Replan's September 30 deadline to take effect, on September 28 the government again changed the deadline for completing field work. The government informed us in a September 28, 2020 letter, without explanation, that it now intends to end field operations on October 5, 2020. This abrupt change contradicts the government's argument that the September 30 date is vitally important to the Bureau's ability to meet its statutory reporting deadline. Our dissenting colleague cites a September 28 estimate suggesting that the census is 98% complete. This is still below the enumeration rate required by the Bureau's internal standards for generating an accurate census report. Further, the district court ruled on September 24 and found, as of that date, the Bureau had met its standard in only four states.

Given the extraordinary importance of the census, it is imperative that the

Bureau conduct the census in a manner that is most likely to produce a workable report in which the public can have confidence. The Bureau must account for its competing constitutional and statutory obligation to produce a fair and accurate census report. The hasty and unexplained changes to the Bureau's operations contained in the Replan, created in just 4 to 5 days, risks undermining the Bureau's mission.

Our dissenting colleague makes four errors. First, the dissent applies the wrong standard for a preliminary administrative stay. In *Doe #1 v. Trump*, our circuit definitively resolved which standard applies to administrative stay motions. We are not free to depart from that standard. *Miller v. Gammie*, 335 F.3d 889, 899 (9th Cir. 2003) (en banc) (holding that a three-judge panel may not overrule a prior decision of the court). Citing the dissent from *Doe #1 v. Trump*, our colleague applies the factors used when we consider a motion for stay pending appeal. This analysis erroneously collapses the distinct legal analyses for an administrative stay and a motion for stay pending appeal. When considering the request for an administrative stay, our touchstone is the need to preserve the status quo. We defer weighing the *Nken*<sup>1</sup> factors until the motion for stay pending appeal is considered. *See Doe #1*, 944 F.3d at 1223.

Second, as a consequence of its threshold error, the dissent does not grapple

---

<sup>1</sup> *Nken v. Holder*, 556 U.S. 418, 426 (2009).

with the factor that drives the outcome of the government's motion: the Bureau's apparatus for conducting field work will be dismantled before the motion for stay pending appeal can be decided. The dissent does not dispute that issuing an administrative stay in this case would return the Bureau to the process of dismantling its data-collection infrastructure and terminating its field staff.

Third, although we need not wade into the underlying merits of the issues on appeal, we would be remiss if we did not note that the dissent hinges on the unsupported premise that the Bureau can meet the December 31 deadline if an administrative stay is issued. The dissent's assumption that the agency can still meet its deadline relies entirely upon one conclusory statement that was not in the administrative record but was instead prepared for litigation. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1908 (2020) (explaining that an agency's *post hoc* rationalizations "must be viewed critically"); *Arrington v. Daniels*, 516 F.3d 1106, 1113 (9th Cir. 2008) (rejecting a justification for agency action that "is entirely absent from the administrative record"). Given the consistent picture painted by the administrative record, it is not surprising the district court was unpersuaded by this sole conclusory statement.

Fourth, the dissent addresses several issues that are not properly before us at the administrative stay stage. The government's emergency motion does not contest the district court's conclusion that Appellees have standing to bring their

claims. Nor does the emergency motion challenge the district court's conclusion that the Bureau's decision to adopt the Replan is an unreviewable political question. Thus, those issues are not properly before us and we do not reach them.

Because the status quo would be upended, rather than preserved, if an administrative stay is issued, the government's request for an immediate administrative stay set forth in Docket Entry No. 4 is denied.

Appellees' response to the emergency motion is due October 2, 2020. Appellants' optional reply is due by October 3, 2020.

FILED

*National Urban League v. Ross*, No. 20-16868  
Bumatay, J., dissenting

SEP 30 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

COVID-19 has wreaked an undeniable toll on the Nation. The virus has already stolen too many American lives. Even more have been hospitalized or fallen ill. And nearly every American's plans this year have been roiled by the virus. But it cannot roil the law. Contorting the Administrative Procedure Act, and liberating itself from any semblance of judicial restraint, the district court injected itself into a sensitive and politically fraught arena: the 2020 census. After the Department of Commerce adopted a plan to address census delays from the COVID-19 pandemic, plaintiffs brought suit under the APA. Upon reviewing the internal deliberative emails of the agencies, the district court decided that it knows better than the Secretary of Commerce. Based on internal discussions about the agency's ability to complete the census in a timely and accurate fashion, the district court essentially overruled the Secretary's decision to adopt the revised plan. But it is undisputed that this new plan was the only way to meet the statutory obligation to report the census results to the President by December 31, 2020. No matter for an adventurous district court: it simply cast aside the statutory deadline as part of its injunction.

Because the district court was without authority to issue its injunction, the defendants are likely to succeed on the merits, and they will be irreparably harmed

without relief, I would have granted the request for an administrative stay.

Accordingly, I respectfully dissent.

## I.

A census is required by our Constitution, which provides that the “actual Enumeration” of the population shall be conducted “in such Manner as [Congress] shall by Law direct.” U.S. Const. Art. I, § 2, cl. 3. As should be evident from this text, besides requiring that such an enumeration shall occur, the Constitution otherwise vests “virtually unlimited discretion” with Congress. *Wisconsin v. City of New York*, 517 U.S. 1, 19 (1996); *see also Baldrige v. Shapiro*, 455 U.S. 345, 361 (1982) (recognizing Congress’s broad discretion over the census). Congress, in turn, has vested substantial discretion with the Secretary of Commerce to determine how to conduct the decennial census. *See* 13 U.S.C. § 141(a); *Wisconsin*, 517 U.S. at 19 (“Through the Census Act, Congress has delegated its broad authority over the census to the Secretary.”). But there’s one aspect that Congress did not delegate: the date for completion of apportionment counts. 13 U.S.C. § 141(b). That deadline is etched in stone: December 31, 2020.<sup>1</sup> And

---

<sup>1</sup> Congress has provided for other deadlines as well. For example, the Census Bureau must “take a decennial census of the population” starting on April 1, 2020, and report the results to the President by December 31, 2020 (the deadline primarily at issue in this case). *See* 13 U.S.C. § 141(a)-(b). After receiving this report, the President must calculate “the number of Representatives to which each State would be entitled” and transmit that information to Congress by January 10,

there's one branch Congress has not delegated any census decisions to: the judiciary.

Cognizant of its statutory deadlines—but unaware of the looming health crisis—the Census Bureau adopted a final operational plan for the 2020 Census in December 2018. This plan has two major phases: a data-collection phase and a data-processing phase. During the data-collection phase, field employees follow up at non-responding addresses and collect other crucial information. Only after this phase is complete can the Bureau begin processing the collected data to report to the President by the December 31 deadline.

But even the best laid plans can go awry. Just as the data collection phase was set to begin, the COVID-19 pandemic struck, forcing the Bureau to suspend its field operations for four weeks. To resume those operations, the Bureau adopted the COVID-19 Plan on April 13, 2020, which set new deadlines for the data collection and dating processing phases, on the assumption that Congress would extend the statutory deadlines by 120 days. Congress did not act, however, so the Bureau adopted the “Replan” schedule, which outlined expedited deadlines designed “to accelerate the completion of data collection [] by our statutory deadline of December 31, 2020, as required by law[.]” According to the Bureau, it was able to meet this

---

2021. *See* 2 U.S.C. § 2a(a). Finally, the Bureau must report a tabulation of population for redistricting to the states by March 31, 2021. *See* 13 U.S.C. § 141(c).

compressed timeframe by (1) offering financial incentives to increase the number of hours each enumerator worked and achieve the “same work hours as would have been done under the original time frame”; and (2) taking advantage of updated software and processing capabilities not available during the 2010 Census in order to maximize enumerator effectiveness. An Associate Director at the Bureau attests that the agency “is confident that it can achieve a *complete and accurate* census and report apportionment counts by the statutory deadline following the Replan Schedule.” (emphasis added).<sup>2</sup> Under this plan, field operations would conclude by September 30, and data processing would begin on October 1. The Bureau asserts that it must complete the data collection phase by September 30 and turn to the data processing phase by October 1 to meet its December 31, 2020 deadline. *See* Motion at 1. On September 28, 2020, the Bureau extended its internal deadline slightly: setting October 5, 2020 as the target date for concluding field operations.<sup>3</sup> As of September 28, 2020, the Bureau reports over 98% enumeration nationwide.<sup>4</sup>

## II.

---

<sup>2</sup> Inexplicably, the majority’s decision simply ignores this attestation when claiming that even under the Replan, “the Bureau will be unable to deliver an accurate census by December 31, 2020.” Majority Op. at 5.

<sup>3</sup> United States Census Bureau, *2020 Census Update*, <https://www.census.gov/newsroom/press-releases/2020/2020-census-update.html>

<sup>4</sup> United States Census 2020, *Total Response Rates by State*, <https://2020census.gov/en/response-rates/nrfu.html>

Whether to grant a request for a stay is governed by the familiar four-factor test: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Doe #1 v. Trump*, 944 F.3d 1222, 1225 (9th Cir. 2019) (Bress, J., dissenting) (simplified).<sup>5</sup>

We should have granted an administrative stay here because defendants are likely to succeed on the merits. The Secretary’s decision to adopt the Replan—rather than simply ignore a statutory deadline—was not arbitrary and capricious. At bottom, the district court’s APA analysis seems to turn on the court’s apparent disagreement with whether the census will be sufficiently accurate under the Replan. But the accuracy of the census is likely a nonjusticiable political question; a properly deferential review would find the Replan satisfies statutory and constitutional requirements; and the plaintiffs here do not appear to have standing

---

<sup>5</sup> The majority suggests that I apply the “wrong standard for a preliminary administrative stay.” Majority at 7. But as Judge Bress has already persuasively explained: “the instant request for a temporary stay is part of the request for a stay pending appeal, and the Court cites no authority for why the usual stay factors—including likelihood of success on the merits—would not apply.” *Doe #1*, 944 F.3d at 1226 (Bress, J., dissenting). We can’t simply ignore the fact that the government is likely to prevail on the merits here. That’s particularly true where, like here, the parties have addressed the merits in the request for a stay and the opposition thereto. *See id.*

because their alleged injuries are not redressable. I discuss each flaw with the district court's injunction in turn.

**A.**

Putting aside momentarily the fact that the crux of this case is not justiciable, *see, infra*, § II-B and II-C, and assuming that the APA applies here and that the Replan can be considered a “final agency action,” *cf. NAACP v. Bureau of the Census*, 945 F.3d 183, 189 (4th Cir. 2019) (challenges to 2020 census “design choices” were not final agency actions under the APA), the Replan does not violate the APA.

Under the APA, agencies must engage in “reasoned decisionmaking.” *Michigan v. EPA*, 576 U.S. 743, 750 (2015). Where census decisions are concerned, this only requires the Secretary to “examine the relevant data and articulate a satisfactory explanation for his decision.” *Department of Commerce v. New York*, 139 S.Ct. 2551, 2569 (2019). “We may not substitute our judgment for that of the Secretary.” *Id.* Nor may we “subordinat[e] the Secretary’s policymaking discretion to the Bureau’s technocratic expertise.” *Id.* at 2571 (Bureau staff’s conclusions are not “touchstones of substantive reasonableness.”); *accord Wisconsin*, 517 U.S. at 23 (Because it is the Secretary “to whom Congress has delegated its constitutional authority over the census,” “the mere fact that the

Secretary's decision overruled the views of some of his subordinates is by itself of no moment in any judicial review of his decision.").

To make reasoned decisions, agencies must consider "significant alternatives." *Mt. Diablo Hosp. v. Shalala*, 3 F.3d 1226, 1232 (9th Cir. 1993). The defendants did so. As a Bureau Associate Director explained, the Bureau "considered a variety of options and evaluated risks" in crafting the Replan, ultimately "select[ing] those that we believed presented the best combination of changes to allow us to meet the statutory deadline without compromising quality to an undue degree." Although the Replan compressed several steps, which might "increase the risk" of errors, the Associate Director explained that efficiencies new to the 2020 Census nevertheless allowed the Replan to "achieve a complete and accurate census."

The core of the district court's reasoning is that the Secretary erred in considering the deadline fixed and then trying to maximize accuracy within that constraint. The court thought the Secretary should have been more flexible and considered other alternatives. But all of the alternatives would require the Bureau to consciously blow a statutory deadline. For example, the district court suggests the defendants could have considered "not adopting the Replan while striving in good faith to meet statutory deadlines." Or, as the plaintiffs put it, "Defendants could have continued to operate under the COVID-19 Plan while striving to meet

statutory deadlines.” But the COVID-19 Plan was premised on Congress extending the statutory deadlines. By adhering to that plan despite Congress’s inaction, the defendants would necessarily not be striving in good faith to meet the deadline; they would be consciously abandoning it.<sup>6</sup> “An agency is under no obligation to consider every possible alternative to a proposed action, nor must it consider alternatives that are unlikely to be implemented or those inconsistent with its basic policy objectives.” *Seattle Audubon Soc’y v. Moseley*, 80 F.3d 1401, 1404 (9th Cir. 1996). Thus, *a fortiori*, an agency need not consider alternatives that violate the law. The Bureau cannot be liable for failing to consider an alternative that would undisputedly violate the clear deadline set by Congress to obtain marginal improvements (of some unknown degree) to the census.

The district court also erred in determining that the Secretary’s reason for adopting the Replan ran contrary to the facts. The district court noted that some Bureau employees thought it would be impossible to accurately complete the census by December 31, given the COVID-19 delays.<sup>7</sup> But each statement relied

---

<sup>6</sup> This same core defect infects the other proposed alternatives, such as making “good faith efforts to meet the deadline” short of adopting the Replan and “balanc[ing]” accuracy and timeliness concerns.

<sup>7</sup> The court also suggests that the Commerce Department pressured the Bureau to cease seeking an extension of the deadline, though nothing in the record before this panel suggests this is so, and the district court’s citations show only that the Bureau did not affirmatively request an extension in certain instances. Even if that were true though, it cannot undermine the Bureau’s stated reason that it adopted the

on was made *before* the Replan, which the Bureau’s Associate Director has attested will reach sufficient levels of accuracy. In any event, “there is nothing even unusual” about a Cabinet secretary “disagreeing with staff, or cutting through red tape.” *New York*, 139 S. Ct. at 2580 (Thomas J., concurring in part and dissenting in part). The Secretary is owed “wide discretion” in this arena because “it is he to whom Congress has delegated its constitutional authority over the census.” *Wisconsin*, 517 U.S. at 22; *see* 13 U.S.C. § 141(a). Dissent from inferior employees at the Bureau cannot constitute “facts” that the Secretary’s decision runs “contrary” to. *See Wisconsin*, 517 U.S. at 23 (“[T]he mere fact that the Secretary’s decision overruled the views of some of his subordinates is by itself of no moment in any judicial review of his decision.”). To hold otherwise would impermissibly “subordinat[e] the Secretary’s policymaking discretion to the Bureau’s technocratic expertise.” *New York*, 139 S. Ct. at 2571.

Finally, the district court concluded that the defendants “failed to sufficiently consider” their obligations to produce an accurate census because “the Replan will decrease the census’s accuracy and undercount historically undercounted

---

Replan because it realized Congress would not extend the deadline. *See New York*, 139 S. Ct. at 2576 (2019) (Thomas J., concurring in part and dissenting in part) (courts defer to executive agency and it is entitled to a presumption of regularity in part because crediting accusations of pretext, which can be easily lodged by “political opponents of executive actions to generate controversy,” could “lead judicial review of administrative proceedings to devolve into an endless morass of discovery and policy disputes”).

individuals.” But the need to consider accuracy does not give courts license to act as a super Census Bureau. The Secretary is “required to consider the evidence and give reasons for his chosen course of action,” but “[i]t is not for us to ask whether [the] decision was ‘the best one possible’ or even whether it was ‘better than the alternatives.’” *New York*, 139 S. Ct. at 2571 (citation omitted). The Bureau fulfilled the deliberative requirement by considering the Replan’s impact on accuracy. *See Providence v. Yakima Med. Ctr. v. Sebelius*, 611 F.3d 1181, 1190 (9th Cir. 2010) (Agency action is arbitrary and capricious where the agency “*entirely failed*” to consider an important aspect of the problem.) (emphasis added).

## B.

Although the district court ostensibly conducted APA review of the procedures the Secretary used to adopt the Replan, the crux of the court’s decision is its view that the Replan would not produce an accurate census. But the “accuracy” requirement is a general duty arising from the Census Act, not a specific statutory or constitutional mandate. *See New York*, 139 S. Ct. at 2568–69 (“[B]y mandating a population count that will be used to apportion representatives, *see* [13 U.S.C.] § 141(b), 2 U. S. C. § 2a, the Act imposes a duty to conduct a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment.”) (simplified). And it is

for the Secretary, under the authority Congress delegated to him, to balance the need for accuracy against the statute's hard deadline.

Although justiciability arguments are only raised briefly on the pending motion for a stay, “federal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press.” *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011). Deciding whether the census meets a free-floating concept of “accuracy” is exactly the type of political question that courts are powerless to adjudicate. Virtually all of the factors announced in *Baker v. Carr*, 369 U.S. 186 (1962), support a finding of this being a nonjusticiable political question.<sup>8</sup> Principally, the district court’s “accuracy” requirement is not amenable to “judicially discoverable and manageable standards.” *See id.* at 217. How accurate is accurate enough? *See, e.g., Department of Commerce v. United States House of Representatives*, 525 U.S. 316, 322 (1999) (“[T]he Bureau has always failed to reach—and has thus failed to

---

<sup>8</sup> These factors include: a textual commitment of the issue to a coordinate political branch, a lack of judicially discoverable and manageable standards for resolving it, the impossibility of deciding without an initial policy determination of the kind clearly for nonjudicial discretion, or the impossibility of a court’s undertaking independent resolution of the question without expressing a lack of respect due coordinate branches of government. *Baker*, 369 U.S. at 217.

count—a portion of the population.”).<sup>9</sup> And what standard are courts to use when evaluating accuracy anyway? Neither the district court nor this panel offer any answers.

But the answer is actually quite simple: it would be impossible for us to decide this case “without an initial policy determination of the kind clearly for nonjudicial discretion.” *See Carr*, 369 U.S. at 217. Even under ordinary circumstances, the Secretary and Bureau must juggle many important considerations when designing the census plan. For example, in choosing the date for when to end its data-collection phase and begin its data-processing phase, the defendants must consider the trade-offs between terminating field operations (even though not everyone has been counted) against the time needed to process the data into the Secretary’s report to the President and the States. *See* 2 U.S.C. § 2a(a); 13 U.S.C. § 141(c); *see also NAACP*, 945 F.3d at 191 (“‘Setting aside’ one or more of these ‘choices’ necessarily would impact the efficacy of the others, and inevitably would lead to court involvement in ‘hands-on’ management of the Census

---

<sup>9</sup> *See also Wisconsin*, 517 U.S. at 6 (“[Various] errors have resulted in a net ‘undercount’ of the actual American population in every decennial census.”); *Karcher v. Daggett*, 462 U.S. 725, 732 (1983) (recognizing that “census data are not perfect,” and that “population counts for particular localities are outdated long before they are completed”); *Gaffney v. Cummings*, 412 U.S. 735, 745 (1973) (remarking that census data “are inherently less than absolutely accurate”); *accord* C. Wright, *History and Growth of the United States Census* 16-17 (1900) (noting that the accuracy of our first census in 1790 was seriously questioned by the man who oversaw its implementation as Secretary of State, Thomas Jefferson).

Bureau’s operations.”). With each decision, the Bureau must consider (and choose among) the various tradeoffs each option presents. By requiring the Bureau to prioritize an elusive standard of accuracy over and above the interest in completing the census in a timely manner, *as prescribed by Congress*, the court substitutes its own policy determination for those set by Congress and delegated to the Secretary.

Analogous cases have held similar claims to be nonjusticiable political questions. Just last year the Court held that trying to decide among “different visions of fairness” for districting maps is an “unmoored determination of the sort characteristic of a political question beyond the competence of the federal courts.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2499–2500 (2019) (internal quotations omitted); *accord Nixon v. United States*, 506 U.S. 224 (1993) (constitutional provision granting the “the sole Power to try all Impeachments” does not “provide an identifiable textual limit on the authority which is committed to the Senate”). So too here: determining the “accuracy” of the census is no more of a judicial question than determining the “fairness” of districting maps.<sup>10</sup>

---

<sup>10</sup> Nor does the fact that plaintiffs brought their claims under the APA change the political question analysis. *See* 5 U.S.C. § 702 (“Nothing herein . . . affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground[.]”); *Int’l Refugee Assistance Project v. Trump*, 883 F.3d 233, 366 (4th Cir. 2018) (Niemeyer, J., dissenting) (“§ 702(1)’s recognition of ‘other limitations’ on the scope of APA review reflects Congress’s intent to maintain longstanding prudential limits confining the judiciary to its proper role in our constitutional

To be sure, courts may entertain some challenges to census-related decisions. But cases treating such challenges as justiciable involved narrow and deferential review—not a freewheeling inquisition into the “accuracy” of the census. In *Department of Commerce v. New York*, for example, the Court considered whether the Secretary could add a citizenship question to the census consistent with the Enumeration Clause and Census Act. 139 S. Ct. at 2566, 2569. On the constitutional challenge, the Court reviewed only for whether the addition of the challenged question bore a “reasonable relationship to the accomplishment of an actual enumeration.” *Id.* at 2566. On the statutory question, the Court deferentially considered “whether the Secretary examined the relevant data and articulated a satisfactory explanation for his decision.” *Id.* at 2569. The Court’s other census cases likewise involved this type of narrow and deferential review. *See Wisconsin*, 517 U.S. at 19–20 (“[S]o long as the Secretary’s conduct of the census is consistent with the constitutional language and the constitutional goal of equal representation, it is within the limits of the Constitution.”) (simplified); *Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992) (similar); *see also U.S. Dep’t of Commerce v. Montana*, 503 U.S. 442, 458–59 (1992) (“The polestar of equal

---

system, such as the political question doctrine.”); *Mobarez v. Kerry*, 187 F. Supp. 3d 85, 92 (D.D.C. 2016) (holding that political question doctrine precluded review of APA claims).

representation does not provide sufficient guidance to allow us to discern a single constitutionally permissible course” among multiple options.).

When our review morphs beyond these precedents into an interrogation of “accuracy,” of the type underlying the district court’s APA analysis here, we are beyond our proper role as judges. Some legal questions—even ones arising under the same constitutional provision as previously justiciable questions—might prove to be nonjusticiable. *See New York v. United States*, 505 U.S. 144, 185 (1992) (“[T]he Court has suggested that perhaps not all claims under the Guarantee Clause present nonjusticiable political questions” even if most do). Thus, while the court might be competent to decide whether a particular decision bears a “reasonable relationship” to the goal of an “actual enumeration,” the same cannot be said of evaluating the “accuracy” of a census. Indeed, the Court has rejected the claim that its prior cases require “a census that was as accurate as possible” and has recognized that “[t]he Constitution itself provides no real instruction” on how to measure the “accuracy” of a census. *Wisconsin*, 517 U.S. at 18; *see also Tucker v. U.S. Dep’t of Commerce*, 958 F.2d 1411, 1417 (7th Cir. 1992) (Posner, J.) (“It might be different if the apportionment clause, the census statutes, or the Administrative Procedure Act contained guidelines for an accurate decennial census, for that would be some evidence that the framers of these various enactments had been trying to create a judicially administrable standard.”).

We cannot mechanically apply the political question doctrine, which must be considered in light of the important separation of powers function it performs. A court’s authority to act depends on a threshold question of the “appropriate role for the Federal Judiciary”: whether the claims brought “are claims of *legal* right, resolvable according to *legal* principles, or political questions that must find their resolution elsewhere.” *Rucho*, 139 S. Ct. at 2494 (emphasis in original). Here, these background principles weigh in favor of not adjudicating this dispute. No census has been, or can be, fully accurate, according to the Court. *See Wisconsin*, 517 U.S. at 6 (“Although each [census] was designed with the goal of accomplishing an ‘actual Enumeration’ of the population, no census is recognized as having been wholly successful in achieving that goal.”). Determining what level of accuracy is sufficient is simply not something that the judicial branch is equipped to do.<sup>11</sup> Indeed, “[i]t would be difficult to think of a clearer example of the type of governmental action that was intended by the Constitution to be left to the political branches directly responsible—as the Judicial Branch is not—to the

---

<sup>11</sup> The district court and plaintiffs seem to think that the district court’s injunction does not require judicial supervision over the accuracy of the census. Instead, they frame the injunction as merely preventing the Secretary from adopting the Replan because it failed to follow the requisite procedures for doing so. But the crux of the district court’s injunction is its disagreement with the Secretary’s resolution of how to balance accuracy of the census against the statutory deadline. *See, infra*, § II-A. And in ordering relief, the district court has inserted itself at the top of the Executive branch’s census operation. *See* Motion at 17 (describing ongoing supervision of the district court under the preliminary injunction).

electoral process. Moreover, it is difficult to conceive of an area of governmental activity in which the courts have less competence.” *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973). By allowing census-accuracy supervision under the guise of APA review, we have “given the green light for future political battles to be fought in this Court rather than where they rightfully belong—the political branches.” *DHS v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1919 (2020) (Thomas, J., concurring in part and dissenting in part).

### C.

Plaintiffs also likely fail to establish Article III standing, given that they have not shown that their alleged injury is redressable by the courts, even assuming the other standing requirements are met. An injury is necessarily not redressable if the court has no authority to authorize the relief requested. *See Gonzales v. Gorsuch*, 688 F.2d 1263, 1267 (9th Cir. 1982) (Kennedy, J.) (“Redressability requires an analysis of whether the court has the power to right or to prevent the claimed injury.”); *Republic of Marshall Islands v. United States*, 865 F.3d 1187, 1199 (9th Cir. 2017) (holding that a lawsuit seeking to enforce a treaty right was not redressable because “the federal courts have no power to right or to prevent . . . violat[ions of] a non-self-executing treaty provision”).

Clearly, a district court has no authority to order an Executive agency to disobey a Congressional statute. Neither the district court nor plaintiffs have cited

any authority for this unprecedented expansion of the judicial power to decide cases and controversies. *See* U.S. Const. Art. III, § 2. Congress makes laws, the Executive enforces them, and we interpret them in the course of adjudicating disputes. Absent the metaphorical “striking down” of an unconstitutional statute, we are impotent to set aside congressionally enacted laws. *See United States v. Booker*, 543 U.S. 220, 283 (2005) (Stevens, J., dissenting in part) (“[T]he Court simply has no authority to invalidate legislation absent a showing that it is unconstitutional. To paraphrase Chief Justice Marshall, an ‘act of the legislature’ must be ‘repugnant to the constitution’ in order to be void.’” (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803))). Here, no one challenges the constitutionality of the statute establishing the Secretary’s deadline. Accordingly, the district court had no authority to ignore it—let alone order an Executive agency to do so.

All of the cases relied on by the district court to enjoin operation of the statute, despite not finding any constitutional infirmity, are wholly inapposite. None suggest that a court can require an agency to *disobey* a statute; they merely confirm that an agency is not necessarily precluded from acting, even if it is doing so after a statutory deadline. *See, e.g., Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 158 (2003) (holding that despite statute’s mandatory deadline, post-deadline action taken by the agency was not void because there was no Congressional intent

that agency would be deprived of statutory authority to act if it did so beyond the deadline); *Linemaster Switch Corp. v. EPA*, 938 F.2d 1299, 1304 (D.C. Cir. 1991) (similar). The fact that an agency can—depending on the text, structure, and history of the statute at issue—continue to act beyond its statutory deadline, says nothing about a court’s authority to *require* an agency to do so.

#### **D.**

An agency’s decision on how to respond to a once-in-a-century pandemic, in order to meet its statutory deadline, is quintessentially the type of decision we should give substantial deference to. Throughout this pandemic, we’ve deferred to the elected branches to determine how to best respond, even when shuttering our churches and businesses. *See, e.g., S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938, 939 (9th Cir. 2020) (denying Free Exercise Clause challenge to application of California’s stay-at-home order to in-person religious services based on deference to elected branches during pandemic). We’ve done so despite our role in protecting individuals’ constitutional rights. *See On Fire Christian Ctr., Inc. v. Fischer*, 2020 WL 1820249, at \*6 (W.D. Ky. 2020) (although “a state may implement emergency measures that curtail constitutional rights” during a pandemic, it cannot enact measures that are “beyond all question, a plain, palpable invasion of rights secured by the fundamental law”). If deference is appropriate there, surely it is doubly appropriate here, where courts are already required to

show deference to the agencies. *See New York*, 139 S. Ct. at 2578 & n.3 (Thomas, J., concurring in part and dissenting in part) (explaining highly deferential review of an “agency’s discretionary choices and reasoning under the arbitrary-and-capricious standard”); *Wisconsin*, 517 U.S. at 19–20 (explaining narrow and deferential review of Secretary’s census decision). Simply put, there’s no basis to anoint ourselves supervisors of this sensitive process at the eleventh hour.

### III.

At a minimum, we should have granted an administrative stay while we further considered the underlying motion to stay the injunction pending appeal. The government faces irreparable harm from our refusal to do so. It’s undisputed that if the government cannot finalize the data collection phase of the census and move into the data processing phase in a timely fashion, it will likely miss its statutory deadline.

Thus, even if the court ultimately rules for the defendants on the merits, it might not matter much: the plaintiffs will have effectively secured the relief they seek on the merits (e.g., a delay of moving into the data processing phase). In contrast, the defendants have said only that it would be “difficult” to rehire and redeploy workers once terminated, if they are allowed to do so, but not that it would be impossible to revamp these workers if needed. Accordingly, although an administrative stay would be inefficient if ultimately reversed later, the damage

would not be irreparable. At most it would present a bureaucratic hassle for the agencies. The same cannot be said for the majority's decision to deny the administrative stay. Similarly, the district court, and now the majority, fail to consider the harms that irreparably flow to other States. *See* Amicus Brief at 8 (“The effect of the TRO was to run up the census tally in Plaintiffs’ jurisdictions at the expense of lagging jurisdictions like Louisiana and Mississippi.”); *id.* at 8–9 (noting “disruption of redistricting and reapportionment in 24 states that have constitutional or statutory deadlines” tied to census).

Finally, the status quo here, to the extent that’s relevant, is the legal landscape that would have existed prior to the district court’s judicial misadventure. *See Doe #1*, 944 F.3d at 1229 (Bress, J., dissenting) (explaining that preserving the status quo is not an enumerated factor, but in any event, an administrative “stay simply suspends judicial alteration of the status quo, while the injunctive relief granted below constitutes judicial intervention upending it”) (simplified). Accordingly, we should have granted the request for an administrative stay to restore the parties to the positions they were in prior to the district court’s decision.

#### IV.

Despite its errors, the district court deserves some credit. It seems to have been motivated by a valiant attempt to balance two competing priorities: accuracy

of the census versus timeliness under the statutory deadline. But the elected branches have already done this balancing. The Secretary of Commerce was briefed on all of the Bureau employee concerns the district judge found persuasive. The Secretary considered those concerns, and then, in exercising the role that the President appointed him to perform, made the decision to proceed with the Replan. “By second-guessing the Secretary’s weighing of risks and benefits and penalizing him for departing from the Bureau’s” views about the Replan, the district court, and now the majority, “substitute[] [their] judgment for that of the agency.” *New York*, 139 S.Ct. at 2571. Likewise, Congress was aware of the potential problem and did not extend the deadline. The House of Representatives held committee hearings and ultimately voted on a bill to extend the deadline. The Senate received the bill, held committee hearings on it, but then took no further action—and hasn’t since July 2020.<sup>12</sup> Plaintiffs suggest that the Senate might act on the bill soon.<sup>13</sup>

There is no basis for the judiciary to inject itself into this sensitive political controversy and seize for itself the decision to reevaluate the competing concerns between accuracy and speed, after the elected branches have apparently done so

---

<sup>12</sup> <https://www.congress.gov/bill/116th-congress/house-bill/6800/all-actions?overview=closed>

<sup>13</sup> Plaintiffs’ Opposition at 14 n.1 (citing Hansi Lo Wang, Bipartisan Senate Push to Extend Census Begins Weeks Before Count Is Set to End, NPR (Sept. 15, 2020), <https://www.npr.org/2020/09/15/913163016/bipartisan-senate-push-to-extend-census-begins-weeks-before-count-is-set-to-end>)

already—or are actively doing so now. *See Clinton v. City of New York*, 524 U.S. 417, 449 (1998) (Kennedy, J., concurring) (“Failure of political will does not justify unconstitutional remedies.”). Plus, had we ruled for the defendants, nothing would have prevented the elected branches from revisiting this dispute at a later date. A belated fix might entail additional cost and delay that the district court’s injunction avoids. But in our constitutional design, courts are not empowered to swoop in and rescue the elected branches from themselves. If additional cost and delay is the consequence of Congress’s inaction, or the Secretary’s decision to adopt the Replan, then so be it. The recourse for such problems lies with the People themselves at the ballot box—not with unelected and unaccountable judges in chambers.

I respectfully dissent.

---

**From:** Cannon, Michael (Federal) [MCannon@doc.gov]  
**Sent:** 7/29/2020 12:00:34 PM  
**To:** Melissa L Creech (CENSUS/PCO FED) [Melissa.L.Creech@census.gov]  
**Subject:** Re: Plans for afternoon discussion and possible briefing

(b) (5)



Mike

Sent from my iPhone

On Jul 29, 2020, at 7:25 AM, Melissa L Creech (CENSUS/PCO FED) <[Melissa.L.Creech@census.gov](mailto:Melissa.L.Creech@census.gov)> wrote:

(b) (5)



Melissa L. Creech  
Deputy Chief Counsel

Office of the Chief Counsel for Economic Affairs  
U.S. Department of Commerce  
Telephone (301) 763-9844  
Facsimile (301) 763-6238

Confidentiality Notice: This e-mail message is intended only for the named recipients. The information contained in this e-mail and any attachments may be confidential, privileged, attorney-work product, or otherwise exempt from disclosure. If you have received this message in error, are not the named recipient, or are not an employee or agent responsible for delivering this message to the named recipient, then be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message, its contents, or attachments is strictly prohibited. If you have received this e-mail in error, then please notify the sender and permanently delete the e-mail and any attachments immediately. Thank you.

---

**From:** Cannon, Michael (Federal) <MCannon@doc.gov>  
**Sent:** Wednesday, July 29, 2020 7:08 AM  
**To:** Melissa L Creech (CENSUS/PCO FED) <Melissa.L.Creech@census.gov>  
**Subject:** Re: Plans for afternoon discussion and possible briefing

(b) (5)



Sent from my iPhone

On Jul 23, 2020, at 10:28 AM, Melissa L Creech (CENSUS/PCO FED) <Melissa.L.Creech@census.gov> wrote:

(b) (5)



Thanks, Melissa

Melissa L. Creech  
Deputy Chief Counsel  
Office of the Chief Counsel for Economic Affairs  
U.S. Department of Commerce  
Telephone (301) 763-9844  
Facsimile (301) 763-6238

Confidentiality Notice: This e-mail message is intended only for the named recipients. The information contained in this e-mail and any attachments may be confidential, privileged, attorney-work product, or otherwise exempt from disclosure. If you have received this message in error, are not the named recipient, or

are not an employee or agent responsible for delivering this message to the named recipient, then be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message, its contents, or attachments is strictly prohibited. If you have received this e-mail in error, then please notify the sender and permanently delete the e-mail and any attachments immediately. Thank you.

---

**From:** Cannon, Michael (Federal) <MCannon@doc.gov>  
**Sent:** Thursday, July 23, 2020 10:25 AM  
**To:** Melissa L Creech (CENSUS/PCO FED) <Melissa.L.Creech@census.gov>  
**Subject:** Fwd: Plans for afternoon discussion and possible briefing

(b) (5)



Thanks,  
Mike

Sent from my iPhone

Begin forwarded message:

**From:** "Steven Dillingham (CENSUS/DEPDIR FED)" <[steven.dillingham@census.gov](mailto:steven.dillingham@census.gov)>  
**Date:** July 23, 2020 at 9:59:47 AM EDT  
**To:** "Cogley, Nathaniel (Federal)" <[NCogley@doc.gov](mailto:NCogley@doc.gov)>, "Ron S Jarmin (CENSUS/DEPDIR FED)" <[Ron.S.Jarmin@census.gov](mailto:Ron.S.Jarmin@census.gov)>  
**Cc:** "James B Treat (CENSUS/DEPDIR FED)" <[James.B.Treat@census.gov](mailto:James.B.Treat@census.gov)>, "Michael A Berning (CENSUS/ERD FED)" <[Michael.A.Berning@census.gov](mailto:Michael.A.Berning@census.gov)>, "Enrique Lamas (CENSUS/DEPDIR FED)" <[Enrique.Lamas@census.gov](mailto:Enrique.Lamas@census.gov)>, Michael Cannon <[mcannon@doc.gov](mailto:mcannon@doc.gov)>, "Risko, Daniel (Federal)" <[DRisko@doc.gov](mailto:DRisko@doc.gov)>  
**Subject:** Plans for afternoon discussion and possible briefing

The Dep. Sec. indicates that we should be prepared to update the Secretary as scheduled, although the option of postponing the briefing is being pursued. I imagine the briefing will include the process we are engaged in for examining the datasets, and their status and potential contributions, in conjunction with an overview of a possible conceptual methodological framework. Nathaniel, please be prepared to pre-brief the Dep. Sec., and conduct the Sec. briefing if it happens.

If others are needed on the calls, please advise, although I think a Sec. briefing could be limited in number. Enrique is out this afternoon. I mentioned the need to conduct legal reviews of our agreements to ensure there are no limitations on proposed uses, as well as continuing legal advice. Thanks

Steven D. Dillingham, Ph.D., Director  
U.S. Census Bureau  
o: 301-763-2135 | m: (b)(6)  
[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)







# **Exhibit 56**

**Expert declaration of Matthew A. Barreto, Ph.D.**

**I. Background and Qualifications**

1. I am currently a Professor of Political Science and Chicana/o Studies at the University of California, Los Angeles. I am the co-founder and faculty director of the Latino Politics and Policy Initiative (LPPI) in the Luskin School of Public Affairs, a national research center that studies policy issues that impact the Latino and immigrant community.

2. Before I joined UCLA in 2015, I was a professor at the University of Washington for more than nine years, where I was promoted to Associate Professor with tenure, and then Full Professor with tenure. At the University of Washington, I was an affiliated faculty member of the Center for Statistics and the Social Sciences, and an adjunct Professor of Law at the UW School of Law. I am also the co-founder of the research firm Latino Decisions.

3. Throughout my career, I have taught courses on Immigration Policy, Racial and Ethnic Politics, Electoral Politics, Public Opinion, Voting Rights, Chicano/Latino History, Introduction to Statistical Analysis, and Advanced Statistical Analysis to Ph.D. students.

4. I earned a Ph.D. in Political Science at the University of California, Irvine in 2005, with an emphasis on racial and ethnic politics in the United States, political behavior, and public opinion.

5. I have published multiple peer-reviewed academic research papers on Latino participation in the U.S. Census, immigrant public opinion and immigrant political engagement (among other topics).

6. In 2018 I provided expert reports and testimony in three federal lawsuits challenging the Department of Commerce's inclusion of a citizenship status question on the 2020 Census, which included an extensive literature review and evaluation of how immigrants react to changes to the U.S. Census. In all three federal trials, the courts recognized my expertise in studying immigrant political and civic participation, and cited my literature review in ruling in favor of the plaintiffs.

7. I have conducted research nationwide and in New York, California, Indiana, Wisconsin, Pennsylvania, Alabama, Texas, North Dakota, and North Carolina in connection with litigation assessing, among other things, how the public responds to, and is affected by, changes in the law. Courts have accepted my research studies as viable and methodologically accurate instruments to understand how the public responds to changes in state law. In particular, my previous research has focused on understanding sub-group analysis to evaluate differential impacts by race and ethnicity. Recently in North Carolina, a federal court relied on my research in issuing an injunction against the state's voter ID law. In addition, the United States District Court for the District of North Dakota stated in *Brakebill v. Jaeger* (No. 1:16-cv-008) that "the Court gives the findings of the Barreto/Sanchez Survey, and the other studies and data presented by the Plaintiffs, considerable weight." Prior to this, in 2014 in *Veasey v. Perry* (No. 13-CV-00193), the United States District Court for the Southern District of Texas, and in findings affirmed by the Fifth Circuit Court of Appeals, found that my survey was statistically sound and relied upon my survey findings to evaluate the impact of Texas's voter ID law. Likewise, in *Frank v. Walker* (No. 2:11-cv-01128), a survey I administered and included as part of my expert report was given full weight by the United States District Court for the Eastern District of Wisconsin in a voter ID case in Wisconsin.

8. In *Fish v. Kobach* (No. 16-2105-JAR-JPO), the plaintiffs retained me as an expert witness to evaluate the methodology of the defendant's survey, and the United States District Court for Kansas found me to be an expert on best practices of survey research and credible and qualified to discuss survey methodology.

9. I have also regularly presented my expert review and summary of social science literature as part of expert witness reports and declarations, which have been accepted as valid and relied upon by the courts. Review of published social science literature is a well-established method among political scientists and social scientists in general for drawing valid conclusions regarding the general consensus in the field. Literature reviews are an essential component of all academic research and a requirement for publishing peer-reviewed academic research because they

establish the baseline set of knowledge and expectations within the field. As noted above, in litigation challenging the addition of a citizenship question to the 2020 decennial census, three federal courts in New York, California, and Maryland relied upon my literature review as providing credible and valid evidence to help the courts form their opinions.

10. Earlier in 2020, in *New York v. Immigration and Customs Enforcement*, I provided an in-depth literature review examining how immigrant communities respond to increased immigration enforcement, surveillance and monitoring of undocumented immigrants.

11. My full professional qualifications and activities are set forth in my curriculum vitae, a true and correct copy of which I have attached hereto as Appendix A.

## **II. Scope of Work**

12. Plaintiffs in this action retained me to evaluate whether the Presidential Memorandum (PM) issued by President Donald Trump on July 21, 2020 to exclude undocumented immigrants from the apportionment base in 2020 would have a negative impact on the Census participation rates of immigrant communities, including undocumented immigrants, legal permanent residents, and naturalized U.S. citizens. To conduct my evaluation, I reviewed two sources of information. First, I compiled an analysis of news coverage of the PM to assess the reach of the announcement. Second, I conducted a comprehensive literature review on survey methodology, response rates, sensitive questions and methodology, and census procedures addressing missing data and imputation.

13. I worked on this project with Mr. Marcel Roman, a Ph.D. student in the department of Political Science at UCLA and Mr. Chris Galeano, a J.D. student in the UCLA School of Law. Mr. Roman and Mr. Galeano both helped me compile sources for the literature review and news coverage of the aforementioned PM.

### **III. Executive Summary**

14. Based on my review of the news coverage of the PM, the extant literature published in the social sciences, and my own extensive experience with immigrant civic engagement, I conclude that the July 21 PM will reduce participation in the 2020 census, and ultimately will reduce the accuracy of the 2020 census. The PM generates the perception of real and immediate threat for undocumented immigrants that will erode their trust in the census, which will lead to increased non-response in immigrant communities. Calling attention to the citizenship or immigration status of immigrants in a negative light causes immigrants to reduce their civic engagement. The new PM sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count, eroding trust that was restored after the threat of a citizenship question on the Census was removed. The strength of that negative signal is visible in coverage of the PM in Spanish-language media, which is a trusted source of news within Latino and immigrant communities. Signals of a threat to the status of undocumented immigrants generate a well-documented “chilling effect” on public participation for immigrants, i.e., the perception of threat will erode trust that leads to a reduction in immigrant engagement with government programs and officials. However, subsequent official action to counteract such threats--either court orders or changes in agency policy--have positive effects on trust and engagement. The perception of immigration status-related threat generated by the PM will make undocumented and mixed-status households less likely to engage with the Census—particularly with enumerators conducting in-person Non-Response Follow-Up (NRFU). The reduction in response rates among undocumented immigrant and mixed-status households will result the Census Bureau using proxy-response and imputation techniques that are error-prone and tend to undercount immigrant households.

15. My review of news accounts following President Trump’s July 21 PM finds there was widespread coverage, particularly within Spanish-language news media. Whether through television, print, or online outlets, the message relayed by the media was that the PM singled out immigrants through a process that invoked citizenship status, or a lack thereof, as part of the 2020

Census, in an effort to exclude them from the apportionment process. Spanish-language news journalists reported that as a result of the PM there was confusion, fear, and anxiety in immigrant communities about fully participating in the 2020 Census. According to a journalist for Telemundo<sup>1</sup> who spoke with many people familiar with the PM, “activists have already reported that this attempt may have scared many people off from responding to the Census, which is particularly detrimental to states with high immigrant populations such as California, Texas, and New York.” This sentiment was widely reported across Spanish-language news in the days and weeks following the July 21 PM.

16. Extensive research studies show Spanish-language media acts as a catalyst for engaging, informing and mobilizing Latino and immigrant communities. Spanish-language journalists and news anchors act as a medium for the feelings and concerns prevalent within Latino immigrant communities, specifically those who are undocumented. Spanish-language media plays a central role in mobilizing and educating the immigrant community on immigration issues in particular. The high levels of trust in Spanish-language media amongst immigrants plays a key role when listening and learning about the issues that matter most to them, in particular those related to immigration policy. Research studies have documented that many immigrants take direct cues related to civic engagement and participation from what they hear, read, and watch on Spanish-language media.

17. Undocumented immigrants are deeply intertwined into the fabric of American communities. Research and statistical reports have repeatedly found that undocumented immigrants see themselves as part of American society and indeed have longstanding ties in the cities and towns in which they permanently live. A clear majority of undocumented immigrants have lived in the United States for over five years and have families, hold jobs, own houses, and are part of their community. A survey of Latino undocumented immigrants<sup>2</sup> found that 89% had

<sup>1</sup> Telemundo. “Trump Ordena Al Censo Que No Incluya a Los Indocumentados En El Recuento Que Determina El Reparto De Escaños Del Congreso,” July 21, 2020. <https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-tmna3823616>.

<sup>2</sup> [https://latinodecisions.com/wp-content/uploads/2019/06/NALEO\\_AV\\_Undoc\\_Results.pdf](https://latinodecisions.com/wp-content/uploads/2019/06/NALEO_AV_Undoc_Results.pdf)

lived in the U.S. over five years, that 74% have children living with them in the U.S. and 85% have a family member in the U.S. who is a U.S. citizen, and indeed that 87% of undocumented immigrants themselves said they hoped to one day become U.S. citizens if legislation were passed to provide that opportunity.

18. Following the June 2019 ruling by the U.S. Supreme Court blocking the inclusion of a citizenship question, Census partners known as *Trusted Voices* conducted extensive outreach to undocumented immigrants to assure them that the federal government would not be monitoring their citizenship status as it relates to the 2020 Census. The new PM sends a signal of government monitoring citizenship status as it relates to the 2020 Census population count, significantly eroding trust.

19. The published literature is quite clear: a critical component to ensure an accurate response rate on any survey, including the census, is trust between the public and the survey administrator. The prior published studies conclude that response rates will fall without a high degree of trust. The new PM erodes the trust that many community-based organizations with experience serving immigrants had built up over the past year.

20. Trust is particularly important in communities with undocumented populations as many prior reports and publications by the Census Bureau have made clear. The Census Bureau has identified vulnerable population subgroups concerned about the potential misuse of personal information provided to the Census as at-risk for low participation rates and for undercounts. From this perspective, the new PM lowers trust and makes it much harder to stimulate participation in the census from vulnerable populations such as immigrant<sup>3</sup> and minority communities, if such communities do not trust the Census.

21. Far-ranging social science research documents a phenomenon called “the chilling effect” in which immigrant communities withdraw and avoid interactions with government officials or agencies if they believe there could be a risk of adverse consequences for their own

---

<sup>3</sup> Here we mean persons who are foreign-born and emigrated to the United States.

immigration status or the status of others in the community. Specifically, some studies have found that Census participation rates drop in immigrant communities when federal immigration enforcement is perceived to be connected to the Census. In fact, the Census Bureau has published studies pointing to fears over the federal government learning their about citizenship status as a major obstacle in some immigrant communities.

22. Social science research since the 1990s, but especially so in more recent years, is near consensus in finding evidence of the “chilling effect,” i.e., strong patterns of avoidance, withdrawal, and exclusion during times of increased immigration enforcement. This research is often community-focused and highlights how increased attention to immigration status or immigration monitoring by authorities, results in noticeable withdrawal in that specific context. Immigrants, and often their children and others in their close network, will purposely avoid or withdraw from an environment where they fear potential immigration enforcement. The fear associated with detention, separation from their children or family, and possible deportation is so paralyzing that many immigrants – when faced with possible immigration enforcement – avoid even necessary public services such as police protection, health services, going to work, sending their children to school, or attending court to defend their rights. The takeaway is clear – increased negative attention to citizenship status issues decreases trust in those specific agencies or actors and leads to immigrant withdrawal.

23. If trust is low, attempts to re-interview or re-contact households will be far less successful either. Census respondents must believe that there is no jeopardy or threat of disclosure to ensure their participation in a survey, regardless of how many attempts one might make to prompt their participation.

24. Already, a prior study from 2018 about perceptions of the 2020 Census found that levels of trust in immigrant and minority communities in the United States were low as a result of concerns over citizenship. The extensive media attention to the citizenship question resulted in high levels of fears among immigrants. When asked about the protection of their and their family members’ sensitive information, including citizenship status, immigrant respondents were

statistically less likely to trust that the Trump administration will protect their information and not share it with other federal agencies (just 35% were trusting). Among Latino respondents overall, just 31% trust the Trump administration to protect their personal information, which is statistically lower than among non-Latinos. While the June 2019 SCOTUS decision may have alleviated these fears by striking the citizenship question, the July 2020 PM effectively re-confirms those immigrant fears because it sends a signal to immigrant communities that the Trump administration will be monitoring their citizenship status so they may subtract these participants from the 2020 base population count for the apportionment base. In essence, Trump has returned the immigrant community to a condition of wariness similar to when the citizenship question was to appear on the census. They believe their participation is either no longer safe, or not required due to the PM of July 2020 to specifically single out undocumented immigrants.

25. The survey also found that large percentages of immigrants and minorities are concerned specifically that their personal information reported on the census will be shared with Immigration and Customs Enforcement (ICE). Overall, 41% of immigrants surveyed state they are concerned about this, along with 40% of Latinos.

26. When households do not initially self-respond to the census, the Census relies on nonresponse follow up (NRFU) to re-contact households to encourage them to respond. In simulated re-contact, my research has demonstrated that a majority of non-responders to the 2020 census will not switch and become participants when asked again to do so. In particular, research has found that NRFU is less successful when immigrant communities have fears about information concerning their citizenship status being collected or revealed.

27. Larger households will be the most difficult to successfully convert from non-participation to participation if there are fears about citizenship status data being collected or monitored, further undermining an accurate count. Existing research has found that among immigrants who would take the census upon NRFU recontact, their average household size is 2.91 compared to an average household size of 3.94 for immigrants who would not participate upon recontact, leaving them, and their larger households uncounted.

28. One of the ways Census Bureau officials try to account for people who refuse to respond to the census is to mathematically account for non-responders through statistical methods such as “substitution” or “imputation.” Both of these methods use information on responding households to estimate population information on non-responding households. However, when there are fears about citizenship status are introduced, non-responding households are statistically different than responding households on a variety of critical demographics, which violates an important assumption of substitution or imputation. For these methods to serve as viable alternatives, missing units and reported units should be roughly equivalent. However, the existing research reveals that when fears over citizenship status emerge, non-responding households are more likely to be larger in size, be foreign-born, and have different age and educational outcomes than responding households. This will make substitution and imputation inaccurate and unreliable, and makes it highly likely that there will be a net undercount of households refusing to respond to the census due to the citizenship question.

#### **IV. Literature Review and Research Findings**

##### **A. The July 21 Presidential Memorandum Received Wide Coverage in Spanish News Media and Created Confusion and Fear About the 2020 Census**

29. On July 21, 2020 President Trump issued a Presidential Memorandum declaring that undocumented immigrants will be excluded from the decennial census for apportionment purposes.<sup>4</sup> Specifically, following the completion of the 2020 Census, the PM requires that individuals without lawful immigration status be excluded from the apportionment base for the purpose of the reapportionment of the U.S. House of Representatives. The PM refers to last year’s Executive Order 13880,<sup>5</sup> which instructed executive departments and agencies to share

<sup>4</sup> Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census (July 21, 2020), <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>

<sup>5</sup> Collecting Information About Citizenship Status in Connection With the Decennial Census (July 11, 2019), <https://www.whitehouse.gov/presidential-actions/executive-order-collecting-information-citizenship-status-connection-decennial-census/>

information with the Department of Commerce . . . to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country.” This order signals to hard-to-count populations, such as undocumented immigrants and mixed status families, that the federal administration is compiling citizenship related data on them, and that they are to be excluded from the 2020 Census.<sup>6</sup> While there are technicalities that an undocumented immigrant may fill out the Census form, and then be deducted later, this nuance is lost on a community that has been under constant attack and threat from President Trump and his administration. A memorandum issued by the President stating that undocumented immigrants will be identified in specific communities and then excluded from the official Census population count sends a clear message of exclusion.

30. In particular, the PM reverses recent progress that has been made by community-based organizations following the June 2019 Supreme Court ruling which blocked the citizenship question from being added to the 2020 Census. In an effort to mitigate the challenge posed by the citizenship question, outreach advocates also sought to use the U.S. Supreme Court’s decision as a starting point “to convince everyone to participate in the census count” and emphasize the benefits of participating in the census.<sup>7</sup> Because the highest and definitive court in our country had struck down the citizenship question, outreach to immigrant communities could emphasize this as a selling point to fill out the census without any fears about someone’s immigration status being reported. For the Census Bureau’s part, they would enact a public outreach plan that involved “working with local organizations to encourage census participation among immigrants, communities of color and other groups the bureau considers hard to count” to combat the mistrust by these communities.<sup>8</sup>

---

<sup>6</sup> Some point out that matching census and administrative data will lead to matching errors and exclude millions of U.S. citizens from the apportionment process. Randy Capps et al., Millions of U.S. Citizens Could Be Excluded under Trump Plan to Remove Unauthorized Immigrants from Census Data, Migration Policy Institute (July 2020), <https://www.migrationpolicy.org/news/millions-us-citizens-could-be-excluded-under-plan-remove-unauthorized-immigrants-census>

<sup>7</sup> [https://www.huffpost.com/entry/2020-census-citizenship-question\\_n\\_5d2f378ce4b02fd71ddd974](https://www.huffpost.com/entry/2020-census-citizenship-question_n_5d2f378ce4b02fd71ddd974)

<sup>8</sup> <https://www.npr.org/2019/07/31/746508182/push-for-a-full-2020-count-ramps-up-after-census-citizenship-question-fight>

31. The new PM undermines these efforts and implies the government is attempting to enumerate the undocumented immigrant population, which could undercut participation. Because of the 2019 Supreme Court decision, there is no direct mechanism for assessing whether a Census response includes data from an undocumented immigrant using Census responses. If the federal government is attempting to exclude undocumented immigrants from the Census count, immigrant communities are likely to draw two conclusions. First, undocumented immigrants, the people they live in the same household with, and others in immigrant communities may be worried the government is attempting to find out their legal status through other means. This is not beyond the realm of possibility, given that the Trump administration has instructed federal agencies to use existing state and federal records to determine citizenship status (Levine, 2020)<sup>9</sup>. This could generate a chilling effect and incentivize households with undocumented immigrants to provide no additional information to the Federal Government that they feel would implicate their immigration status. Second, undocumented immigrants and those with ties with undocumented immigrants may think the government will use other means to find them, such as their responses to questions asking about nativity or ethnic/racial group. Therefore, they will not fill out the Census form writ large since probabilistically, providing information on other characteristics might facilitate government efforts to track and identify undocumented immigrants.

32. After the President announced the PM, widespread reports about how the PM would seek to exclude undocumented immigrant populations from the reapportionment process were published by major news outlets throughout the U.S.<sup>10</sup> Major Spanish-language media and

<sup>9</sup> For instance, Nebraska, South Dakota, and South Carolina voluntarily agreed to transfer citizenship data from their state driver's license and state ID records to the U.S. Census Bureau (Wang, 2020)

<sup>10</sup> Alex Daughery, *Florida Could Lose Power in Washington if Trump's New Immigration Order is Enacted*, MIAMI HERALD (July 21, 2020), <https://www.miamiherald.com/news/politics-government/article244382462.html>; Alexandra Alper and Nick Brown, *Trump Issues Memo To Stop Counting Undocumented Migrants In Next Round Of Redistricting*, HUFFINGTON POST (July 21, 2020), [https://www.huffpost.com/entry/trump-executive-order-immigrants-redistricting\\_n\\_5f1709e0c5b615860bb7f415](https://www.huffpost.com/entry/trump-executive-order-immigrants-redistricting_n_5f1709e0c5b615860bb7f415); Chris Megerian, *Trump Tries New Move to Restrict Census, Could Cut California's Seats in Congress*, L.A. TIMES (July 21, 2020), <https://www.latimes.com/politics/story/2020-07-21/trump-new-tack-restrict-immigrants-census>; David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA

## Barreto Declaration – Census 2020 Presidential Memorandum

print news outlets throughout the nation also reported on the PM. They included Telemundo,<sup>11</sup> Univision,<sup>12</sup> Azteca America,<sup>13</sup> and Estrella TV<sup>14</sup>—all major media sources for Spanish-speaking viewers with hundreds of local television stations and affiliates throughout the U.S.<sup>15</sup> Newspapers and online media outlets for Spanish-speaking readers also reported on the PM's intention to leave out undocumented immigrants from the reapportionment process.<sup>16</sup> Whether

TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002/>; Jill Colvin and Kevin Freking, *Trump to Exclude Those in US Illegally From Congressional Reapportionment Count*, CHICAGO SUN-TIMES (July 21, 2020), <https://chicago.suntimes.com/2020/7/21/21333076/trump-to-illegally-from-congressional-reapportionment-count>; Katie Rogers and Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Kevin Freking and Mike Schneider, *Trump's New Immigration Fight: How to Redraw House Districts*, HOUSTON CHRONICLE (July 21, 2020), <https://www.chron.com/news/article/Trump-seeks-to-bar-illegal-alien-from-15423258.php>; Kevin Liptak et al., *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html>; Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants From a Portion of the 2020 Census*, SEATTLE TIMES (July 21, 2020), <https://www.seattletimes.com/nation-world/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/>

<sup>11</sup> *Trump Ordena Al Censo Que No Incluya a Los Indocumentados En El Recuento Que Determina El Reparto De Escaños Del Congreso*, TELEMUNDO (July 21, 2020), <https://www.telemundo.com/noticias/noticias-telemundo/inmigracion/trump-ordena-al-censo-que-no-incluya-los-indocumentados-en-el-recuento-que-determina-el-reparto-de-esca%C3%B1os-del-congreso>; *Trump Firma Decreto Para Excluir a Indocumentados del Censo 2020*, TELEMUNDO SAN ANTONIO (July 21, 2020), <https://www.telemundosanantonio.com/noticias/la-casa-blanca/presidente-trump-decreto-indocumentados-2020/2068275/>.

<sup>12</sup> *Trump Ordena al Censo No Contar a Los Indocumentados en un Memo de Dudosa Legalidad y Difícil de Cumplir*, UNIVISION (July 21, 2020), <https://www.univision.com/noticias/elecciones-en-eeuu-2020/trump-ordena-al-censo-no-contar-a-los-indocumentados-en-un-memo-de-dudosa-legalidad-y-dificil-de-cumplir>.

<sup>13</sup> Ju Carpy, *Trump Firma Memo Para Excluir a Migrantes del Censo*, AZTECA AMERICA (July 21, 2020), <https://aztecaamerica.com/2020/07/21/trump-firma-memo-para-excluir-a-migrantes-del-censo/>

<sup>14</sup> Maria Teresa Sarabia, *Inmigrantes Indocumentados No Serán Contados*, ESTRELLA TV (July 21, 2020), <http://noticiario.estrellatv.com/noticias/inmigrantes-indocumentados-no-seran-contados-noticiario-estrella-tv/>

<sup>15</sup> *Owned Stations*, TELEMUNDO, <https://www.nbcmv.com/owned-stations/telemundo-station-group/about?network=5266626> (last visited July 31, 2020); *Local Media*, UNIVISION COMMUNICATIONS INC., <https://corporate.univision.com/partner-with-us/local/> (last visited July 31, 2020); *TV*, ESTRELLA TV, <http://www.estrellamedia.com/programming/tv> (last visited July 31, 2020); *Azteca America*, GRUPO SALINAS, <https://www.gruposalinas.com/en/aztecaUS> (last visited July 31, 2020).

<sup>16</sup> Jesús García, *Trump Firma Memorando Para Excluir a Inmigrantes Indocumentados del Censo*, La Opinión (July 21, 2020), <https://laopinion.com/2020/07/21/trump-firma-memorando-para-excluir-a-inmigrantes-indocumentados-del-censo/>; Jesús García, *Trump Firma Memorando Para Excluir a Inmigrantes Indocumentados del Censo*, El Diario (July 21, 2020), <https://eldiario.com/2020/07/21/trump-firma-memorando-para-excluir-a-inmigrantes-indocumentados-del-censo/>; Kevin Freking and Mike Schneider, *Trump Firma Memo Que Afectaría Conteo de Migrantes*, El Nuevo Herald (July 21, 2020), <https://www.elnuevoherald.com/noticias/estados-unidos/article244382772.html>; <https://www.msn.com/es-nx/noticias/mundo/ordena-trump-excluir-a-indocumentados-del-2020-censo-en-cu/ar-BB171eMI>; <https://cnnespanol.cnn.com/video/2020/07/21/trump-firma-memorando-constitucion-estados-unidos-dusa-vo/>; <https://cnnespanol.cnn.com/2020/07/21/trump-firma-orden-para-excluir-inmigrantes-indocumentados-en-el-2020-censo/>; <https://es-us.noticias.yahoo.com/trump-firma-memorandum-excluir-indocumentados-193912301.html>; <https://www.dallasnews.com/espanol/al-dia/estados-unidos/2020/07/21/donald-trump-pedira-al-2020-censo-que-no/>

through television, print, or online mediums, the message relayed by the media was that the order singled out immigrants through a process that invoked citizenship status, or a lack thereof, as part of the 2020 Census, in an effort to exclude them from the apportionment process. Since the PM was signed, it has prompted discussion by Spanish-language news segments on its implications for the immigrant community.<sup>17</sup> These reports have conveyed to Spanish-speaking audiences that millions of undocumented immigrants living in the U.S. would not be counted when deciding how to apportion congressional seats because of the PM, affecting states such as California, Florida, and Texas, each of which includes large undocumented immigrant populations within their communities.<sup>18</sup>

33. Across these news accounts, immigrants, as well as individuals who worked with community-based organizations that serve immigrants, and even journalists, all stated that they believed the July 21 PM was an effort to sow confusion and distrust, and to reduce the count of Latinos and immigrants on the 2020 Census. Examples of some of the direct quotations from these news sources include:

- a. *“Este memo obviamente causa miedo entre esta población en particular, te pregunto, ¿podría ser el miedo una de las razones por la que la comunidad hispana no participe en el Censo 2020 o se siente que su participación sea baja? Lamentablemente no es la primera vez que el Presidente Trump amenaza y amedrenta nuestra comunidad inmigrante indocumentada... y si, fomenta el miedo en nuestras comunidades. Una vez más, le dice a nuestra comunidad inmigrante, no se cuentan, no los necesitamos.”* “This memo obviously causes fear among this particular population, I ask you, could fear be one of the reasons

---

[cuente-a-los-indocumentados-segun-funcionario-de-la-casa-blanca/](https://www.cuente-a-los-indocumentados-segun-funcionario-de-la-casa-blanca/) ; <https://laoferta.com/2020/07/21/trump-ordena-excluir-a-indocumentados-de-distribucion-electoral-tras-censo/> ; <https://www.lavanguardia.com/trump-firma-memorandum-que-busca-excluir-a-indocumentados-del-censo-2020/> ; <https://www.excelsiorcalifornia.com/2020/07/22/trump-abre-nueva-polemica-al-ordenar-excluir-a-indocumentados-del-censo/>

<sup>17</sup> <https://www.telemundo62.com/videos/videos-noticias/implicaciones-de-remover-a-los-indocumentados-del-censo-2020/2063236/> ; <https://www.univision.com/local/los-angeles-knmx/que-implicaciones-tiene-la-orden-de-trump-que-busca-excluir-a-los-indocumentados-del-censo-2020-video> ; <https://www.univision.com/local/philadelphia-wuwp/lideres-reaccionan-ante-peticion-de-trump-para-excluir-a-personas-indocumentadas-del-censo-2020-video>

<sup>18</sup> <https://www.chron.com/news/article/Orden-de-Trump-afecta-censo-en-California-15434405.php> ; <https://eldiariouny.com/2020/07/21/enorme-oposicion-a-orden-de-trump-que-afectaria-a-millones-de-inmigrantes-y-que-califican-de-ilegal/> ; Mike Schneider, Orden de Trump afecta censo en California, Florida y Texas, El Nuevo Herald (July 25, 2020), <https://www.elnuevoherald.com/article244496782.html>

why the Hispanic community does not participate in the 2020 Census or feels that their participation is low? Unfortunately, this is not the first time that President Trump has threatened and intimidated our undocumented immigrant community... and yes, he has fostered fear in our communities. Once again, he tells our immigrant community, don't count yourselves, we don't need you.”<sup>19</sup>

- b. *“Hay varias organizaciones que están reaccionando y no están de acuerdo con esta movida de la casa blanca porque ya llevan más de un año tratando de incentivar a la comunidad de indocumentados para que participen del censo, para que no tenga miedo y hagan escuchar su voz, ahora esta acción prácticamente se convierte en un golpe bajo para la comunidad de inmigrantes indocumentados en este país.”* “There are several organizations that are reacting and do not agree with this move by the White House because they have been trying for more than a year to encourage the undocumented community to participate in the census, so that they are not afraid and make their voice heard, now this action practically becomes a low blow to the undocumented immigrant community in this country.”<sup>20</sup>
- c. *“Además, afirman que el anuncio del presidente “claramente” tiene la intención de promover el miedo y disuadir la participación en el censo de inmigrantes y sus familias, ya que se produce solo unas semanas antes de que los enumeradores estén programados para salir y alentar a los hogares a responder al censo.”* “In addition, it claims that the president's announcement is “clearly” intended to promote fear and discourage participation in the census by immigrants and their families, since it comes just weeks before enumerators are scheduled to leave and encourage households to respond to the census.”<sup>21</sup>
- d. *“Algunos oponentes afirman que es un intento para suprimir el creciente poder político de los latinos en Estados Unidos y discriminar a las comunidades inmigrantes de otras minorías no blancas.”* “Some opponents claim it is an attempt to suppress the growing political power of Latinos in the United States and to discriminate against other non-white, minority immigrant communities”<sup>22</sup>
- e. *“Es una manera de tratar de eliminarnos numéricamente del mapa, borrarlos en cuanto a números”* “It is a way of trying to wipe us out numerically, wipe us out in terms of numbers”

34. The PM has threatened to upend a year's worth of outreach efforts by groups focused on hard-to-count populations. These groups now face a big challenge: reach out to

<sup>19</sup> Telemundo 62. “Implicaciones De Remover a Los Indocumentados Del Censo 2020.” Telemundo 62. Telemundo 62, July 22, 2020. <https://www.telemundo62.com/videos/videos-noticias/implicaciones-de-remover-a-los-indocumentados-del-censo-2020/2063236/>.

<sup>20</sup> Univision. “Líderes Reaccionan Ante Petición De Trump Para Excluir a Personas Indocumentadas Del Censo 2020.” Univision, July 22, 2020. <https://www.univision.com/local/philadelphia-wuwp/lideres-reaccionan-ante-peticion-de-trump-para-excluir-a-personas-indocumentadas-del-censo-2020-video>.

<sup>21</sup> EFE, Agencia. “Coalición De Fiscales Demanda Al Presidente Trump Por Su Acción Con El Censo.” Yahoo! Yahoo! Accessed July 29, 2020. <https://es-us.noticias.yahoo.com/coalici%C3%B3n-fiscales-demanda-presidente-trump-230425578.html>.

<sup>22</sup> Mike Schneider. “Orden De Trump Afecta Censo En California, Florida y Texas.” Houston Chronicle. Associated Press, July 29, 2020. <https://www.chron.com/news/article/Orden-de-Trump-afecta-censo-en-California-15434405.php>.

people who haven't filled out their census form yet who are now worried the federal administration will use whatever information they provide in the 2020 Census to target them. Solving this challenge is now more urgent for these groups given the Census Bureau's recent decision to shorten the period for collecting responses, including NRFU operations, by 31 days.<sup>23</sup>

35. According to Arturo Vargas, the CEO of NALEO, one of the nation's top civic engagement organizations in the Latino and immigrant community, the new PM is a setback that creates fear in the immigrant community. NALEO has been identified by the Census Bureau itself as one of the most important "trusted voices" to earn trust in the Latino community. Vargas stated on Twitter<sup>24</sup>: "With a successful #NALEOVirtual Conference done, time now to refocus on #Census2020 - which just got even MORE DIFFICULT with @POTUS effort to exclude immigrants from the apportionment numbers and cutting short @uscensusbureau's time to finish the count. Our community is scared." Vargas went further to note<sup>25</sup> that the new PM was undoing progress made after striking the citizenship question, "#Census2020 is the most challenging to promote participation I have seen in my career. After @SCOTUS stopped a citizenship question, we had a fighting chance. Now @POTUS has made it much harder by his July 21 memo and by cutting off @uscensusbureau's field work early. @NALEO"

#### **B. Spanish-Language News Media is a Trusted Source for Immigrants**

36. Studies show Spanish-language media acts as a catalyst for engaging and mobilizing Latino and immigrant communities. Spanish-language journalists and news anchors act as a medium for the feelings and concerns felt amongst Latino immigrant communities, in particular among undocumented immigrants. Green-Barber discuss these trends in Spanish-speaking media.<sup>26</sup> She found that Spanish-speaking households have high utilization of internet

<sup>23</sup> <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals>

<sup>24</sup> <https://twitter.com/ArturoNALEO/status/1291764313405812737?s=20>

<sup>25</sup> <https://twitter.com/ArturoNALEO/status/1291792560390729728?s=20>

<sup>26</sup> Lindsay Green-Barber, *Latinos and the media: Patterns, changes and ideas for more connection*, Center for Investigative Reporting.

and Spanish TV and radio, indicating the large presence and critical role of the Spanish-language media has in Spanish speaking homes. She also found that the Spanish-speaking media plays a central role in mobilizing and educating Latino communities on immigration issues in particular.

37. Research shows that households who more closely follow Spanish-language news rely on that information when it comes to civic and political engagement.<sup>27</sup> Garcia-Rios and Barreto (2016) investigated media habits of Latino immigrants and found that people with high rates of Spanish-language news consumption were more informed and had high rates of immigrant identity, meaning that they were particularly aware and responsive to immigration-related news and current affairs.<sup>28</sup> In 2012, a positive association between Spanish news coverage of President Obama's DACA program and immigrant identity spurred naturalized citizens to vote at higher rates. In other instances, exposure to negative information can lead to withdrawal.

38. Research on Spanish-language media by Federico Subervi-Velez (2008) notes "the intersection between media and Latinos when assessing political socialization and mobilization of Latinos."<sup>29</sup> To put simply, Spanish-language media is a critical bridge that informs and influences immigrants in politics and is often a direct reflection of Latino immigrant opinion in America. One example is the reliance of Spanish-language radio to share and spread information about anti-immigrant legislation in the U.S. Congress (Felix et. al, 2008). Research found that Spanish media personalities such as Almendarez Coello (El Cucuy), Eduardo Sotelo (El Piolin) and Christina Saralei presented and educated the community on the anti-immigration rhetoric that was becoming prominent in politics (Felix et al, 2008). Coello and Sotelo's provided daily updates and created awareness about H.R. 4437, a bill that could negatively impact immigrant communities. In particular, research has found that the high levels of trust in

---

<sup>27</sup> Barreto, Matt. Garcia-Rios, Sergio. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012." RSF: The Russell Sage Foundation Journal of the Social Sciences. January 06, 2016

<sup>28</sup> Barreto, Matt. Garcia-Rios, Sergio. "Politicized Immigrant Identity, Spanish-Language Media, and Political Mobilization in 2012." RSF: The Russell Sage Foundation Journal of the Social Sciences. January 06, 2016, p. 78.

<sup>29</sup> Subervi-Vélez, Federico A., ed. 2008. The Mass Media and Latino Politics: Studies of U.S. Media Content, Campaign Strategies and Survey Research: 1984–2004. New York: Routledge.

Spanish-language media plays a key role when Latino immigrants read or hear about the issues that matter most to them, like immigration policy.

**C. Trust and Socio-Political Context are Two Key Factors That Impact Survey Response Rates and Accuracy**

39. The decennial census is a population survey. There have been extensive studies across the social sciences documenting the best practices and potential pitfalls in collecting accurate survey data. With respect to evaluating the 2020 Census there are two key takeaways that are quite clear in the published literature. First, trust between the public and the survey administrator is crucial. Prior studies conclude that response rates will fall without a high degree of trust, leading to a biased survey project because it excludes people from the data and is no longer representative. Second, the social and political context during survey implementation can greatly impact trust, confidence, and participation rates. This is especially the case for vulnerable populations when they perceive an unwelcoming environment or context. Of these key takeaways, the hallmark of cooperation in any survey is trust. Subjects are more likely to participate in a survey, to complete survey items accurately, and respond fully to survey items when they trust the survey administrator. When potential respondents are suspicious, uncertain, anxious or untrusting, non-response rates significantly increase. An early study on this topic framed the issue as how much threat potential respondents perceive through the source of the survey (Ball 1967; Bradburn et al. 1978). When subjects identify the survey as being implemented on behalf of authorities who they perceive could use their answers against them, they are likely to not-respond, or to respond untruthfully (Ball 1967). From this perspective, newfound fears about citizenship status due to the July 21 PM will make securing participation of immigrant communities much harder than if the PM had never been issued.

40. A research study by the U.S. Government Accountability Office in 2003 (GAO-03-605) laid out the most appropriate approaches to surveying the Latino population specifically. The report was commissioned because prior government surveys, in particular the Census, were

characterized by high rates of non-response with Latino respondents. The report stated that distrust – especially of those representing the government – was a leading factor in Latino immigrant non-response. To fix this, the report recommended increasing trust so that potential survey respondents are not fearful of their participation, and not suspicious of the census questions being asked, or the census enumerators visiting their community. The July 21 PM related to undocumented immigrants does precisely the opposite, increasing *distrust* and, therefore, making it substantially less likely that members of the Latino immigrant subgroups will respond to the census.

41. De la Puente (1995) examined issues related to trust, confidentiality, and fear among potential census respondents in El Paso, Texas and found that fear and apprehension on part of the sample area residents led to concealment of information from the Census Bureau and from the ethnographers, due to their belief that the government will not keep their information private or confidential when it comes to highly sensitive questions. This research establishes that the Census Bureau already knows it has challenges with trust in some immigrant communities and attempts to overcome those challenges by not asking sensitive questions that make it very difficult to persuade communities with low trust. While the threat of a citizenship question was dropped, this brand new PM of July 21 instills a new sense of confusion and fear and will result in increased problems with trust in such communities and a corresponding reduction in Census response.

42. In a follow-up study a decade later, de la Puente (2004) concluded that individuals with unstable immigration statuses were much less likely to trust the government and specifically less likely to fill out the census questionnaire. Indeed, properly counting undocumented immigrants has long been a concern for the Census Bureau. De la Puente's research demonstrated that respondents with irregular immigration statuses are unlikely to directly cooperate with the Census if they perceive their immigration status will be revealed. The July 21 PM does precisely this,; it sends a strong signal to undocumented immigrants that the federal government is collecting data about them, and will match various government records to find and exclude certain immigrants. One respondent in the de la Puente study, who did have legal status as a student, was afraid to participate in the Census because she feared that at some point in the future she may go out of

status and that the information she provided to the Census Bureau might be used to track her down. According to de la Puente, it is critical that immigrant respondents clearly understand that their immigration status is not associated with the Census population count.

43. An important practice that ensures higher participation rates in surveys is respondent anonymity, particularly when there might be concerns over immigration status. The Census violates anonymity by requiring the respondent to list the names of all household members. If respondents do not trust the survey administrator, and there is no anonymity, vulnerable respondents are far less likely to participate. Tourangeau and Yan (2007) explain how the “threat of disclosure” can result in non-response. Generally, people have concerns about the possible consequences of participating in a survey, or giving a truthful answer should information become known to a third party with enforcement powers. The authors explain a survey may be “sensitive” if it raises fears about the likelihood or consequences of disclosure of the answers to agencies or individuals directly, or not directly involved in the survey. As an example, Tourangeau and Yan (2007) discuss asking a question about marijuana use to a group of teenagers. If the teens suspect that the answers could be shared with their parents, they opt out of the survey or lie. But if the survey is completely anonymous and implemented by their peers, they are much more likely to participate and be truthful. The *perceived* threat of disclosure to authorities is what matters. With the July 21 PM, the federal government has clearly created a perception of threat for immigrants and the 2020 Census.

44. A review of findings across different surveys suggest that the likelihood of survey response largely depends on timing and contextual factors, including the respondent’s personal situation and the features of the data collection, such as the degree of privacy it offers. The exact same survey might be highly sensitive and risk non-participation in one setting, but be acceptable and proper in another. To this point, a comprehensive review of survey environment research indicates that highly sensitive surveys will be disruptive, produce non-response, or result in biased data when the respondent is concerned that their answers could be known by authorities. However, if the respondent feels secure and has total privacy and anonymity, they are likely to participate

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

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

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

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

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

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

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

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

49. Prior survey research in January 2020<sup>30</sup> assessed how Latinos in New York reacted to information about whether or not ICE was present in and around state courthouses. The question there was whether increased threat of immigration enforcement resulted in immigrant withdrawal. ICE was sporadically conducting immigration-related searches in or near state courthouses across New York. In our survey experiment, we randomly assigned one set of respondents to a condition in which we reminded them of ICE presence at state courthouses, while other respondents were randomly assigned to a condition without the information about ICE presence.

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

---

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

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

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

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

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

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

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

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

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

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

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