Other Authorities

INTRODUCTION

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

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

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

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

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

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

BACKGROUND

I. CONSTITUTIONAL AND STATUTORY AUTHORITY FOR THE CENSUS

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

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

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

II. 2020 CENSUS PROCEDURES

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

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

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

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

LEGAL STANDARDS

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

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

ARGUMENT

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

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

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

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

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

A. The census deadline is textually committed to Congress.

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

As the Supreme Court has recognized, the text of the Enumeration Clause "vests Congress with virtually unlimited discretion in conducting the decennial 'actual Enumeration.'" *Wisconsin*, 517 U.S. at 19; *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2567 (2019) (Congress has "broad authority over the census, as informed by long and consistent historical practice"); *see also NAACP v. Bureau of the Census*, 399 F. Supp. 3d 406, 418 (D. Md. 2019) ("[T]he Founders clearly intended Congress to have paramount authority in both the design and execution of the census"), *aff'd in part, rev'd on other grounds*, 945 F.3d 183 (4th Cir. 2019).

That "virtually unlimited discretion" necessarily includes the authority to weigh policy considerations—like the need for timely census results to calculate apportionment, the need for a thorough census, and the funding for lengthy census operations—to determine the deadline for each decennial enumeration. That's why Congress, and Congress alone, has set the deadline for every one of the 24 censuses in American history. *See, e.g.*, Census Act of 1790, 1 Stat. 101 (1790) (directing that the census would commence on August 2, 1790 and end on May 2, 1791). And "[i]t should go without saying that the National Legislature well knows how to amend a statute when it so desires." *Nat. Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 317 (D.C. Cir. 1988). In fact, Congress has extended census deadlines from the earliest days of our Republic. For example, in the 1790 Census, Congress directed that the census would commence on August 2, 1790 and end on May 2, 1791. Census Act of 1790, 1 Stat. 101 (1790). But Congress later amended the first census act to extend the reporting deadline for Rhode Island and Vermont until late 1791, and for South Carolina until March 1, 1792. *Id.* Such amendments became a running theme, with census deadlines codified, then subsequently extended in every census from 1810 to 1850. *See* An Act to Extend the Time for Completing the Third Census, 2 Stat. 658 (1811); An Act to Amend the Act Entitled "An Act to Provide for Taking the Fourth Census," 3 Stat. 643 (1821), An Act to Amend the Act for Taking the Fifth Census, 4 Stat. 439 (1831), An Act to Amend the Act Entitled "An Act to Provide for Taking the Sixth Census," 5

Stat. 452 (1841), An Act Supplementary to the Act Entitled "An Act Providing for the Taking of the Seventh and Subsequent Censuses," 9 Stat. 445 (1850).[2]

Congress's sole responsibility to set or change census deadlines is not lost on the current Congress. Bills have been introduced, letters exchanged, and hearings held, all concerning whether Congress should extend the § 141(b) deadline in light of the COVID-19 pandemic. *See* H.R. 6800, § 70201(a) (extending deadline for 2020 Census under § 141(b) from December 31, 2020 to April 30, 2021); H.R. 7974, § 2 (same); H.R. 7034, § 2 (same); S. 4048, § 2 (same). As one Congresswoman stated in a letter earlier this month, "it is more urgent than ever that the Senate act." *See* Letter from Carolyn B. Maloney to Mitch McConnell et al. (Sept. 2, 2020) (emphasis added).[3] That letter conspicuously did not chide the Secretary or Census Bureau, but urged *Congress* to take action because "Congress has a solemn responsibility under the Constitution to help ensure an accurate and complete count, and there is bipartisan support in the Senate for extending these deadlines." *Id.* So while the Census Act now delegates many aspects of Congress's "broad authority over the census to the Secretary," *Wisconsin*, 517 U.S. at 5, 19, Congress maintains ultimate control over the census by, among other things, setting deadlines for completion and appropriating funds for the Census Bureau to meet those deadlines. *See, e.g.*, 13 U.S.C. § 141(b)–(c); 2 U.S.C. § 2a; *see also* Consolidated Appropriations Act, 2019,

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[2] Extensions became less necessary in 1880 when professional enumerators were used in lieu of U.S. Marshals. *See* An Act to Provide for Taking the Tenth and Subsequent Censuses, 20 Stat. 473 (1879). Congress has also altered the start date of the decennial census. From 1790 to 1820, censuses began on the first Monday in August. *See* An Act to Provide for Taking the Fourth Census, 3 Stat. 548 (1820). In 1828, President John Quincy Adams suggested the census be conducted earlier, so from 1830 to 1900, decennial censuses began on June 1. After sfluctuation in the early Twentieth Century, Congress eventually codified April 1 as Census Day, 13 U.S.C. § 141(a), where it remains today.

[3] Available at this link.

Pub. L. No. 116-6, 133 Stat. 13 (appropriating $3.5 billion to the Census Bureau for use through 2021).

As the plain constitutional text and history make clear, it is Congress that has responsible for updating census deadlines to accommodate changing circumstances. Not the Secretary. Not the Census Bureau. Not this Court. And certainly not Plaintiffs.

B. There are no judicially manageable standards for determining the appropriate census period.

This case is also nonjusticiable because there is "a lack of judicially discoverable and manageable standards for resolving" the dispute. *Zivotofsky*, 566 U.S. at 195. How is a Court to evaluate whether Congress's decisions about census timing are appropriate? It can't.

In prior census-related cases, courts entertained challenges to discrete statistical methodologies or data-collection decisions made by the Secretary. *See, e.g., New York*, 139 S. Ct. 2551 (evaluating reinstatement of citizenship question on census questionnaire); *Utah v. Evans*, 536 U.S. 452, 452 (2002) (holding that "hot-deck imputation"—a process which imputes characteristics of households based upon the characteristics of neighbors—does not violate the Enumeration Clause); *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316 (1999) (holding that statistical sampling violates the Census Act and declining to reach the Enumeration Clause claim); *Wisconsin*, 517 U.S. at 1 (holding that Secretary did not violate Enumeration Clause by declining to correct a census undercount with data from a post-enumeration survey); *Franklin v. Massachusetts*, 505 U.S. 788 (1992) (holding that allocating federal employees serving overseas to their home States did not violate Enumeration Clause). Each of those cases involved a discrete policy choice that could be juxtaposed with an alternative—*e.g.*, to omit a citizenship question, to forego imputation, to decline the use of a statistical adjustment. And nearly all of those disputes could be resolved by examining whether the calculation methodology at issue was a permissible person-by-person count (an "actual

Enumeration") or an unlawful statistical estimate.[4] *See, e.g., Utah*, 536 U.S. at 457–58 ("Utah's constitutional claim rests upon the words 'actual Enumeration' as those words appear in the Constitution's Census Clause."); *House of Representatives*, 525 U.S. at 346–49 (Scalia, J., concurring in part) ("For reasons of text and tradition . . . a strong case can be made that an apportionment census conducted with the use of 'sampling techniques' is not the 'actual Enumeration' that the Constitution requires."); *id.* at 363 (Stevens, J., dissenting) (concluding that an "actual Enumeration" does not preclude "the use of sampling procedures to supplement data obtained through more traditional census methods"); *Wisconsin*, 517 U.S. at 24 (examining the Secretary's decision that an "'actual Enumeration' would best be achieved without the [ ] statistical adjustment of the census"). Not so here.

A reporting deadline necessarily limits the possible range of the Bureau's operations and requires the Bureau to perform a careful and complex balancing of numerous considerations such as cost, testing, training, effectiveness, timing, informational need, and accuracy. These tradeoffs are quintessentially "policy choices and value determinations constitutionally committed for resolution to the halls of Congress [and] the confines of the Executive Branch." *Japan Whaling*, 478 U.S. at 230. A litigant could *always* posit, as Plaintiffs do here, that some alleged deficiency can be cured with more time, staff, money, or a different design. But such hypotheticals do not provide

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

any vehicle by which a court (as opposed to Congress) can evaluate the many policy choices that Congress has made to establish a deadline and that the Bureau has made to meet that deadline. Where, as here, Plaintiffs challenge the operations of an ongoing census, "[n]o districts have been drawn, no benefits cut, no actual harm yet suffered by the plaintiffs." *Tucker v. U.S. Dep't of Commerce*, 135 F.R.D. 175, 180 (N.D. Ill. 1991). So "[t]he question is which of the coordinate branches of government is best equipped to deal with plaintiffs' concern." *Id.* And the answer is Congress because Congress alone can balance the need for timely census results with the need for a thorough census with the appropriations needed to conduct the census. As a result, there is no rule or standard that a Court could apply to determine when census operations are too limited or too curtailed in response to Congress's statutory deadline. Indeed, "you might as well turn [this case] over to a panel of statisticians and political scientists and let them make the decision, for all that a court could do to add to its rationality or fairness." *Tucker v. U.S. Dep't of Commerce*, 958 F.2d 1411, 1417–18 (7th Cir. 1992).

Plaintiffs seem to suggest that the Court may decide this case because the Enumeration Clause demands accuracy at all costs. *See* Pls.' Mot. at 21–34. But the Supreme Court has recently rejected the idea that the Enumeration Clause commands accuracy. *New York*, 139 S. Ct. at 2565–66.[5] That makes sense because no census is ever perfect and every census can, presumably, be made better with more time or resources. *See Wisconsin*, 517 U.S. at 6 (recognizing that "no census is recognized as having been wholly successful in achieving" perfect accuracy); *Carey v. Klutznick*, 653 F.2d 732, 735 (2d

[5] The *Wisconsin* reasonable-relationship test, on which Plaintiffs rely, speaks only to the requirement that there be a person-by-person headcount rather than a statistical estimation. *See* Argument Section III., *infra*. Whether any method used by the Censu Bureau constitutes a headcount is a justiciable question with a readily administrable standard. Here, though, no one disputes that the Bureau is conducting just such a headcount. *See* Pls.' Mot. at 18.

Cir. 1981) ("Although the mechanics of the counting process have been improved in [every] census[], there has never been a perfect count."). So *any* census deadline would be inimical to Plaintiffs' purported standard, and thus improper. *See, e.g.*, *Wisconsin*, 517 U.S. at 6; *see also Karcher v. Daggett*, 462 U.S. 725, 732 (1983). Yet Congress—and Congress alone—has always set and reset deadlines using its plenary control over the census. *See supra*. That history merely highlights the obvious: census deadlines are nonjusticiable. *See NLRB v. Noel Canning*, 573 U.S. 513, 525 (2014) (accepting James Madison's view that "a regular course of practice" may "liquidate & settle the meaning" of constitutional provisions); *id.* at 572 (Scalia, J., concurring the judgement) ("[W]here a governmental practice has been open, widespread, and unchallenged since the early days of the Republic, the practice should guide our interpretation of an ambiguous constitutional provision."); *McCulloch v. Maryland*, 17 U.S. 316, 401 (1819) (Marshall, C.J.) (when questions arise about "the respective powers of those who are equally the representatives of the people," the "practice of the government" should "receive a considerable impression from that practice" if not settle it completely).

With the lack of any discernible standards, this Court should not wade into the realm of cost/benefit analyses and policy disagreements necessary to adjudicate the Replan or § 141(b)'s census deadline. Even during the COVID-19 pandemic, which presents unique challenges, those determinations are constitutionally entrusted to representatives of the people and executive officials confirmed by the same. And they are up to the task: the Census Bureau has adjusted its operations to meet the current statutory deadline and Congress is presently considering whether to extend that deadline. *See* H.R. 6800, § 70201(a); H.R. 7974, § 2 (same); H.R. 7034, § 2 (same); S. 4048, § 2. Plaintiffs may well believe that completing the census before December 31, 2020 will prove difficult. They may also believe that § 141(b), which has governed the last four censuses, should be changed. But Plaintiffs should take those concerns to Congress, not

an Article III court ill-equipped to resolve these policy judgments. Plaintiffs' constitutional claim is barred by the political question doctrine.

II. PLAINTIFFS LACK STANDING

Plaintiffs are also unlikely to succeed on the merits of their Enumeration Clause claim because they lack standing. Article III of the Constitution limits the judicial power of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2. "[R]ooted in the traditional understanding of a case or controversy," standing doctrine developed to implement this Article III command. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). It "limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong," thus preventing "the judicial process from being used to usurp the powers of the political branches" and "confin[ing] the federal courts to a properly judicial role." *Id.*

Standing "requires an injury in fact that is caused by the challenged conduct and is likely to be redressed by a favorable decision." *6th Cong. Dist. Republican Comm. v. Alcorn*, 913 F.3d 393, 405 (4th Cir. 2019). As the parties invoking this Court's jurisdiction, Plaintiffs bear the burden of establishing these requirements. *Spokeo*, 136 S. Ct. at 1547. Here, that burden is heavy because the standing inquiry is "especially rigorous when reaching the merits of the dispute would force [the court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) (quoting *Raines v. Byrd*, 521 U.S. 811, 819-20 (1997)). Plaintiffs are far from satisfying this "especially rigorous" review.

A. Plaintiffs' alleged injuries are not redressable by a court order.

Plaintiffs must establish redressability by demonstrating "that some personal benefit will result from a remedy *that the court is prepared to give*." 13A Charles Alan Wright et al., *Federal Practice & Procedure* § 3531.6 (3d ed. Apr. 2018 update) (emphasis added). That is, a plaintiff must show that "the court has the power to right or to prevent

the claimed injury." *Gonzalez v. Gorsuch*, 688 F.2d 1263, 1267 (9th Cir. 1982) (Kennedy, J.). If the court does not "have the power to 'redress' the 'injury' that the defendant allegedly 'caused' the plaintiff," Article III standing is lacking. *Utah v. Evans*, 536 U.S. 452, 459 (2002) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)); *see McConnell v. FEC*, 540 U.S. 93, 229 (2003) (no redressability because court "has no power to adjudicate a challenge to the [allegedly unconstitutional] FECA limits in this litigation"), *overruled on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010). Here, the Court has neither the power to abrogate an unchallenged statutory deadline, nor the power to order wholesale improvement of the census.

1. The Court has no power to ignore § 141(b)'s statutory deadline.

Plaintiffs have not mounted § 141(b)'s statutory deadline for the census. *See generally* Pls.' Mot. at 1–34. Rightly so. Congress's "virtually unlimited discretion" over the "actual Enumeration" necessarily includes the power to set a deadline for census completion. *See Wisconsin*, 517 U.S. at 19. This has been true since the beginning of our Republic. *See* Argument Section I., *supra*. And "[w]hen Congress by [ ] statute sets a specific deadline for agency action, neither the agency nor any court has discretion. The agency must act by the deadline." *South Carolina v. United States*, 907 F.3d 742, 758 (4th Cir. 2018) (quoting *Forest Guardians v. Babbitt*, 174 F.3d 1178, 1190 (10th Cir. 1999)). So ordering relief that compels the Census Bureau to miss the statutory deadline "would be an affront to our tradition of legislative supremacy and constitutionally separated powers." *Id.*

It is therefore no surprise that district courts ordering the Census Bureau to flout § 141(b)'s statutory deadline were swiftly reversed by the Supreme Court. Plaintiffs rely most heavily on *Carey v. Klutznick*, where the Second Circuit affirmed a district court order (later made permanent) that required the Census Bureau "to compensate for [a] disproportionate undercount" and explained that relief was available because there was "nothing sacred in the due date" established by § 141(b). 637 F.2d 834, 837–38 (2d Cir.

1980); *Carey v. Klutznick*, 508 F. Supp. 420, 433 (S.D.N.Y. 1980). Evidently, the Supreme Court disagreed. Within days, the Court reinstated the statutory deadline by staying the district court's order, which had precluded the Census Bureau "from certifying to the President the population totals for New York and the state-by-state census tabulations, on December 31, 1980, as mandated by 13 U.S.C. § 141(b)." *Klutznick v. Carey*, 449 U.S. 1068 (1980). And following the stay order, the district court's judgment was reversed on appeal. *Carey v. Klutznick*, 653 F.2d 732, 736 (2d Cir. 1981). A near-identical sequence of events unfolded in *Young v. Klutznick*, where the district court erroneously found that § 141(b)'s deadline was merely "directory," not "mandatory." 497 F. Supp. 1318, 1338 (E.D. Mich. 1980). Again, the Supreme Court stayed the district court's order. *Klutznick v. Young*, No. A-533 (Dec. 24, 1980). And again, the district court's judgment was reversed on appeal after the stay. *Young v. Klutznick*, 652 F.2d 617, 626 (6th Cir. 1981). Contrary to Plaintiffs' position, these cases straightforwardly demonstrate that § 141(b)'s December 31 mandate is absolute and cannot be overridden by judicial fiat.

Plaintiffs' reliance on *Wisconsin* is equally unavailing. Pls.' Mot. at 30–31. That case concerned a possible statistical adjustment to *already-collected* census data *after* the count was complete and *after* the Census Bureau had met its statutory deadline. *Wisconsin*, 517 U.S. at 20. It said nothing about whether courts have the power to alter operations of the census itself so that compliance with § 141(b)'s deadline is impossible.[6]

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[6] Plaintiffs also include a passing citation to *City of New York v. Dep't of Commerce*, 713 F. Supp. 48 (E.D.N.Y. 1989). In wrongly concluding that "[i]t is not Congress' intent to sacrifice [census] accuracy for the sake of timeliness," the district court in *City of New York* cited only *Carey v. Klutznick* and *Young v. Klutiznick*, both of which are fatally undermined by the Supreme Court's stays in those cases. But rather than appealing the *City of New York* order, the government entered a stipulation that later became the basis for the Supreme Court's decision in *Wisconsin*. 517 U.S. at 10 (noting the "interim stipulation"). The *City of New York* case is also distinguishable because the plaintiffs there submitted evidence that the statistical adjustment at issue *was* feasible before the

In fact, the Supreme Court would later impliedly recognize the importance of § 141(b)'s deadline in deciding whether the Secretary may reinstate a citizenship question on the census questionnaire. There, the Court granted certiorari directly from a district court judgment, specifically because "the census questionnaire needed to be finalized for printing by the end of June 2019" in order to meet § 141(b)'s statutory deadline. *New York*, 139 S. Ct. at 2565. If the Court thought that deadline unimportant, it could have simply allowed the Second Circuit to opine on the case, granted certiorari at its leisure, and allowed the census questionnaires to be printed sometime in 2020.[7] That procedural history is especially illuminating here because any order by this Court "granting or denying . . . an interlocutory or permanent injunction" is directly appealable to the Supreme Court. 28 U.S.C. § 1253.

There is no authority, let alone binding authority, for the proposition that courts may instruct the Census Bureau to disregard § 141(b)'s statutory deadline. And because courts cannot do so, Plaintiffs lack standing. *Utah*, 536 U.S. at 459.

2. The Court has no power to order wholesale changes to the census.

Redressability (and standing) are also lacking because Plaintiffs "cannot seek wholesale improvement of [a federal] program by court decree, rather than in the offices

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statutory deadline. *City of New York*, 713 F. Supp. at 51. Plaintiffs submit no analogous evidence here.

[7] This makes Plaintiffs' reliance on a district court decision in the citizenship-question litigation doubly flawed. Pls.' Mot. at 31 (citing *La Unión del Pueblo Entero v. Ross*, 353 F. Supp. 3d 381, 393 (D. Md. 2018)). First, nothing in that case remotely suggested that the Census Bureau could simply ignore § 141(b)'s deadline and, as explained above, the Supreme Court tacitly recognized the opposite. Second, Plaintiffs cite that district court case for the idea that "[w]hen the Census Bureau unreasonably compromises the distributive accuracy of the census, it may violate the Constitution." *Id.* (*La Unión del Pueblo Entero*, 353 F. Supp. 3d at 393). But the Supreme Court specifically rejected that standard, reasoning that it "would seem to render every census since 1790 unconstitutional." *New York*, 139 S. Ct. at 2567.

of the [agency] or the halls of Congress, where programmatic improvements are normally made." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 891 (1990). "[I]t is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution." *Lewis v. Casey*, 518 U.S. 343, 349 (1996). So given the unchallenged statutory deadline, Plaintiffs' broad programmatic challenge to ongoing census operations is not redressable.

For all their criticism of the Census Bureau's current plan, Plaintiffs have no alternative proposal—none—for how the Bureau is to complete a better census by the statutory deadline. In fact, they seem to categorically reject the idea. *See, e.g.*, Pls.' Mot. at 39. That alone should be dispositive. *Nat'l Law Ctr. on Homelessness & Poverty v. Kantor*, 91 F.3d 178, 183 (D.C. Cir. 1996) (alleged enumeration injury not redressable where plaintiffs "do not even ask that [] alternative methodologies . . . be employed in a recount" and the court has no basis to find "that a commission of as-yet unnamed persons, using as-yet unidentified methodologies, will devise a better [] count that will redound to appellants' benefit"). Without any alternative, and facing § 141(b)'s unmoving deadline, the Court would be in the untenable position of exercising "supervisory control over the execution of the 2020 Census." *NAACP*, 399 F. Supp. 3d at 416. But "[t]hat is not a remedy that a court has the authority, expertise, or time to provide. Rather, Congress determined that it was the Bureau that was best equipped to complete this task." *Id.* (citing 13 U.S.C. § 141(a)).

B. Plaintiffs' alleged injuries are not traceable to Defendants.

For similar reasons, Plaintiffs fail to establish the requisite "causal connection between" their alleged injury and the Replan they challenge. *Defs. of Wildlife*, 504 U.S. at 560. To establish such a connection, Plaintiffs must show more than that their populations may be undercounted under the plan the Bureau has developed. They must establish that their populations will be "improperly undercounted by [a particular]

methodology as compared to a feasible, alternative methodology," and that the difference between the two methodologies is sufficiently large to produce some kind of harm. *Kantor*, 91 F.3d at 183, 185–86; *see also Franklin*, 505 U.S. at 802 (plurality) (challengers to the allocation of overseas employees among states had "neither alleged nor shown . . . that [they] would have had an additional Representative if the allocation had been done using some other source of 'more accurate' data" and did not have standing "to challenge the accuracy of the data used in making that allocation"). Plaintiffs have not done so.

As noted above, Plaintiffs complain that the current census plan will result in an undercount of people in their communities, but they have identified no other feasible method by which the Bureau could meet the end-of-year deadline, let alone one that can produce a supposedly more-accurate result. Absent such an alternative, Plaintiffs cannot meaningfully contend that any alleged undercount of their communities is, in fact, caused by the Bureau's plan, rather than by an independent factor like the COVID-19 pandemic, the statutory deadline, natural disasters, or all of the above. *See* Pls.' Mot. at 33 ("These natural disasters are legitimate threats to an accurate census count.").

Indeed, Plaintiffs' praise of the COVID-19 Plan—a plan that bypasses the existing statutory deadline—only highlights that their alleged injuries derive from Congress's current refusal to alter the census deadline, not the Bureau's extraordinary attempt to meet that deadline. This is fatal to their standing. *See Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976) (federal courts have jurisdiction only if the plaintiff's injury "fairly can be traced to the challenged [conduct] of the defendant, and [does] not . . . result[] from the independent action of some third party not before the court."). Plaintiffs cannot seek redress against the Bureau for choosing to follow the law, and they should petition Congress, not this Court, if they are concerned about congressional inaction.

C. Plaintiffs' alleged injuries are entirely speculative.

Besides redressability and causation, Article III also requires that Plaintiffs establish "injury in fact" by showing that they "ha[ve] sustained or [are] immediately in danger of sustaining a direct injury" as a result of the challenged action. *Spokeo*, 136 S. Ct. at 1552. The injury must be "concrete and particularized," *Defs. of Wildlife*, 504 U.S. at 560, and not "merely 'conjectural' or 'hypothetical' or otherwise speculative." *Summers v. Earth Island Inst.*, 555 U.S. 488, 505 (2009). An alleged future injury must be *"certainly impending"*; '"[a]llegations of *possible* future injury' are not sufficient." *Clapper*, 568 U.S. at 409, 410 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)). Plaintiffs' alleged injuries rest on exactly that kind of prohibited speculation.

As detailed in Mr. Fontenot's declaration, the Replan was designed to provide "the best combination of" procedures to allow the Bureau "to meet the statutory deadline without compromising quality to an undue degree." Fontenot Decl. ¶¶ 88–93. Among other things, the plan "intends to improve the speed of the [Nonresponse Followup] operations without sacrificing completeness." *Id.* ¶ 92. The Bureau "is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline following the Replan Schedule."[8] *Id.* ¶ 97. Plaintiffs and their declarants appear to disagree. *See* Pls.' Mot. at 31 ("Nothing suggests Defendants can

[8] Plaintiffs mischaracterize the Secretary and the Director's joint statement of April 13, 2020 as stating that "more time than [the Replan] is necessary to ensure 'the completeness and accuracy of the 2020 Census.'" Pls.' Mot. at 31. Rather, the statement simply acknowledged that congressional relief was necessary to effectuate the COVID-19 Plan, and that the COVID-19 Plan would "ensure the completeness and accuracy of the 2020 Census." U.S. Census Bureau, Statement on 2020 Census Operational Adjustments Due to COVID-19 (Apr. 13, 2020), available at this link. The statement never said that an extension was "necessary" to complete the 2020 Census, as Plaintiffs erroneously contend. In any event, any ambiguity is put to rest by Mr. Fontenot's statement that the Bureau "is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline." Fontenot Decl. ¶ 97.

complete an accurate count by the end of 2020."). But their opinion cannot be credited over Mr. Fontenot's; as Associate Director for Decennial Census Programs, he was (and is) directly involved with the design and implementation of the Replan. The Census Bureau is in best position to opine on the likely effects of its operational choices, and generalized assertions to the contrary must be discounted accordingly.

In any event, purportedly "dire consequences" do not flow directly from even a "significant undercount." Pls.' Mot. at 30. The number of congressional seats for each State is affected not only by that State's *own* total population, but also by the population of *every other* State in the country. *See* 2 U.S.C. § 2a(a); *U.S. Dep't of Commerce v. Montana*, 503 U.S. 442, 461 (1992). Likewise, the allocation of federal funds is not directly proportional to population, but is a function of multiple factors, usually including the populations of *other* geographical areas. *See, e.g.*, 42 U.S.C. § 1396d(b) (Medicaid formula measuring a State's per capita income against the national average per capita income); 49 U.S.C. § 5305(d)(1) (apportioning public transit funds to States based on the population of urbanized areas in each State compared to the total population of urbanized areas in all States); Reamer Decl. ¶ 44, ECF No. 112-7 ("Census-guided financial assistance programs use census-derived datasets to differentiate among geographic areas in terms of eligibility and/or allocation and then distribute funds based on those differentiations."). So an undercount may be immaterial if it is replicated elsewhere or does not exceed some as-yet-unknown threshold. *See, e.g., Kantor*, 91 F.3d at 183.

That is why a purported "undercount" is not talismanic: Plaintiffs must actually demonstrate that any alleged undercount will be so severe and disproportionate that it will cause them to lose representation or funding. *Id.* at 185 (no standing because court could not determine "what effect any methodology for counting the homeless would have on the federal funding of any particular appellant," since "if a more accurate count would have enlarged some communities' shares, it likely would have reduced the shares of other communities"); *Ridge v. Verity*, 715 F. Supp. 1308, 1318 (W.D. Pa. 1989) (no

standing because "none of the plaintiffs in this case can show which states would gain and which would lose representation in Congress"); *Fed'n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 570 (D.D.C. 1980) (three-judge court) (no standing because "none of the plaintiffs are able to allege that the weight of his or her vote in the next decade will be affected" since plaintiffs "can do no more than speculate as to which states might gain and which might lose representation," which depends on "the interplay of all the other population factors which affect apportionment"); *see also Sharrow v. Brown*, 447 F.2d 94, 97 (2d Cir. 1971) (no standing to challenge apportionment method because plaintiff "would have to show, at least approximately, the apportionment his interpretation . . . would yield, not only for New York but for every other State as well").

Plaintiffs have not come close to that showing. For starters, they do not even attempt to calculate the supposedly "statistically certain" undercount for their own States and localities.[9] Pls.' Mot. at 30; *see, e.g.*, Thompson Decl. ¶¶ 22, 32, ECF No. 112-2 ("I am very concerned that these timing constraints will significantly increase the risk of much larger undercounts for the 2020 Census than measured in previous censuses."); Hogan

[9] Plaintiffs also seem to rely on cursory, but fundamental, assertions based only on "information" and/or "belief." *See, e.g.*, Park Decl. ¶ 6, ECF No. 112-8 (stating his "belief" that "the truncation of field operations will result in Asian Americans and immigrants not being counted in the 2020 Census"); Valdez Decl. ¶ 3, ECF No. 112-9 (stating her "belief" that "the truncation of field operations on September 30, 2020 will result in many Latinx individuals and immigrants not being counted in the 2020 Census"); Chen Decl. ¶ 5, ECF No. 112-10 (stating her "belief" that "the truncation of census field operations will . . . result in an undercount of Asian Americans in Texas"). Such statements are "insufficient for a preliminary injunction." *Williamson v. Maciol*, 2020 WL 4449527, at *7 (N.D.N.Y. Aug. 3, 2020); *Allstate Ins. Co. v. McKinney*, 2018 WL 4186421, at *3 (W.D.N.C. Aug. 31, 2018) (explaining that "averments based 'upon information and belief' are no substitute for evidence"); 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2949 (3d ed. 2002) ("[W]hen the primary evidence introduced is an affidavit made on information and belief rather than on personal knowledge, it generally is considered insufficient to support a motion for a preliminary injunction.").

Decl. ¶ 69, ECF No. 112-3 ("I have described the risks of a greatly increased differential undercount and an inaccurate census."); O'Hare Decl. ¶ 127, ECF No. 112-4 ("[C]hanging the end of the 2020 Census data collection period . . . will result in greater omissions and undercounts . . . ."); O'Hara Decl. ¶ 24, ECF No. 112-5 ("[T]he result of adhering to the truncated schedule will be a failure to conduct an actual enumeration of the population."); Brace Decl. ¶ 33, ECF No. 112-6 ("The Bureau's changes to the timeline for the counting and post-count process will likely result in a greater undercount than experienced in prior censuses."). Without those calculations, and the concomitant calculations for every other relevant area in the country, Plaintiffs have no way of demonstrating that they will be impacted in any way.

And while Plaintiffs complain about potential undercounts in various cities and populous counties with allegedly low self-response rates, Pls.' Mot at 28–29, their own expert notes that self-response rates are *also* "disproportionately lower . . . in some rural areas." Thompson Decl. ¶ 21. In fact, Plaintiffs' expert notes that (1) those rural areas have a response rate under 51.3 percent, Thompson Decl. ¶ 21, which is at or below the 51.4 to 64.6 percent range[10] that Plaintiffs identify in their constituent communities, Pls.' Mot. at 28–29, and (2) this low response rate is "likely" to result in "increased undercounts" for these rural areas, Thompson Decl. ¶ 21. Yet Plaintiffs completely fail to consider how any potential undercount in those rural communities, or any other communities, could affect Plaintiffs' share of representation or funding. *See* Pls.' Mot. at 21–34 (contending that Plaintiffs' communities may be undercounted, but offering no evidence regarding how any such undercount may relate to counts in other jurisdictions).

[10] Plaintiffs practically argue themselves out of Article III standing by acknowledging that certain Plaintiffs live in areas with self-response rates *equal to or above* the national average. *See* Pls.' Mot. at 28–29 (Yakima County, Washington and Maricopa County, Arizona).

As a result, the Court would need to guess how those undercounts, if they occur at all, may affect Plaintiffs.

Such guesswork does not support jurisdiction, much less an injunction. *See Clapper*, 568 U.S. at 414 n.5 (no Article III standing exists if a plaintiff's theory of injury rests on an "attenuated chain of inferences necessary to find harm"). In the census context, the Supreme Court has consistently scrutinized claims of census harm to ensure that prospective litigants have demonstrated not some amorphous "increased risk" of an undercount untethered from the count of other areas, but an actual or likely injury from the census count. *See, e.g., New York*, 139 S. Ct. at 2565 (finding standing after trial where plaintiffs would "lose out on federal funds" "if noncitizen households [were] undercounted by as little as 2%" due to inclusion of a citizenship question on the census questionnaire); *Utah*, 536 U.S. at 458 (noting that the challenged methodology indisputably changed which state received a Representative); *House of Representatives*, 525 U.S. at 330 (noting that plaintiffs produced evidence showing that under the challenged plan a State would lose a representative compared to the prior method). Here, by contrast, Plaintiffs present nothing of the sort. Instead, they generally claim that they will be injured by an undercount, seemingly no matter how small. That falls far short of the requisite standard.

Nor can they bypass that Article III standard by simply stating that the Replan's NRFU and post-data processing phases are shorter than prior censuses. *See, e.g.*, Pls.' Mot. at 16–18. As Mr. Fontenot explains, "[t]he Census Bureau designed the 2020 Census NRFU operation to leverage automation and technological advances to control and track the NRFU workload and improve the efficiency of enumerators and the process of collecting census responses." Fontenot Decl. ¶ 60. With improvements like a state-of-the-art Field Operational Control System and iPhones for field work, 2020 NRFU "replaces paper-based NRFU operations used in past Censuses, providing a faster, more accurate, more efficient and more secure means of data collection." *Id.* ¶¶ 59–61.

Similarly, "[t]he 2020 Census leveraged significant advances in computing technology that have occurred since the 2010 Census" to significantly enhance its post-data processing operations. *Id.* ¶ 71. The Census Bureau has optimized its "computer processing systems" in "partnership with industry leaders using the latest hardware, database, and processing technology available" to "accelerate [its] processing time to fit within the re-planned schedule." *Id.* ¶ 72. So the Replan's compressed timeframe for completing NRFU and post-data processing, while less than ideal, simply demonstrates the enormous technological advancements that make this year's census the most efficient and flexible in history. *See, e.g., id.* ¶¶ 41, 81; *see generally id.* ¶¶ 20–77. It says nothing about whether there will be an undercount in any particular area, much less a significant differential undercount.

Plaintiffs fall far short of the required showing to establish Article III standing. But that makes sense because "the absence of any particular individual or class to litigate these claims gives support to the argument that the subject matter is committed to the surveillance of Congress, and ultimately to the political process." *United States v. Richardson*, 418 U.S. 166, 179 (1974). So while Plaintiffs may lack standing "within the narrow confines of Art. III jurisdiction," they are free "to assert [their] views in the political forum or at the polls." *Id.*

III. PLAINTIFFS CANNOT PREVAIL ON THEIR ENUMERATION CLAUSE CLAIM

If the Court finds this case justiciable, Plaintiffs are nonetheless unlikely to succeed on their Enumeration Clause claim. Indeed, in almost three decades of census-related litigation, the Supreme Court has *never* found an Enumeration Clause violation. *See New York*, 139 S. Ct. at 2567 (holding that a citizenship question on the census questionnaire does not violate the Enumeration Clause); *Utah*, 536 U.S. at 452 (holding that hot-deck imputation does not violate the Enumeration Clause); *House of Representatives*, 525 U.S. at 344 (holding that statistical sampling violates the Census Act and declining to reach the Enumeration Clause claim); *Wisconsin*, 517 U.S. at 1 (holding that the Secretary did not

violate Enumeration Clause by failing to correct a census undercount with data from a post-enumeration survey); *Franklin*, 505 U.S. at 788 (holding that the method used to count federal employees serving overseas did not violate Enumeration Clause). This case presents no reason to break from those Supreme Court precedents, especially because any injunction by this Court is directly appealable to the Supreme Court. 28 U.S.C. § 1253.

The Constitution's reference to "actual Enumeration" is simple: population is to be determined by a person-by-person headcount, rather than through estimates or conjecture. Prior to the first census in 1790, the Framers settled on an interim number of Representatives allocated to each State. U.S. Const. art. I, § 2, cl. 3 (providing the number of Representatives for each State "until such enumeration shall be made" within "three Years after the first Meeting of the Congress of the United States"). This allocation was based on "estimates" of the population derived from "materials ranging from relatively complete enumerations . . . to fragmentary data such as contemporary local population estimates, militia registrations, tax records, church records, and official vital statistics." U.S. Dep't of Commerce, Historical Statistics of the United States, 1789–1945 (1949).

Given that context, "Article I makes clear that the original allocation of seats in the House was based on a kind of 'conjectur[e],' in contrast to the deliberately taken count that was ordered for the future. What was important was that contrast—rather than the particular phrase used to describe the new process." *Utah*, 536 U.S. at 475 (citations omitted); *see id.* at 493 (Thomas, J., concurring in part and dissenting in part) ("[A]t the time of the founding, 'conjecture' and 'estimation' were often contrasted with the actual enumeration that was to take place pursuant to the Census Clause."); *House of Representatives*, 525 U.S. at 363 (Stevens, J., dissenting) ("The words 'actual Enumeration' require post-1787 apportionments to be based on actual population counts, rather than mere speculation or bare estimate."); Thomas R. Lee, *The Original Understanding of the Census Clause: Statistical Estimates and the Constitutional Requirement of an "Actual*

Enumeration," 77 Wash. L. Rev. 1, 20 (2002) (providing an in-depth examination of this contrast and its historical context).

The Replan endeavors to do exactly the person-by-person headcount required by the Constitution without any reliance on prohibited estimates or guesswork. Plaintiffs tacitly acknowledge as much, *see* Pls.' Mot. at 18, and focus not on any impermissible estimation, but on their speculative belief that the Replan will result in a "significant undercount," Pls.' Mot. at 30. Yet Plaintiffs do not even attempt to identify any meaningful standard by which to evaluate whether the Replan achieves a constitutionally adequate census. There's a reason for that: no such standard exists. "[D]espite the command of the Enumeration Clause that there be an 'actual enumeration' during a decennial census, there has never in our country's history been a completely accurate enumeration of the entire population, and absolute perfection is neither possible nor required." *NAACP v. Bureau of Census*, --- F. Supp. 3d ---, 2020 WL 1890531, at *7 (D. Md. Apr. 16, 2020); *see Wisconsin*, 517 U.S. at 6 (recognizing that "no census is recognized as having been wholly successful in achieving" perfect accuracy); *see also Karcher v. Daggett*, 462 U.S. 725, 732 (1983) (recognizing that "census data are not perfect," and that "population counts for particular localities are outdated long before they are completed"); *Carey v. Klutznick*, 653 F.2d 732, 735 (2d Cir. 1981) ("Although the mechanics of the counting process have been improved in [every] census[], there has never been a perfect count."). That Plaintiffs have subjectively prejudged the 2020 Census to be a failure by some unknown and inscrutable metric is not sufficient to prevail on their Enumeration Clause claim.

Nor can Plaintiffs find refuge in the *Wisconsin* reasonable-relationship test. In *Wisconsin*, the Supreme Court considered whether the Secretary violated the Enumeration Clause by declining to statistically adjust the 1990 census to rectify alleged differential undercounts. 517 U.S. at 10–11. The Court cited Congress's "virtually unlimited discretion in conducting the decennial 'actual Enumeration,'" and explained

that Congress had in turn delegated its "broad authority" to the Secretary. *Id.* at 19. It then announced that the Secretary's decision not to adjust the census count "need bear only a reasonable relationship to the accomplishment of an actual enumeration of the population, keeping in mind the constitutional purpose of the census." *Id.* at 20. The Court observed that a similar standard had been applied in *Montana* and *Franklin*, both of which similarly involved Executive Branch decisions to adjust the census *after* it was completed. *See Franklin*, 505 U.S. at 804 (reviewing the Secretary's decision to allocate overseas federal personnel to their home States); *Montana*, 503 U.S. at 460 (considering the method used to apportion House seats among the States).

The Supreme Court recently confirmed the limited applicability of *Wisconsin*'s reasonable-relationship test, explaining that it is only used when reviewing "decisions about the population count itself"—*i.e.*, census data *already collected* by the Bureau. *New York*, 139 S. Ct. at 2566 (citing *Wisconsin*, 517 U.S. at 4 and *Franklin*, 505 U.S. at 790–91). If the *Wisconsin* test applied in every case remotely implicating the final census count, at least some member of the Supreme Court would have conceivably applied that standard in *House of Representatives* (concerning statistical sampling), *Utah* (concerning hot-deck imputation), or even in *New York* itself (concerning a citizenship question). None of them did. *See New York*, 139 S. Ct. at 2566–67 (explicitly eschewing the *Wisconsin* reasonable-relationship standard in determining the constitutionality of a citizenship question); *Utah*, 536 U.S. at 464 (foregoing the *Wisconsin* reasonable-relationship standard in determining the constitutionality of hot-deck imputation); *House of Representatives*, 525 U.S. at 346–47 (Scalia, J., concurring in part) (discussing the constitutionality of statistical sampling without reference to the *Wisconsin* reasonable-relationship standard); *id.* at 363 (Stevens, J., dissenting) (same).

Plaintiffs' Enumeration Clause claim here—in contrast to *Wisconsin*—challenges detailed operational aspects of the Census Bureau's plans to actually *conduct* the census, well before "the population count itself" is determined. So Plaintiffs' claim should

instead be assessed under Congress's (and by delegation the Secretary's) "virtually unlimited discretion" to conduct the census "in such Manner as they shall by Law direct." U.S. Const., art. I, § 2, cl. 3; *Wisconsin*, 517 U.S. at 19.

Measured against that standard, Plaintiffs cannot prevail. Choices over how to allocate resources, conduct data processing, and manage timetables in order to meet a statutory deadline amidst a pandemic are prototypical questions about the "Manner" in which the person-by-person headcount should be conducted, falling well within the scope of the Secretary's "broad authority over the census." *Wisconsin*, 517 U.S. at 17. And, again, Plaintiffs nowhere allege that Defendants are conducting something other than an "actual Enumeration," like an impermissible estimate or an educated guess of the population. Instead, Plaintiffs simply dislike the "actual Enumeration" being conducted, and complain about an "inevitable undercount of minority populations." Pls.' Mot. at 34. But the possibility of a differential undercount exists in every census and does not inherently violate the Enumeration Clause—the Constitution does not require perfection. *See Utah*, 536 U.S. at 504 (Thomas, J., concurring in part and dissenting in part) (canvassing the history of census undercounts, including the first census in 1790); *City of New York v. U.S. Dep't of Commerce*, 34 F.3d 1114, 1117 (2d Cir. 1994) ("This phenomenon, known as the 'differential undercount,' has skewed every census since at least 1940. The Census Bureau started measuring the differential undercount in that year."), *rev'd sub nom. Wisconsin*, 517 U.S. at 1. Even Plaintiffs' own experts acknowledge that differential undercounts are commonplace in the census. Thompson Decl. ¶ 21; Hogan Decl. ¶ 9; O'Hare Decl. ¶ 32; Brace Decl. ¶ 33. So if the Secretary is attempting to individually count every resident of the United States, any undercount (differential or otherwise) is the constitutionally permissible result of attempting to enumerate upwards of 330 million people across 3.8 million square miles.

Plaintiffs get no closer to an Enumeration Clause violation with their other passing quibbles. For example, they seem to take issue with the Census Bureau's planned use of

certain enumeration techniques, like proxy responses, administrative records, and imputation. *See* Pls.' Mot. at 24–26. But none of those practices are themselves unlawful, and Plaintiffs wisely do not argue otherwise. *See, e.g.*, *Utah*, 536 U.S. at 457–59, 473–79 (approving the Census Bureau's use of "hot-deck imputation" in the census); *Franklin*, 505 U.S. at 794–96, 803–06 (approving the Census Bureau's use of "home of record" information from Defense Department personnel files in the census).

Plaintiffs also insinuate that the sheer length of certain 2020 Census operations somehow violates the Enumeration Clause when compared to prior censuses. *See* Pls.' Mot. at 32 (noting that "Defendants have now announced their intent to proceed with the shortest NRFU operation in modern history"). But there is no constitutionally mandated duration for particular census operations. That bizarre theory would mean that nearly every census has been unconstitutional simply because the 1790 Census allowed a year or more to count certain States. *See* Argument Section I., *supra*. Not to mention that such a preposterous constitutional principle would cripple the Census Bureau's ability to harness new technology and perform the enumeration more quickly, efficiently, and with less taxpayer dollars. This case is the paragon: the Census Bureau is able to compress the time needed for NRFU *precisely because* of technological advances like a state-of-the-art optimizer and the digitization of field work. Fontenot Decl. ¶¶ 59–72. This Court should reject the absurd notion of a constitutionally required, judicially-managed procrustean census, and it should "decline [Plaintiffs'] invitation to measure the constitutionality of [census operations] by a standard that would seem to render every census since 1790 unconstitutional." *New York*, 139 S. Ct. at 2567.

Notably, Plaintiffs could not succeed on their constitutional claim even if the Court were to disregard the text, history, and case law surrounding the Enumeration Clause and simply ask, as Plaintiffs urge, whether the Bureau's planned operations bear a "reasonable relationship to the accomplishment of an actual enumeration." Pls.' Mot. at 30 (quoting *Wisconsin*, 517 U.S. at 19). For one, an "actual Enumeration" simply means a

person-by-person headcount. *See supra.* So unlike the *post hoc* statistical adjustment at issue in *Wisconsin*—which implicated the concept of estimation—there is no dispute that the Replan endeavors to count each U.S. resident individually. *Compare* Pls.' Mot. at 18 *with Wisconsin*, 517 U.S. at 24 (examining the Secretary's decision that an "'actual Enumeration' would best be achieved without the [ ] statistical adjustment of the census"). For another, Defendants are aware of no decision finding a violation of the reasonable-relationship test. *See NAACP v. Bureau of Census*, --- F. Supp. 3d ---, 2020 WL 1890531, at *6 (D. Md. Apr. 16, 2020) ("I have located no case where a court has found a violation of the *Wisconsin* reasonable relationship standard."). And the Census Bureau's extraordinary effort to meet Congress's statutory deadline, in the midst of a global pandemic and a series of natural disasters, should not be the first. In moving to the Replan, the Census Bureau "evaluated the risks and quality implications of each suggested time-saving measure and selected those that [the Bureau] believed presented the best combination of changes to allow [it] to meet the statutory deadline without compromising quality to an undue degree." Fontenot Decl. ¶ 88. Nothing more can be required if the "substantial deference" owed by this Court to the "virtually unlimited discretion" of Congress and the Secretary is to mean anything. *See NAACP*, --- F. Supp. 3d ---, 2020 WL 1890531, at *6.

IV. PLAINTIFFS CANNOT SATISFY THE OTHER PRELIMINARY-INJUNCTION FACTORS

The "extraordinary remedy" of a preliminary injunction may not be awarded when a plaintiff fails to demonstrate a likelihood of success on the merits. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 32–33 (2008); *see also see Munaf v. Geren*, 553 U.S. 674, 690 (2008) (likelihood of success requires far more than identifying "serious, substantial, difficult, and doubtful" questions); *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) ("[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." (internal

quotes and citations omitted; emphasis in original)). So Plaintiffs' unlikelihood of success on the merits is itself sufficient to deny their preliminary-injunction motion.

But Plaintiffs' position only gets worse as the Court proceeds further. Because Plaintiffs are seeking an injunction that would compel the Census Bureau to yet again re-configure and extend its operations, Pls.' Mot. at 39, they are requesting a mandatory injunction. *See Mountain Valley Pipeline, LLC v. 6.56 Acres of Land*, 915 F.3d 197, 216 n.8 (4th Cir. 2019) (mandatory injunctions are "those that alter rather than preserve the status quo"). Such injunctions are "particularly disfavored," and require Plaintiffs to demonstrate that their "right to relief is indisputably clear." *Profiles, Inc. v. Bank of Am. Corp.*, --- F. Supp. 3d ---, 2020 WL 1849710, at *3 (D. Md. Apr. 13, 2020) (citing *id.*). Just as they fail to establish a likelihood of success on the merits, Plaintiffs cannot satisfy this demanding standard for the remaining injunction factors: irreparable injury, balance of harms, and the public interest. *See Winter*, 555 U.S. at 20.

A. Plaintiffs cannot establish any imminent and irreparable harm.

Most significantly, Plaintiffs fail to establish that they are "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Plaintiffs cannot "demonstrate that absent a preliminary injunction they will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm." *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (internal quotation marks omitted). Because a preliminary injunction "is one of the most drastic tools in the arsenal of judicial remedies," *id.*, Plaintiffs' burden to show irreparable harm is necessarily higher than what is required to establish standing. *See, e.g., Mazurek*, 520 U.S. at 972.

Here, Plaintiffs fail this test for the same reasons that they fail to establish standing: they cannot show that they will suffer any imminent and certain injury. As explained above, Plaintiffs' assertions that their communities are likely to be undercounted as a

result of the Replan are speculative. They are also inconsistent with the evidence presented by Mr. Fontenot. *See* Fontenot Decl. ¶ 97 ("[T]he Census Bureau is confident that it can achieve a complete and accurate census and report apportionment counts by the statutory deadline following the Replan Schedule.").

Even more significant, however, is Plaintiffs' failure to connect any alleged undercount in their communities to potential undercounts in *other* jurisdictions. Because Plaintiffs are competing for dollars and legislative seats with other communities in their States and across the country, they can only be injured by inaccuracies that affect their members disproportionately. *See Kantor*, 91 F.3d at 185 (finding lack of standing where court could not determine "what effect any methodology for counting the homeless would have on the federal funding of any particular appellant," noting that "if a more accurate count would have enlarged some communities' shares, it likely would have reduced the shares of other communities"); *see, e.g.*, 42 U.S.C. § 1396d(b) (Medicaid formula measuring a State's per capita income against the national average per capita income); 49 U.S.C. § 5305(d)(1) (apportioning public transit funds to States based on the population of urbanized areas in each State compared to the total population of urbanized areas in all States).

There is no evidence in the record here to establish (1) the undercount in Plaintiffs' communities; (2) how that undercount compares to undercounts in other communities; and (3) how that comparison will result in some appreciable funding or representational loss for Plaintiffs. Absent this evidence, Plaintiffs cannot be said to establish anything more than the abstract "possibility of irreparable injury." *Nken v. Holder*, 556 U.S. 418, 434 (2009). But, as the Supreme Court has emphasized, the "'possibility' standard is too lenient" a basis upon which to issue the drastic remedy of a preliminary injunction. *Winter*, 555 U.S. at 22. So Plaintiffs' failure to establish anything more than the theoretical possibility of harm means that requested injunction should be denied.

If Plaintiffs' theory of irreparable harm were accepted, anyone who comes to court complaining about census operations and the mere prospect of an undercount could obtain an injunction as a matter of course to drastically alter a $15.6 billion census operation. That is not, and cannot be, the law. *See id.*

B. The public interest and harm to the government weigh heavily against a preliminary injunction.

On the other side of the ledger, the harm to the government and the public interest from an injunction would be ruinous and immediate. *See Nken*, 556 U.S. at 435 (explaining that harm to opposing party and the public interest "merge" when relief is sought against the government). As a legal matter, judicial intervention would usurp Congress's and the Executive's discretion over the census. *See* Argument Section I., *supra.* Congress has set the December 31 deadline, has so far declined to extend it, and has created an expectation that States and localities reliant on census data for redistricting and other purposes will receive it at a particular time. And as a practical matter, the requested injunction may make it *more* difficult to execute the census. Fontenot Decl. ¶¶ 100–08.

There is no denying that § 141(b)'s end-of-year statutory deadline presents a number of challenges. But if the Court sets aside the Replan, the Bureau would have to generate a *new* plan to comply with § 141(b)'s deadline or, if the Court somehow disregards that statutory provision, whatever new timelines the Court may impose. *See id.* This would require another re-planning of the various operations and staffing allocations of a nationwide census—one of the largest peacetime mobilizations in American history—whose field operations are nearly complete. *See id.* As the congressional clock ticks away with no statutory relief in sight, the Census Bureau would need to complete this massive re-Replan in perhaps only a few days. And, of course, there is no guarantee that any judicially mandated re-Replan would better achieve Plaintiffs' unknown and inscrutable "standard" of census accuracy.

With "the decennial census [ ] again generat[ing] a number of [ ] controversies," *Franklin*, 505 U.S. at 790, and the extraordinary disruption caused by the COVID-19 pandemic and various natural disasters, the public interest favors only one course: allowing the Census Bureau to complete the census under its current plan—the only plan that complies with the current statutory deadline. In denying a similar preliminary-injunction motion earlier this year, Judge Grimm said it best:

> The founders were clear in their allocation of where the power and authority to plan and execute the census should lie—with Congress, which in turn has delegated its broad authority to the Secretary. While Plaintiffs are right to be concerned about a differential undercount . . . it would not be in the public interest for me to substitute my judgment for that of the Constitution, Congress, the Secretary, and the Census Bureau, which would certainly disrupt the conduct of the census in ways that would have consequences far beyond the reaches of Prince George's County. Balancing the impact of granting the injunction against the alternative of allowing the census to proceed as planned, with the Plaintiffs having the opportunity to prosecute their Enumeration Clause challenge after the results are known . . . seems to me to be far more in the public interest.

NAACP v. Bureau of the Census, No. 18-cv-0891 (D. Md. March 5, 2020), ECF No. 82 (citations omitted). The Census Bureau is confident that its Replan will produce the best possible census under the circumstances. *See* Fontenot Decl. ¶¶ 82, 97. Plaintiffs can ask for, and obtain, no more from this Court.

V. PLAINTIFFS CANNOT SIDESTEP THE THREE-JUDGE COURT

"A district court of three judges shall be convened . . . when *an action* is filed challenging the constitutionality of the apportionment of congressional districts." 28 U.S.C. § 2284(a). The "action" here challenges not just the duration of census operations, but also "the apportionment" calculation by the President under 2 U.S.C. § 2a.[11] *See*

[11] As Plaintiffs themselves note, one California "action" (as here) involves claims "directly challenging the constitutionality of apportionment" and was concomitantly assigned to a three-judge court. Pls.' Mot. at 1 n.2 (citing No. 20-cv-05167 (N.D. Cal.

Second Am. Compl. ¶¶ 273–322, ECF No. 98. Everyone agrees on that point, which is why a three-judge court was convened to hear this case. Letter, ECF No. 101 (Judge Xinis requesting a three-judge court under § 2284(a) and noting that "[t]he parties did not oppose the referral"); Order, ECF No. 104 (appointing three-judge court under § 2284(a)); *see New York v. Trump*, ---F. Supp. 3d ---, 2020 WL 5422959, at *36 n.21 (S.D.N.Y. Sept. 10, 2020) (noting that an challenge to "the apportionment" was "properly heard by a three-judge panel" under § 2284). And once a three-judge court is convened, a single judge is not allowed to "hear and determine *any* application for a preliminary or permanent injunction."[12] 28 U.S.C. § 2284(b)(3) (emphasis added). Plaintiffs cannot sidestep that unequivocal text now. *See* Pls.' Mot. at 1.

"A straightforward reading of the pertinent language suggests that the entire case, and not just the constitutional claims [triggering § 2284], must be heard by a three-judge court." *Page v. Bartels*, 248 F.3d 175, 187–88 (3d Cir. 2001) (Becker, C.J.). "This is because the language of § 2284 itself is broadly applicable to 'actions'—not narrowly to 'claims'—challenging the constitutionality of the apportionment." *Id.*; *Thomas v. Reeves*, 961 F.3d 800, 802 n.2 (5th Cir. 2020) (en banc) (Costa, J., concurring) (explaining that "§ 2284(a) refers to 'action[s] . . . filed,' not individual claims"); Black's Law Dictionary, "Action"

2020)). A different California "action"—despite substantial overlap in parties and identical plaintiffs' counsel—does *not* include such claims and was *not* assigned to a three-judge court. Pls.' Mot. at 1 n.2 (citing No. 20-cv-0577 (N.D. Cal. 2020)). This proves Defendants' point that § 2284's applicability hinges on the "action" at issue, not the claims in any particular motion. *Page v. Bartels*, 248 F.3d 175, 187–88 (3d Cir. 2001) (Becker, C.J.).

[12] Although a single judge may "grant a temporary restraining order," that order can "remain in force only until the hearing and determination by the district court of three judges o[n] an application for a preliminary injunction." *Id.* § 2284(b)(3). Because Plaintiffs simultaneously move for a temporary restraining order and a preliminary injunction, § 2284(b)(3)'s allowance for a single-judge temporary restraining order is overcome by its prohibition on a single-judge preliminary injunction.

(11th ed. 2019) (defining "action" as "[a] civil or criminal judicial proceeding"); *cf. City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 166 (1997) (holding that "federal claims suffice to make the actions 'civil actions'" for removal purposes under 28 U.S.C. § 1441(a) even when there are also non-removable state-law claims). So if § 2284 is properly invoked, all claims "are subject to § 2284(a)'s requirement that they be heard by a three-judge district court."[13] *Page*, 248 F.3d at 188. "That is consistent with the common practice when both constitutional and statutory challenges to reapportionment are brought—the constitutional hook for three-judge jurisdiction sweeps in the statutory claims." *Thomas v. Bryant*, 919 F.3d 298, 305 n.4 (5th Cir. 2019).

The Court should summarily reject Plaintiffs' bizarre attempt to sidestep both the three-judge court to which they agreed and the plain language of § 2284. Because a single judge cannot "hear and determine *any* application for a preliminary or permanent injunction," 28 U.S.C. § 2284(b)(3) (emphasis added), the full three-judge court should deny Plaintiffs' motion.

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[13] To the extent courts have declined to address claims that would not themselves trigger § 2284, those decisions were based on pre-1976 interpretations of § 2284 before the statute was overhauled, dealt with situations where the claims triggering § 2284 had already been dismissed, or both. *See Page*, 248 F.3d at 189 ("[T]he 1976 amendments limited the scope of the Three Judge Court Act considerably, making it questionable whether the policy considerations that drove the original, narrow construction are still applicable today. These revisions militate in favor of our broader reading of § 2284(a)'s scope."); *see, e.g., Hagans v. Lavine*, 415 U.S. 528, 543 (1974) (allowing a single judge to adjudicate a statutory claim before a three-judge court adjudicates the constitutional challenges that triggered the pre-1976 version of § 2284); *Gordon v. Exec. Comm. of Democratic Party of City of Charleston*, 335 F. Supp. 166, 170 (D.S.C. 1971) (three-judge court) (resolving three-judge-court claims, declaring the "statutory court [ ] accordingly dissolved," and stating that "[a]ny rights asserted by the plaintiffs under other federal statutes or Constitutional provisions can be asserted only before the [single-judge] District Court.").

CONCLUSION

For the reasons discussed above, the Court should deny Plaintiffs' motion for temporary restraining order or preliminary injunction. Plaintiffs should petition Congress, not this Court, for appropriate relief.

DATED: September 11, 2020

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO, *et al.*, Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, Defendants.	No. 8:19-cv-02710-PX-PAH-ELH

DECLARATION OF ALBERT E. FONTENOT, JR.

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

I. EXECUTIVE SUMMARY

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

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

II. QUALIFICATIONS

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

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

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

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

6. After retirement from private sector corporate management, I began my career with the Census Bureau in 2009 as a Field Operations Supervisor in Southern California for the 2010 Census. I quickly rose through the ranks and managed the Nonresponse follow-up operations for the 2010 Census as Area Manager responsible for census activities in Los Angeles County, the State of Hawaii, San Bernardino County and

Riverside County California. After 2010, I served in positions of increasing responsibility as Survey Supervisor, Senior Supervisory Survey Statistician, Assistant Regional Director for the Los Angeles Region, and Regional Director for the Chicago Region. I moved from the field to the Census Bureau headquarters to assume the position as Chief of the Field Division and subsequently Assistant Director of Field Operations, Assistant Director for Decennial Census Operations, then Associate Director for the Decennial Census.

7. From 2012–16, I represented the Field Directorate on the team that developed and wrote the Operations plan for the 2020 Decennial Census.

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

III. A Complex Design and Budget for the 2020 Census

9. The Census Bureau goes to extraordinary lengths to count everyone living in the country once, only once, and in the right place, including those in hard-to-count

populations. This is the core mandate of the Census Bureau, and has been the most significant factor informing every decision made in designing, planning, testing, and executing the decennial Census.

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

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

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

Examples include:

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

- Creating culturally relevant advertisements targeting hard-to-count communities.

13. The Operational Plan cited above is an overall plan that integrates numerous sub-operations. Details on most of these sub-operations can be found on our website at https://www.census.gov/programs-surveys/decennial-census/2020-census.html. A partial list of the major operations for which we have posted detailed operations plans includes:

a. Count Review

b. NRFU

c. Integrated Communications Plan

d. Intended Administrative Data Use

e. Formal Privacy Methods

f. Post Enumeration Survey (PES)

g. Integrated Partnership and Communications

h. Count Question Resolution

i. Forms Printing and Distribution

j. Response Processing

k. Evaluations and Experiments

l. Counting Federally Affiliated Americans Overseas

m. Field Infrastructure and Logistics

n. Data Products and Dissemination

o. Geographic Delineations

p. Local Update of Census Addresses Operation

q. Update Enumerate Operations

r. Archiving

s. Internet Self Response

t. Non-ID Processing

u. Update Leave

v. Address Canvassing

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

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

16. The complexity and inter-related nature of census operations is echoed in the budget for the 2020 Census. The overall budget estimate for the 2020 Census—covering fiscal years 2012 to 2023—is $15.6 billion. This represents enough funding to successfully complete the 2020 Census in virtually all possible scenarios, including the current challenging circumstances. In fact, the Government Accountability Office (GAO) recently reviewed this budget estimate1 and determined that, as of January 2020, the estimate substantially or fully met GAO's standards and best practices for a reliable cost estimate in terms of credibility, accuracy, completeness, and documentation quality. It is rare for civilian agencies to be so designated, and we are proud that the Census Bureau has achieved this status.

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

18. Combined, prior to the COVID-19 pandemic operational adjustments, there remain just over $2 billion in contingency funds that have been appropriated, but which we have not needed to use. With only minimal exceptions, Congress appropriated these

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

funds to allow us to flexibly and quickly respond to any and all risks to the 2020 Census that might be realized and have an impact on the operations.

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

IV. CENSUS STEP 1: LOCATING EVERY HOUSEHOLD IN THE UNITED STATES

20. The first operational step in conducting the 2020 Census was to create a Master Address File (MAF) that represents the universe of addresses and locations to be counted in the 2020 Census. This operation constitutes a significant part of the 2020 Census, and our plans to enumerate every resident once, only once, and in the right place.

21. A national repository of geographic data—including addresses, address point locations, streets, boundaries, and imagery—is stored within the Census Bureau's Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) System. The MAF/TIGER System provides the foundation for the Census Bureau's data collection, tabulation, and dissemination activities. It is used to generate

the universe of addresses that will be included in a decennial census. Those addresses are then invited to respond, typically through an invitation in the mail. The MAF/TIGER System is used to control responses as they are returned to the Census Bureau and to generate a list of nonresponding addresses that will be visited in person. Finally, the MAF/TIGER System is used to ensure that each person is tabulated to the correct geographic location as the final 2020 Census population and housing counts are prepared.

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

23. Between 2013 and 2019, the Census Bureau accepted nearly 107 million address records from government partners. Over 99.5 percent of those records matched to addresses already contained in the MAF, many of which were obtained from the U.S.

Postal Services' Delivery Sequence File (DSF). The remaining 0.5 percent of address records from partner governments represented new addresses and were used to update the MAF. In addition, partners submitted over 75 million address points that were either new or enhanced existing address point locations in TIGER. Over 257,000 miles of roads were added to TIGER using data submitted by partners.

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

25. Between September 2015 and June 2017, the Census Bureau conducted a 100 percent in-office review of every census block in the nation (11,155,486 blocks), using two different vintages of imagery (one from 2009, which was contemporary with the timing of address list development and Address Canvassing for the 2010 Census, and one concurrent with the day on which in-office review occurred) and housing unit counts from the MAF. The 2009-vintage imagery was acquired from a variety of sources, including the National Agricultural Imagery Program as well as publicly available imagery from state and local governments. Current imagery was acquired through the National

Geospatial Intelligence Agency's Enhanced View Program, through which federal agencies can access imagery of sufficiently high quality and resolution to detect individual housing units and other structures, driveways, roads, and other features on the landscape.

26. During the in-office review, clerical staff had access to publicly available street-level images through Google Street View and Bing StreetSide, which provided the ability to see the fronts of structures, as if standing on the sidewalk. The technicians categorized blocks as passive, active, or on-hold. Passive blocks represented stability, meaning the technician verified the currency and accuracy of housing data in the office. Active blocks represented evidence of change and/or coverage issues in the MAF. On-hold blocks represented a lack of clear imagery. In these latter two instances, In-Field Address Canvassing was required. At the end of the initial review in June 2017, 71 percent of blocks were classified as passive, suggesting a need for in-field review of only 29 percent of blocks.

27. However, since the 2020 Census was still several years away when In-Office Address Canvassing completed its initial review of the nation, the Census Bureau continued the in-office review to ensure the MAF was keeping up with changes on the ground. The Census Bureau used information from the U.S. Postal Services' DSF and partner governments to identify areas experiencing recent change and triggered these areas for re-review. Between July 2017 and March 2019, the additional review resulted in

the categorization of nearly 87.9 percent of the 11.1 million census blocks as passive, indicating a need for in-field review of only 12.1 percent of census blocks.

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

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

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

V. CENSUS STEP 2: ENCOURAGING SELF-RESPONSE THROUGHOUT THE 2020 CENSUS

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

A. Advertising and Media

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

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

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

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

36. As a result of that research, we mounted a media campaign with stories in news media across the country in print, social, and digital media. The campaign was

tested in over 120 focus groups across the country, and driven by efforts to reach historically undercounted audiences. More than 1,000 advertisements, in English and 43 other languages, were developed to communicate the importance of responding to the 2020 Census. This compares to roughly 400 separate creative pieces created in 2010. A sample of these creative pieces can be seen on the Census Bureau's YouTube channel website.

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

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

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

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

B. Partnerships with Community Organizations

41. The second major element of the Integrated Communications Program is partnerships. There are two prongs to the Partnership Program, the National Partnership

Program that works from Census Bureau headquarters mobilizing national organizations, and the Community Partnership and Engagement Program, that works through the regions at the local level to reach organizations that directly touch their communities. The National Partnership Program and Community Partnership and Engagement Program are more integrated than ever before, and numbers involved for both programs significantly exceed the totals reached in prior censuses.

42. Census partners include national organizations like the National Urban League, the Mexican American Legal Defense Fund, the National Association of Latino Elected Officials (NALEO), the National Association for the Advancement of Colored People (NAACP), and the U.S. Chambers of Commerce. Major corporations also become census partners. At the local level, partners can be churches, synagogues and mosques, legal aid clinics, grocery stores, universities, colleges, and schools.

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

VI. CENSUS STEP 3: SELF-RESPONSE

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

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

46. Internet Choice is targeted to areas of the nation that we believe are least likely to respond online. Historical response rates from other Census Bureau surveys,

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

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

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

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

VII. CENSUS STEP 4: NONRESPONSE FOLLOWUP (NRFU)

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

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

51. The 2020 Census NRFU operation is similar to the 2010 Census NRFU operation, but improved. In both the 2010 Census and the 2020 Census, cases in the NRFU workload are subject to six contact attempts. In both the 2010 and 2020 NRFU, the first contact attempt is primarily an in-person attempt. In the 2010 Census, these six contact attempts could be conducted as three in-person attempts and three attempts by telephone. By comparison, each contact attempt in the 2020 Census NRFU will be either a telephone or an in-person contact attempt (however the vast majority of attempts will be in-person).

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

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

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

55. If a knowledgeable person cannot be found to confirm the status of vacant or non-existent, use of administrative records may provide confirmation of the enumerator's assessment. The Census Bureau does not rely on a single administrative records

source to determine an address is vacant or non-existent. Rather, multiple sources are necessary to provide the confidence and corroboration before administrative records are considered for use. When used in combination with an enumerator's assessment of vacant or non-existent, corroborated administrative records provide the second confirmation that a nonresponding address is vacant or non-existent.

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

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

58. The vast majority of nonresponding addresses in the NRFU workload will require the full battery of in-person contact attempts to determine the status of the non-responding address (vacant, occupied, does not exist) and to collect 2020 Census response data. The full battery of in-person contact attempts also includes the ability to collect information about persons living in a nonresponding housing unit from a proxy respondent on the third unsuccessful attempt to find residents at that address.

59. The Census Bureau designed the 2020 Census NRFU operation to leverage automation and technological advances to control and track the NRFU workload and improve the efficiency of enumerators and the process of collecting census responses. The 2020 Census design for NRFU replaces paper-based NRFU operations used in past Censuses, providing a faster, more accurate, more efficient and more secure means of data collection.

60. The Census Bureau has developed a robust and modern Field Operational Control System to handle many tasks and makes many decisions historically made by individuals. The Field Operational Control System creates daily enumerator workloads using an optimizer that takes into account the location of cases in the workload, the number of attempts a case has received, the time of day to contact an address to maximize response, travel time and mileage from case to case, the location of enumerators, and the hours each enumerator is available to work for a given day. Cases are sorted in the optimal order to ensure enumerators travel to their cases and conduct interview attempts

in the most efficient manner possible. Workloads are generated each night and transmitted to enumerators to work the next day.

61. Enumerators use government furnished iPhones to receive daily assignments and to collect census data. Use of iPhones and the capabilities afforded by automation allow for near real-time case status updates, transmission of response data, and increased enumerator efficiency. Enumerators receive daily workloads of nonresponding addresses, as generated by the optimizer. Enumerators work the addresses in the order prescribed by the optimizer, to determine the Census Day status of the housing unit and, when occupied, to enumerate the housing unit. The data collection application on the iPhone guides the enumerators through their activities for completing interviews. It provides enumerators with scripting for the introduction and the specific census questions and provides extensive help screens for answering questions a respondent may ask during the interview. At the end of each day, enumerators uses case management capabilities on their iPhone to enter work availability for the upcoming five days, as well as to enter/verify payroll information, including hours worked, mileage, and other expenses incurred during their shift.

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

VIII. CENSUS STEP 5: QUALITY CONTROL DURING DATA COLLECTION

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

64. The NRFU Reinterview Program involves contacting a small number of households to conduct another interview—to help us ensure that enumerators are conducting their jobs correctly and are not falsifying responses. We have streamlined this operation as part of the Replan, using information collected from the mobile devices used by enumerators. The data from these mobile devices tell us where the enumerators were physically located while they were conducting the interviews, how long they spent on each question in the interview, time of day of the interview, and other detail data about the interview process. Having this information—which is new for the 2020 Census—provides management with information on how the census takers are doing their jobs, and allows us to select reinterview cases in a targeted fashion.

65. A second quality check program, new for the 2020 Census, is the Decennial Field Quality Monitoring operation. This operation monitors overall adherence to field procedures in order to identify unusual patterns. We used this near real-time data analysis successfully during the Address Canvassing operation in 2019, and it is currently

active in the NRFU operation. The goal of the program is to identify and investigate potential quality issues. In this program we examine data from individual field representatives and larger scale data, scanning for the possibility of both individual and systemic data quality problems. The program monitors outlier metrics, and produces reports that we analyze on a daily basis. Management staff use these reports to investigate suspicious activities and follow up as needed.

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

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

68. The Census Bureau has also formed a Data Quality Executive Guidance Group that brings together the Census Bureau's experts in the fields of census operations,

statistical methodology, acquisition and utilization of administrative records, and in the social, economic and housing subject areas. The group's mission is to provide direction and approvals about quality assessments of changes to the operational plans and of the 2020 Census data during and post data collection. We plan to release Demographic Analysis estimates of the population in December, prior to the release of the apportionment counts, as previously planned.

69. Finally, as noted by the Director in his August 3, 2020 statement, under the Replan the Census Bureau is working to meet a similar level of household responses as in prior censuses. In short, the Census Bureau has robust programs in place to monitor data quality and has no indication that its NRFU operation is collecting "substandard" data.

IX. CENSUS STEP 6: POST-DATA COLLECTION PROCESSING

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

71. The 2020 Census leveraged significant advances in computing technology that have occurred since the 2010 Census. Internet data collection, use of smart-phones

for field data collection, digital input of phone data collection, and state-of-the-art paper data capture have enabled the Census Bureau to consolidate and prepare the raw census data for processing more rapidly than ever before. Additionally, our computer applications include built-in quality controls that guide respondents through the data collection process and help to ensure higher data accuracy at the point of data input than ever before.

72. The computer processing systems at Census Headquarters have also been optimized in partnership with industry leaders using the latest hardware, database, and processing technology available. Taking advantage of this processing power and speed, we have been able to accelerate our processing time to fit within the re-planned schedule.

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

74. As part of developing the Replan Schedule, we looked at the possibility of starting the post data collection processing activities on a flow basis and reaffirmed that

there is little opportunity to begin until data collection operations close everywhere. The only processing step we could adjust in the schedule was initial processing of addresses, which we advanced by 26 days. It is not possible, however, to begin final census response processing in one region of the country while another region is still collecting data.

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

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

Original Dates: February 10 – August 10, 2020

Replan Dates: February 6– September 24, 2020

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

B. Produce the Final Collection Geography MAF/TIGER Benchmark

Original Dates: August 14 – September 1, 2020

Replan Dates: September 5 – 25, 2020

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

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

Original Dates: September 2 – 14, 2020

Replan Dates: September 26 – Oct 14, 2020

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

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

Original Dates: September 15 – October 14, 2020

Replan Dates: October 14– November 8, 2020

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

- First we determine the final classification of each address as either a housing units or a group quarters facility. Addresses can change from a housing unit to group quarters and vice versa. Initial status is set at the start of the data collection operations as either a housing unit or group quarters. During the enumeration operations, we collect information that informs us on the classification. For a small number of addresses the classification may change, for example a housing unit may

have been turned into a small group home. Based on the information collected we determine the status of every address as either a housing unit of group quarters.

- Next, we identify each unique person on the housing unit returns.
- As part of NRFU operation, we conduct a reinterview of a sample of cases to ensure quality. We incorporate the results of the reinterview.
- As part of the Internet self-response option and telephone operation, respondents can provide their data without their Census Identification Number (ID). These cases are assigned an ID which associates them to the final collection geography.
- Some group quarters will provide the information electronically. These files can contain duplicate records, so we need to remove the duplicates.
- We also determine the population count for all group quarters.
- We collect data in many ways, for example on-line, over the phone, on a paper questionnaire, electronic administrative files, and in person using an electronic questionnaire. As a result, we need to standardize the responses across the modes of collection.
- Finally, for the operations that collect data on a paper questionnaire, some housing units have more people than can fit on one paper questionnaire. The census field staff will use multiple paper questionnaires to enumerate the house. These continuation forms are electronically linked to form one electronic form.

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

Original Dates: October 14 – November 4, 2020

Replan Dates: November 9 – 30, 2020

Once the previous step has been verified, we incorporate the results from the Self-Response Quality Assurance operation. As part of the group

quarters operations, we enumerate domestic violence shelters. Their locations and data are high sensitive and are handled with special procedures both in the field and in processing. Their data are incorporated at this point in the process. Finally, for a small number of addresses we receive multiple returns, for example where one person in a house completes the form on-line, and other completes the paper questionnaire. For these cases, we select a form that will be used as the enumeration of record.

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

Original Dates: November 4 – 30, 2020

Replan Dates: December 1 – 14, 2020

Once the previous step has been verified, we incorporate administrative records data as the response data for housing units were we do not have an enumeration and have high quality administrative records data. Next we determine the status for every housing unit as occupied, vacant or non-existent. Non-existent units are removed from future processing. For every occupied housing unit, the population count is determined. For each person with write-in responses to the race and Hispanic origin questions, we merge in the information from automated and clerical coding operations. The coding operations assign a numerical value to the write-in responses. At this point in the post-data collection activities, for every

housing unit and group quarter their location (state, county, tract, block group and block) is assigned, their status (occupied, vacant or non-existent) is determined, and in occupied addresses the number of persons is known. In addition, at the person level the demographic information (relationship, age, date of birth, sex, race and Hispanic origin along with write-in code values) and at the housing unit level housing information (tenure) is determined. For the majority of these items, the respondent provided the information. However, for a small number of people and addresses the information may be missing or inconsistent with other provided information, for example the Person 1's spouse is five years old. The result of these processes is a file that contains records for every housing unit and group quarters along with person records for the people associated with the addresses. Note that some of the demographic information and response to the tenure question may be missing.

G. Produce, review and release the Apportionment Counts

Original Dates: December 1 – 28, 2020

Replan Dates: Dec 15- 31, 2020

Once the CUF has been verified, the process goes down two paths. The first path is to determine the apportionment counts. Since every housing unit and group quarters has a population count and linked to a state, we

can tabulation the state level population counts. In addition, we merge in the count of the Federally Affiliated Overseas population and the results of the Enumeration of Transitory Locations for each state. To ensure accuracy in the apportionment numbers, the state counts including the overseas population and apportionment numbers are verified by multiple independent ways. The results of the independent verifications are compared and reconciled, if necessary.

X. CENSUS STEP 0: RESEARCH AND TESTING OF THE 2020 CENSUS DESIGN

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

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

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

   i. Evaluate the use of administrative records and third-party data to identify vacant housing units and remove them from the NRFU workload;

   ii. Evaluate the use of administrative records and third-party data to enumerate nonresponding occupied housing units to reduce the NRFU workload;

   iii. Test an adaptive design approach for cases not enumerated with administrative records and third-party data; and

   iv. Test methods for reducing the number of enumeration contact attempts as compared with the 2010 Census.

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

   i. Testing various self-response modes, including the Internet, telephone, and paper, and response without a preassigned census identifier;

ii. Testing the use of mobile devices for NRFU enumeration in the field;

iii. Continuing to evaluate the use of administrative records and third-party data to remove cases (vacant and nonresponding occupied housing units) from the NRFU workload;

iv. Testing the effectiveness of applying adaptive design methodologies in managing the way field enumerators are assigned their work; and

v. Examining reactions to the alternate contacts, response options, administrative record use, and privacy or confidentiality concerns (including how the Census Bureau might address these concerns through micro- or macro-messaging) through focus groups.

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

i. Determination that the field management structure could be streamlined and the supervisor-to-enumerator ratios increased;

ii. Messaging and alerts within the operational control system provided real-time and consistent communication; and

iii. Smartphones were usable by all people—even those with little technology experience were able to adjust and adapt.

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

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

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

iii. Determining self-response and Internet response rates.

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

i. Continue testing of fully utilized field operations management system that leverages planned automation and available real-time data, as well as data households have already provided to

the government, to transform the efficiency and effectiveness of data collection operations;

ii. Begin examining how regional offices can remotely manage local office operations in an automated environment, the extent to which enumerator and manager interactions can occur without daily face-to-face meetings, and revised field staffing ratios;

iii. Reduce NRFU workload and increase productivity with the use of administrative records and third-party data, field reengineering, and adaptive design; and

iv. Explore reactions to the NRFU contact methods, administrative records and third-party data use, and privacy or confidentiality concerns.

F. **2016 Census Test.** The 2016 Census Test tested different supervisor-to-enumerator staffing ratios and incremental improvements and updates to the field data collection software that guided an enumerator through interviews. The 2016 Census Test also allowed the continued evaluation of the use of administrative records to reduce the NRFU workload. Key NRFU objectives included:

i. Refining the reengineered field operations;

ii. Refining the field management staffing structure;

iii. Testing enhancements to the Operational Control System and field data collection application; and

iv. Testing scalability of Internet and Non-ID Processing during self-response using enterprise solutions.

Objectives related to self-response included:

i. Testing provision of language support to Limited English Proficient populations through partnerships and bilingual questionnaires;

ii. Testing the ability to reach demographically diverse populations;

iii. Testing deployment of non-English data collection instruments and contact strategies; and

iv. Refining Real-Time Non-ID processing methods, including respondent validation.

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

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

H. Address Canvassing Test (conducted in the fall of 2016). The Address Canvassing Test examined the effectiveness of the In-Office Address Canvassing through the results of the In-Field Address Canvassing. The objectives of the test included:

i. Implementing all In-Office Address Canvassing processes;

ii. Evaluating the effectiveness of online training for field staff;

iii. Measuring the effectiveness of In-Office Address Canvassing through In-Field Address Canvassing; and

iv. Integrating multiple information technology applications to create one seamless operational data collection, control, and management system.

XI. CURRENT STATUS OF 2020 CENSUS OPERATIONS

78. As of September 10, 2020, over 97 million households, 65.7 percent of all households in the Nation, have self-responded to the 2020 Census. Combining the house-

holds that self-responded with those that field staff have enumerated under NRFU reveals that as of September 10, 2020 the Census Bureau has enumerated 90.1 percent of the nation's housing units.

79. The Census Bureau is now roughly 4 ½ weeks into the 7 ½ week schedule for conducting the NRFU operation. Under the Replan Schedule, NRFU is scheduled to last 7 ½ weeks, not 6 weeks as some of Plaintiffs' declarations state. As of September 10, 2020, we have completed roughly 75.1% of the NRFU workload. We were helped in achieving this result by the fact that we got a "head start" on data collection by beginning NRFU at select offices in July at a "soft launch." When we began NRFU in all areas on August 9 we had already enumerated over 7.4 million households. Additionally, over 90% of the households in 49 states, Washington D.C., and the Commonwealth of Puerto Rico have been enumerated.

80. While the number of enumerators hired and deployed has not been at the level anticipated, current progress indicates that we will nonetheless be able to complete NRFU before September 30. We currently have over 231,000 enumerators actively deployed, and we are conducting continuous replacement training sessions to increase that number.

81. The productivity rate for our enumerators thus far is above the planned rate. Our plans assumed a productivity rate of 1.55 cases/hour, and 19 hours/week average hours worked, but as of September 10, 2020 we have experienced a productivity rate of approximately 2.19 cases/hour, and 20.0 hours/week averaged work hours.

82. As the Director stated on August 3, 2020, the Census Bureau intends to meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities. We are, however, facing significant risks to complete all states by this date, due to factors beyond the Census Bureau's control, such as wildfires in the western part of our country, major storms, resurgence of COVID-19 restrictions and other similar disruptions.

XII. REPLANNING THE CENSUS – MULTIPLE TIMES

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

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

85. At that time, the career professional staff at the Census Bureau undertook the project of replanning each of the field operations based on our best predictions of when we could safely begin sending staff into the field to interact with the public. On April 13, 2020 staff finalized the plan to adjust field operations, and I presented the plan to the Secretary of Commerce and Department of Commerce management. The plan involved delaying our key high personal contact operations by 90 days. Update Leave, which had started on March 15 and been stopped because of COVID-19 on March 17, would resume pursuant to a new schedule beginning on June 13 and concluding on July 9. In-person Group Quarters operations which had been scheduled from April 2 – June 5 would be rescheduled from July 1–September 3, and our largest field operation, NRFU, which was scheduled from May 13–July 31, would be moved to August 11- October 31. We rescheduled self-response to conclude with the end of Field Operations so instead of ending on July 31 as indicated in the original plan, it was extended to October 31. This schedule required Congress to provide legislative relief from the statutory deadlines of December 31, 2020, for the submission of the Apportionment counts to the President, and March 31, 2021, for the delivery of redistricting data to the states. A request statutory relief from Congress was made for 120 days to enable us to complete the field operations and post enumeration processing.

86. On April 13, 2020, the Secretary of Commerce and the Director jointly announced the new Census Schedule and stated that they would seek statutory relief from

Congress of 120 additional calendar days. This new schedule set a completion date for field data collection and self-response of October 31, 2020. For clarity, I will refer to this as "the COVID Schedule." The COVID Schedule assumed Congressional action and called for the delivery of apportionment counts to the President by April 30, 2021 (120 days after the statutory deadline) and redistricting data files to the states no later than July 31, 2021.

87. Once it became apparent that Congress was not likely to grant the requested statutory relief, in late July the career professional staff of the Census Bureau began to replan the Census operations to enable Census to deliver the apportionment counts by the statutory deadline of December 31, 2020. On July 29, the Deputy Director informed us that the Secretary had directed us, in light of the absence of an extension to the statutory deadline, to present a plan at our next weekly meeting on Monday, August 3, 2020 to accelerate the remaining operations in order to meet the statutory apportionment deadline. I gathered all the senior career Census Bureau managers responsible for the 2020 Census at 8:00 a.m. on Thursday, July 30 and instructed them to gather their staff of professional demographers, survey analysts, statisticians, and programmers and begin to formalize a plan to meet the statutory deadline. At that time I consulted with the Associate Director of Communications and we directed that the COVID Schedule be removed from our website while we replanned. We divided into various teams to

brainstorm how we might assemble the elements of this plan, and held a series of meetings from Thursday to Sunday. We developed a proposed replan that I presented to the Secretary on Monday August 3.

88. In developing the proposed replan we considered a variety of options and evaluated risk for each suggested time-saving measure. We evaluated the risks and quality implications of each suggested time-saving measure and selected 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. The challenge was to shorten the field data collection operation by 30 days, and to conclude the post processing operation in only 3 months, as opposed to 5 months in prior schedules. We began with a review of the status of all field outreach operations, and assessed the impacts of possible revisions on the Census Bureau's ability to complete those operations within the compressed timeline. The six million housing units in the Update Leave Operation (which provides Census invitations to housing units that do not receive regular US mail) had been completed in early July, and we had received over two million self-responses and the remaining housing units would be moved into the NRFU operation to be visited by enumerators for personal interviewing. The Group Quarters enumeration operation which had begun on July 1st was on track to be completed on schedule by September 3, 2020 and would not be negatively affected by compressing the balance of the Field Schedule. The enumeration of persons staying in transitory locations (Campgrounds, RV

parks, marinas and hotels without a home elsewhere) was scheduled to be conducted from September 3–September 28. That operation could be conducted as planned within the replan schedule timeline.

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

90. We also reviewed NRFU, our largest and most critical operation. The Census Bureau had conducted soft launches of all our major operations (during a soft launch

a small portion of the operation starts early to insure that all the planned and tested systems work as designed under real field conditions with real respondents and actual newly hired temporary employees). The NRFU Soft Launch was planned with six offices that could be safely started based on COVID risk profiles (developed using CDC, HHS, State and Local health guidance), availability of staff, and provisioning of Personal Protective Equipment. The original plan was to begin the operation in one office from each of our six regions starting on July 16th (Cycle 1a) and to follow on July 23rd (Cycle 1b - one week later) with six additional offices picked from coastal areas that would be prone to Hurricane risk. As the plan developed we were unable to take offices from all of the areas in the original plan because of high COVID risk and state and local stay at home orders, however we were able to select 6 offices for each cycle and these offices commenced NRFU field operations without incident on the planned dates. On July 14, as the pandemic controls began to be lifted, and our concerns grew over lack of action on a waiver of the December 31, 2020 apportionment statutory deadline, we decided to expand NRFU operations to all offices that could meet the safety, health, and staffing requirements – to start those offices in advance of the initial planned start date of August 11, 2020. We deployed NRFU operations in 35 additional offices on July 30, 2020 and 39 additional offices on August 6, 2020. We then made the decision to pull forward all remaining offices from August 11 to August 9. All ACOs had begun NRFU operations by

August 9 and we had enumerated over 7.4 million housing units before the Replan Schedule's official start date of August 11.

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

92. The Replan Schedule intends to improve the speed of the NRFU operations without sacrificing completeness. Under the Replan Schedule, the Census Bureau has responded to the shortened calendar period for NRFU operations by taking steps to increase the ability of its employees in the field to work as efficiently as possible. This involves increased hours of work per enumerator, spread across the total workforce, to get the same work hours as would have been done under the original time frame. We incentivize this behavior by providing monetary bonuses to enumerators in who maxim-

ize hours worked, and retention bonuses to those who continue on staff for multiple successive weeks. Successful completion of NRFU is dependent on hours worked, not days worked.

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

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

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

- We shortened address processing from 33 to 20 days. This required eliminating 13 days of processing activities that will be deferred until the creation of the redistricting data products.

- We cancelled the internal independent review of the final list of addresses that will be used to tabulate 2020 Census data (what we call "the MAF Extract").

- We eliminated redundant quality control steps, and the multiple file deliveries that supported those steps, in order to enable a state-by-state flow of deliveries for processing. (Previous procedures delivered data to the next step only when the entire country had been reviewed by multiple teams).

- We optimized employee assignments to ensure maximum staff resource usage during this shortened production period – i.e., implemented a seven-day/week production schedule.

- We compressed the time allotted for subject matter expert review and software error remediation, cutting 21 days from the schedule.

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

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

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

XIII. IMPACTS OF GRANTING A PRELIMINARY INJUNCTION

99. On September 5, 2020 the District Court for the Northern District of California entered a Temporary Restraining Order (TRO) enjoining the Census Bureau from "implementing the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened timelines in the August 3, 2020 Replan, including but not limited to winding down or altering any Census field operations, until the Court conducts its September 17, 2020 hearing on Plaintiffs' PI motion." In compliance with the TRO, the Census Bureau issued the guidance attached as Exhibit A to its field staff. It also took action at the Headquarters level to ensure that no action in the period of September 5–17 would be contrary to the TRO.

100. If a Court grants a Preliminary Injunction, the Census Bureau will need to replan the remaining census operations again.

101. The timing of any Court order changing the schedule is particularly important, as prior to the Temporary Restraining Order, the Census Bureau had already begun to take steps to conclude field operations. As I will explain further, the fact that we are concluding field operations in ACOs that have completed their workload is a normal part of the NRFU operation, and is not specific to the Replan Schedule.

102. The Census Bureau manages its nonresponse follow up operation (NRFU) out of "Census Field Supervisor areas" or "CFS areas" within each of the nation's 248

ACOs. CFS areas are supervisory work assignment areas consisting of 4,000-5,500 housing units. As of September 10, 2020, roughly 25% (3,782) of CFS areas nationwide are eligible for what we call "the closeout phase," and 3,461 are actually in the closeout phase, and roughly 70 have actually reached conclusion. The closeout phase refers to the process of focusing our best enumerators to resolve the remaining cases in that area. CFS areas are eligible for closeout procedures when they cross the 90% completion mark. Under the Replan, all CFS areas would have become eligible for closeout procedures on September 11. This does not mean that all CFS areas would have been moved to closeout procedures on that date, only that regional directors could have made this decision. Under the TRO, we have directed that no CFS area can be moved into closeout procedures until it reaches 90% completion. The Census Bureau is continuing to work across the nation to obtain responses from all housing units, and has not begun closeout procedures for any CFS area with under 90% completion.

103. It is a normal and planned part of the NRFU operation for an ACO to move into the closeout phase and complete operations. We used closeout procedures in NRFU in the 2010 Census and always planned to do the same for the 2020 Census. If we have not wound down in some areas, it is because we are still counting. Some ACOs have greater initial workload, and some started earlier than others –therefore, moving to completion varies by ACO and is a reflection of workload and local conditions and results in

the allocation of enumerator resources from areas that are complete to areas that require more work.

104. As of September 10, 2020 we are finished with 75.1% of the NRFU field work and over 90.1% of the housing units in the nation have been enumerated and those numbers increase daily. Additionally, 30 states have 90% or more of their housing unit enumeration completed, and in 13 additional states, including Washington D.C. and the Commonwealth of Puerto Rico, we have completed over 85% of the housing units in those states. As we complete areas, staff are offered an opportunity to assist by enumerating in other areas that are not yet complete. Some staff elect that option, others choose not to go outside of their home area, and as their area is completed, they are released. As we complete more field work, the number of staff who are still active and the need for staff declines, and our ability to ramp up is severely hampered.

105. Reduced numbers of field staff would be a barrier to reverting to the COVID Schedule were the Court to rule later in September. Prior to issuance of the TRO, based on progress to date, we had already begun terminating some of our temporary field staff in areas that had completed their work, as is standard in prior censuses. It is difficult to bring back field staff once we have terminated their employment. Were the Court to enjoin us tomorrow we would be able to keep more staff on board than were the Court to enjoin us on September 29, at which point we will have completed enumeration of most of the nations' housing units and terminated many more employees.

106. Were the Court to enjoin us, we would evaluate all of the changes we made for the Replan Schedule and determine which to reverse or modify. We would go through each and every aspect of remaining operations and determine how best to use the remaining time to maximize the accuracy and completeness of the census results.

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

108. As I have tried to make clear in this Declaration, the decennial census is a massive, complex, and interrelated endeavor. Particularly troubling is the prospect of continual, conflicting, and evolving court orders from this this and other courts, including appellate courts. While Census Bureau staff have demonstrated considerable resilience and flexibility during this difficult year, some certainty as to the amount of time

available to conclude data collection and post processing will increase the likelihood of a successful outcome.

XIV. Commitment to Transparency and High Quality Enumeration

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

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

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

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

The 2020 Census is the first to post NRFU workload completion rates, which is now available at the ACO level and may be seen at https://2020census.gov/en/response-rates/nrfu-completion.html. By "completion rate" or "completed" we are referring to the percent of housing units in the ACO that we have resolved as occupied with an interview (either resident or proxy), or confirmed as a vacant unit or deleted (as not a housing unit).

110. I have briefed staff for House and Senate leadership every Friday since April (except for August 7), and I have provided a transcribed briefing to Congress. We produce a massive amount of documents and other information to the Office of the Inspector General and the General Accounting Office every week, and these organizations interview Census Bureau staff on almost a daily basis.

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

I have read the foregoing and it is all true and correct.
DATED and SIGNED:

Albert E Fontenot Digitally signed by Albert E Fontenot
Date: 2020.09.11 21:00:52 -04'00'

Albert E. Fontenot, Jr.
Associate Director for Decennial Census Programs
United States Bureau of the Census

Exhibit A

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

James T Christy (CENSUS/LA FED) [redacted]@census.gov>
Sat 9/5/2020 11:59 PM
To: [redacted]@census.gov>

1 attachments (205 KB)
TRO ORDER 9-5-20.pdf;

FYI

James Christy
U.S. Census Bureau
LA [redacted] HQ [redacted] Cell [redacted]
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From: James T Christy (CENSUS/LA FED [redacted]@census.gov>
Sent: Saturday, September 5, 2020 11:57 PM
To: James T Christy (CENSUS/LA FED) [redacted]@census.gov>
Subject: Important Information related to Census Bureau's Compliance with today's Federal Court Order

Guidance for Census Bureau Field Employees

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

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

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

Enumeration will continue.

The Order is attached for reference.

Direct any questions to your regional management.

James Christy
U.S. Census Bureau
LA [redacted] HQ [redacted]
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DISTRIBUTION: All RDs, DRDs, ARCMs, Area Managers & ACOMs

Fw: Guidance for Field Managers

James T Christy (CENSUS/LA FED) [redacted]@census.gov>
Mon 9/7/2020 12:02 AM

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

2 attachments (130 KB)
Guidance for Field Managers related to Action Required following the 9-5 Court Order.pdf; Guidance for Field Managers related to Action Required following the 9-5 Court Order.docx;

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

James Christy
U.S. Census Bureau
LA[redacted] HQ [redacted] Cell [redacted]
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From: Albert E Fontenot (CENSUS/ADDC FED) [redacted]@census.gov>
Sent: Sunday, September 6, 2020 11:52 PM
To: James T Christy (CENSUS/LA FED)[redacted]@census.gov>
Subject: Fwd: Guidance for Field Managers

Jamey

Let me know when you send to the RDs.

Al

Albert E. Fontenot Jr.
Associate Director, Decennial Census Programs
United States Department of Commerce
Bureau of the Census
Office [redacted]
Office [redacted]
Cell [redacted]

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

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

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

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

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

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

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

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

From: Enrique Lamas (CENSUS/DEPDIR FED) [Enrique.Lamas@census.gov]
Sent: 9/14/2020 7:11:51 PM
To: Ron S Jarmin (CENSUS/DEPDIR FED) [Ron.S.Jarmin@census.gov]; Christa D Jones (CENSUS/DEPDIR FED) [Christa.D.Jones@census.gov]
Subject: Re: Likely topics to discuss with Secretary Ross through 12/31/2020

Let's talk at COO

Enrique Lamas
Senior Advisor
Director's Office
U.S. Census Bureau
Office: 301-763-3811

From: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>
Sent: Monday, September 14, 2020 2:29 PM
To: Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>
Subject: Likely topics to discuss with Secretary Ross through 12/31/2020

Following up on a phone call with Karen on Friday, I've summarized several key items that will likely be the subject of discussion with the Secretary, the current status and the Bureau's position on who owns related decisions. I'd like your thoughts, edits, additions, subtractions, etc. This can be fodder for COO as well. Will eventually be share with the KDK and the Dir.

(b) (5)

(b) (5)

[redacted]

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From: Christa D Jones (CENSUS/DEPDIR FED) [Christa.D.Jones@census.gov]
Sent: 9/14/2020 9:26:01 PM
To: Ron S Jarmin (CENSUS/DEPDIR FED) [Ron.S.Jarmin@census.gov]; Enrique Lamas (CENSUS/DEPDIR FED) [Enrique.Lamas@census.gov]
Subject: Re: DOC
Attachments: Topics to discuss with Secretary Ross through 12_31 cdj.docx

Here's my thoughts, but I forgot to use track changes. I added the first sentence and moved, then edited the Presidential Memorandum paragraph.

Christa D Jones, Chief of Staff
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From: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>
Sent: Monday, September 14, 2020 5:13 PM
To: Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>
Subject: DOC

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Topics to discuss with Secretary Ross through 12/31/2020

The Department is demonstrating an unusually, high degree of engagement in technical matters, which is unprecedented relative to the previous censuses.

1. Completion of NRFU by 9/30. If there are many states substantially below the target 99% completion rate, do we stay in the field past the 9/30 deadline? If we do, we won't be able to deliver the apportionment data to the Secretary and President by the 12/31 statutory deadline. The Census Bureau is currently engaged in extraordinary efforts to achieve the 99% target in every state by the end of September. However, this may not be achievable and a decision to end field work by schedule date or work completeness will need to be made. The Census Bureau views this as policy decision that political leadership should make.
2. Imputation. The Secretary and other political personnel have expressed interest in the Census Bureau's use of imputation in the 2020 Census. Interest was expressed in both item (filling in missing items in a self-response, adrec enumeration or NRFU record) and status and count imputation (resolving cases with no response). Status and count imputation impact the CUF (Census unedited file) that underlies the 12/31 apportionment products. Item imputation impacts the CEF (census edited file) that impacts the 4/1 PL-94-171 redistricting products. The Census Bureau views imputation methodologies as its responsibility as an independent statistical agency.
3. Post-collection processing. Due to the compressed schedule, political leadership has expressed interest in ways that processing can be accelerated to meeting statutory deadlines. The Census Bureau has found efficiencies that can generate a completed CUF in time to produce resident population and foreign affiliated overseas residents for each state to meet the apportionment deadline assuming no major processing glitches are encountered. The Census Bureau views post-collection procedures as its responsibility as an independent statistical agency.
4. Disclosure Avoidance. The Secretary and other political personnel have expressed interest in the methods the Census Bureau will be using to protect privacy and confidentiality as required by law for the 2020 Census. To summarize, two important decisions have already made by Census Bureau's DSEP (Data Stewardship Executive Policy) Committee: i) to adopt differential privacy has the statistical disclosure avoidance methodology for the 2020 Census and ii) to leave the resident population and federally affiliated overseas counts as invariants (i.e., published as enumerated). The DSEP will soon be meeting to decide the value of the privacy parameter – epsilon – for the PL 94-171 and other data products. If state level counts of unauthorized immigrants counted in the 2020 Census are to be released, the DSEP will also need to decide if they require disclosure protection. The adoption of differential privacy has been controversial across the data user community. Essentially, there's a direct tradeoff between privacy protection and detailed and accurate statistics. Where are on that continuum one lands is a choice. The only policy guidance on that choice is title 13, which calls for strict privacy protections. The Census Bureau views disclosure avoidance procedures and policies as its responsibility as an independent statistical agency. Moreover, these decisions are the purview of the DSEP and not of political leadership.
5. Production of the CEF and other downstream data products (e.g., PL 94-171, CVAP and other data products). The Secretary and other political personnel have expressed interest in the redistricting, the citizen voting age population and other data products constructed from the

2020 Census. Notably, the Census Bureau is using administrative records to produce improved (block level) CVAP data. The Census Bureau is still assessing whether it will be able to make adjustments under the compressed schedule to deliver the PL data by 4/1 as required by statute. The Census Bureau views the procedures and schedule of the release of these data products as its responsibility as an independent statistical agency.

Finally, with respect to the Presidential memo, we are also concerned by the level of direct engagement with the methodology. As we've reported throughout the past weeks, the Census Bureau's response to the 7/21 Presidential memo has been to begin developing a method to identify unauthorized residents in administrative data, some of which the Bureau obtained after EO 13880. These admin record identified unauthorized immigrants would then be matched to the 2020 Census to find those enumerated in the census. The number found in each state would be then transmitted to the Secretary and the President. This process lives downstream from the production of the CUF, the current schedule for the availability of these counts is 1/7. While the Bureau has ceased work on this due to court order and is awaiting legal and policy guidance on whether work can progress during legal proceedings, we view the development of the methodology as a technical activity and it has been our goal to deliver the most objective data possible given the constraints and the potential use of the information. In many respects, while the Presidential Memorandum may be a statement of the Administration's policy, the Census Bureau views the development of the methodology and processes as its responsibility as an independent statistical agency.

From: James Whitehorne (CENSUS/ADDC FED) [James.Whitehorne@census.gov]
Sent: 9/15/2020 1:32:18 PM
To: Ali Mohammad Ahmad (CENSUS/ADCOM FED) [ali.m.ahmad@census.gov]
CC: Kathleen M Styles (CENSUS/ADDC FED) [kathleen.m.styles@census.gov]
Subject: Presentation for NCSL this Friday
Attachments: 2020_09_18_NCSL_September_Update.pptx

Good morning Ali -
I am presenting to NCSL on Friday afternoon and Kathleen wanted me to share my presentation with you in case there is something in it that you feel needs to be cleared before I conduct the briefing. The first three slides are basic background on the 2020 Census and our progress tools. The editing and imputation slides are taken from the presentation I gave to the Poynter Institute when we did the event sponsored by Georgetown U. The redistricting and DAS slides are from previous presentations with an update on the latest demonstration product we are producing. The CVAP slides are a combination of the one I have given repeatedly and a brief high level one of the CVAP discussion that will be happening at CSAC 1/2 hour before my presentation. I will essentially be telling people who are interested to go view the CSAC recording when it gets posted.
Thanks
James

****

James Whitehorne, Chief
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The 2020 Census and The 2020 Census Redistricting Data Program

James Whitehorne
Chief, Census Redistricting and Voting Rights Data Office

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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

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.

- September 9 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

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Census 2020

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	98.9%
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: 9/13/2020
As of 9/12/2020, percentage of housing units:

State	Self-Responded	Enumerated in Nonresponse Followup (NRFU)	Enumerated
U.S. Total	66.8	28.5	97.3
Alabama	62.4	26.6	89.0
Alaska	53.5	46.1	99.6
Arizona	62.5	29.4	94.0
Arkansas	59.0	34.8	94.8
California	68.2	25.8	94.0
Colorado	69.0	22.3	91.3
Connecticut	69.7	26.4	96.2
Delaware	63.6	26.0	89.6
District of Columbia	62.3	27.1	89.4
Florida	62.5	24.2	86.7
Georgia	61.2	22.8	83.9
Hawaii	62.3	35.5	97.8
Idaho	68.9	30.3	99.2
Illinois	70.4	24.1	94.5
Indiana	68.6	27.3	96.0
Iowa	70.5	16.3	86.7
Kansas	68.1	27.7	95.8
Kentucky	67.5	21.5	89.0
Louisiana	58.9	25.1	84.1
Maine	67.6	29.2	96.8
Maryland	70.0	23.3	93.3
Massachusetts	68.2	25.0	93.9
Michigan	70.0	20.9	91.0
Minnesota	74.4	20.9	95.3
Mississippi	59.1	24.4	83.6
Missouri	65.1	26.0	94.0
Montana	65.1	24.0	89.0
Nebraska	71.1	21.5	92.6
Nevada	65.4	25.3	90.7
New Hampshire	66.1	21.2	90.3
New Jersey	69.1	25.3	94.4
New Mexico	66.8	33.6	100.4
New York	62.4	28.6	91.0
North Carolina	61.6	24.9	86.5
North Dakota	64.9	21.7	86.2
Ohio	69.8	23.7	93.5
Oklahoma	60.0	28.7	88.7
Oregon	68.4	27.8	96.2
Pennsylvania	66.5	24.8	83.3

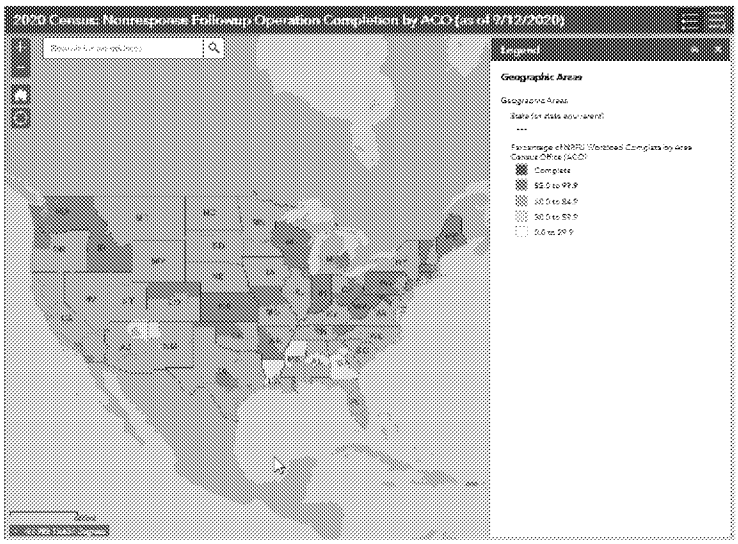
Note: Percentages may not sum due to rounding. A limited number of areas were part of the NRFU self-response beginning July 16, 2020, and could have higher completion rates due to more timely data fields. Percentages for the U.S. Total do not include housing units in Puerto Rico.

Source: U.S. Census Bureau

Shreyas Census 2020

2020 Census

Status – Tools for monitoring Census progress



2020 Census Nonresponse Followup Operation Completion by ACO

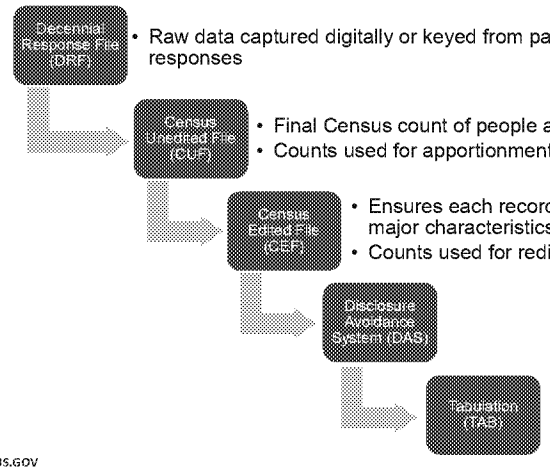
- https://2020census.gov/en/response-rates/nrfu-completion.html

Shape your future START HERE >

Census 2020

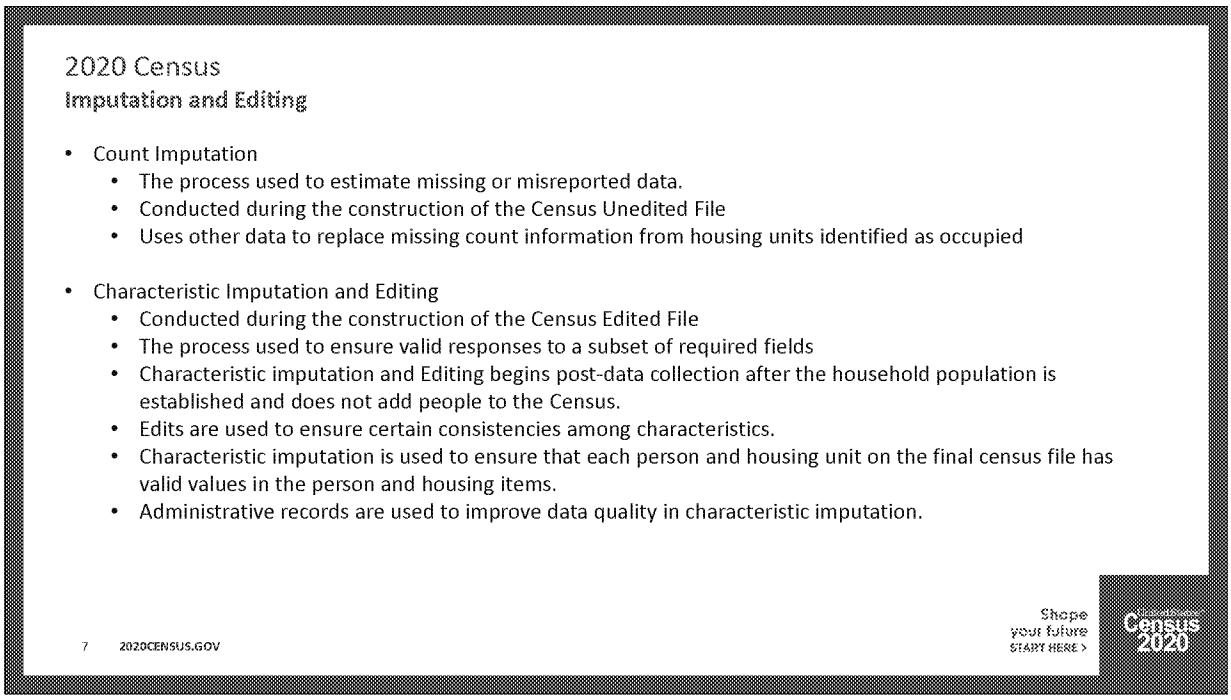
2020 Census

Generalized Flow Of Response Data



Shape your future START HERE >

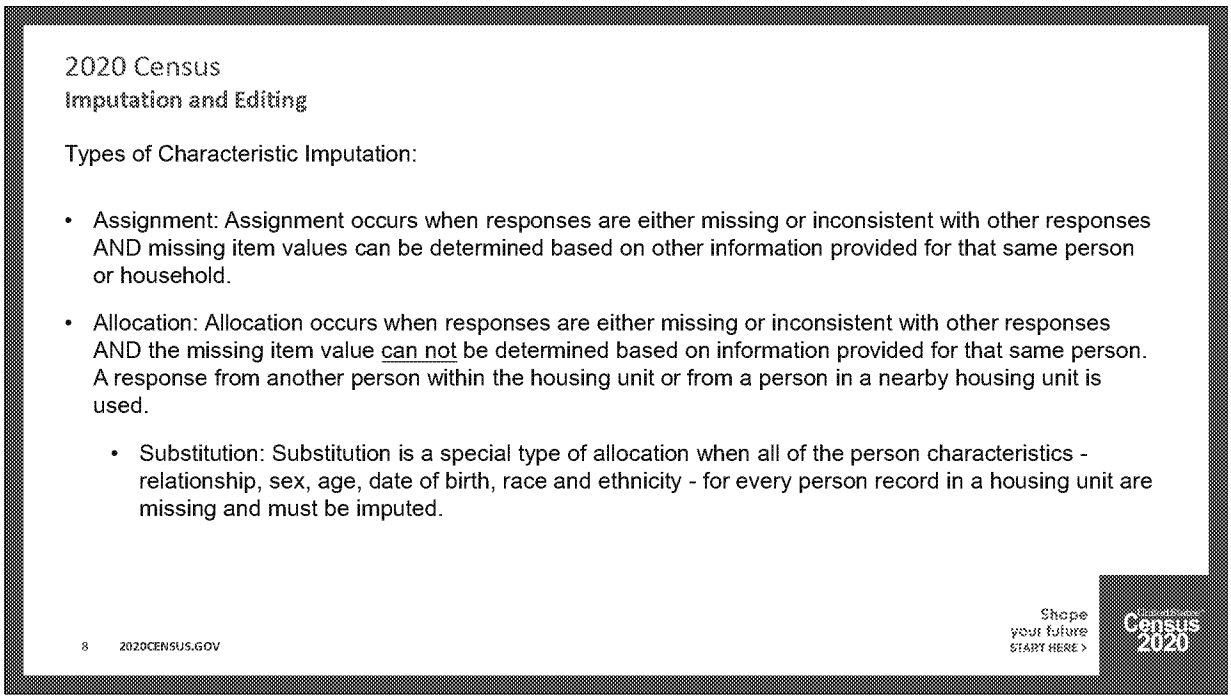
Census 2020



The next stage of the process revolves around the concepts of editing and imputation. There are essentially two types of these 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 next stage of the process which is the creation 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.
Its 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.

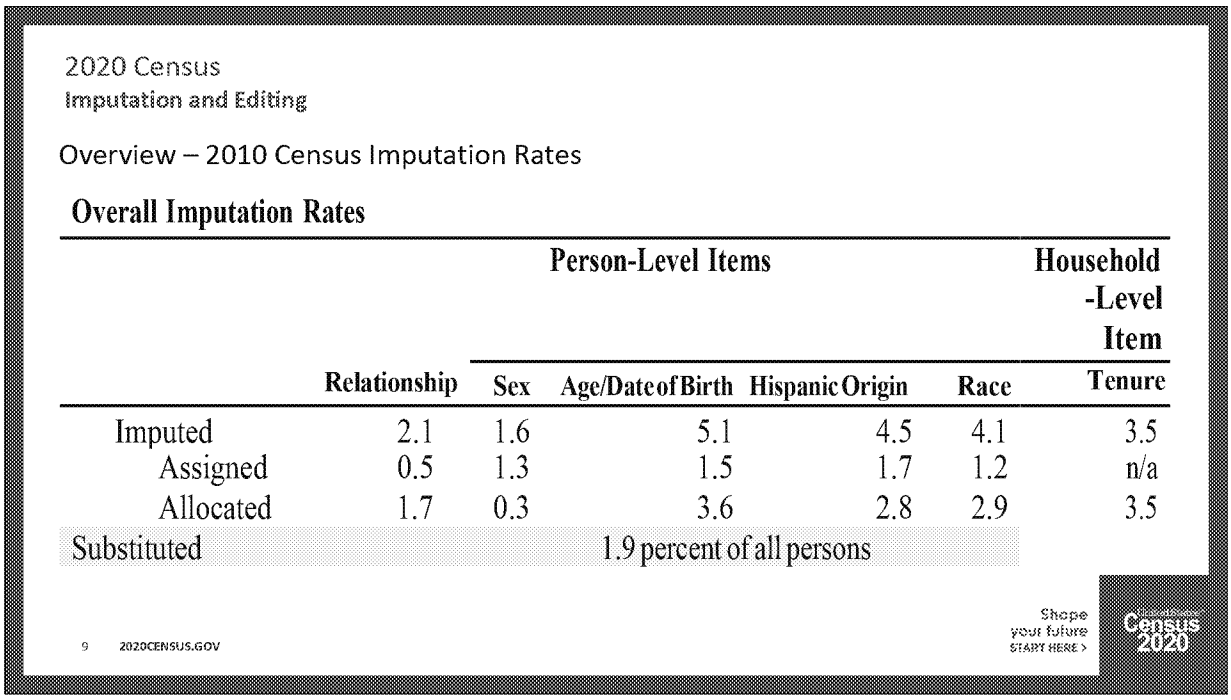


There are different types of characteristic imputation:

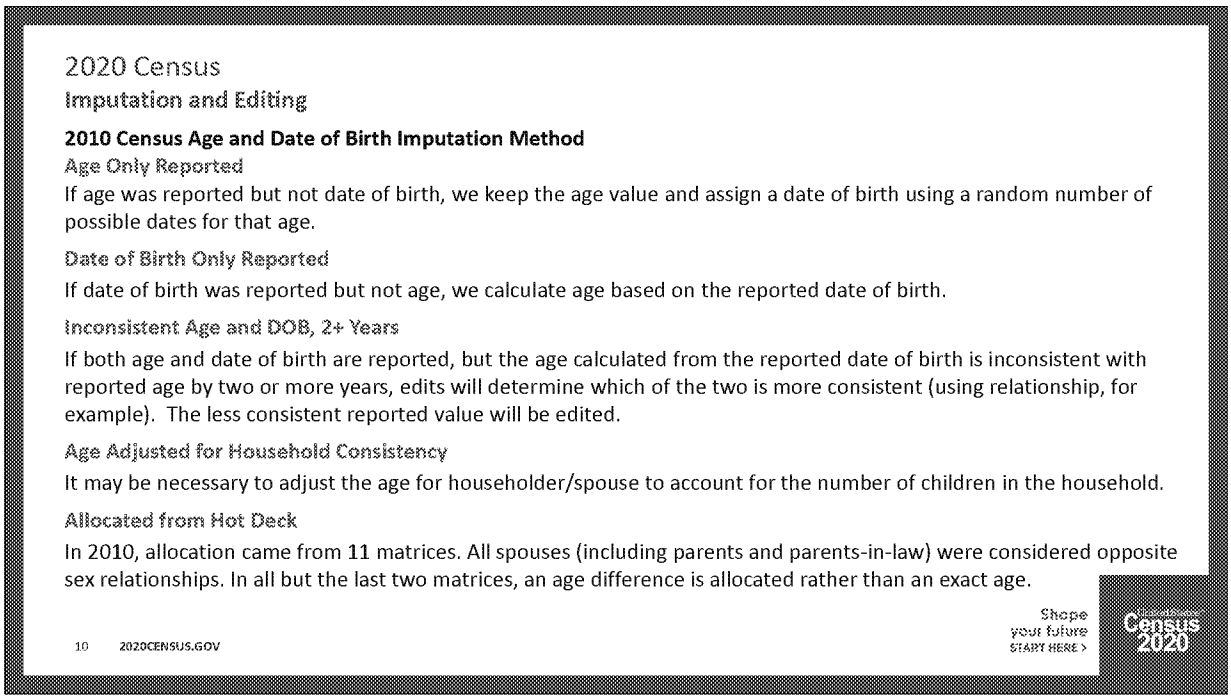
Assignment is when responses are missing or inconsistent with others data supplied for that person or household can be used for that missing or inconsistent response. The simplest of these is when either birthdate or age is missing. The one you do have can be used to calculate that information.

Allocation is when you have the same situation but you can not make a determination for the missing or inconsistent response based on that 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.



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.



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.

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	https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.html
Maps	https://www.census.gov/geographies/reference-maps.html
Block Assignment Files	https://www.census.gov/geographies/reference-files.html
Block to Block Relationship Files	https://www.census.gov/geographies/reference-files/time-series/geo/relationship-files.html

- 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

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

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

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 (underlying data created 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, 2019 – Release interim output showing improvements (underlying data created X/XX/XXXX)
  - 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 added for review and comparison
- TBD – a final PPMF is expected prior to publishing the official data

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 1st 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

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**

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
Phone: 1-301-763-4039
Web: www.census.gov/rdo

From: Enrique Lamas (CENSUS/DEPDIR FED) [Enrique.Lamas@census.gov]
Sent: 9/15/2020 6:13:16 PM
To: Ron S Jarmin (CENSUS/DEPDIR FED) [Ron.S.Jarmin@census.gov]; Christa D Jones (CENSUS/DEPDIR FED) [Christa.D.Jones@census.gov]; John Maron Abowd (CENSUS/ADRM FED) [john.maron.abowd@census.gov]; Victoria Velkoff (CENSUS/ADDP FED) [Victoria.A.Velkoff@census.gov]
Subject: Fw: Question on the effect of SDNY's Court Order on Census Work
Attachments: (b) (5) [redacted]

FYI

Enrique Lamas
Senior Advisor
Director's Office
U.S. Census Bureau
Office: 301-763-3811

(b) (5) [redacted]


(b) (5)

From: Steven Dillingham (CENSUS/DEPDIR FED) [steven.dillingham@census.gov]
Sent: 9/15/2020 9:37:59 PM
Subject: Fw: Letter to Dir. Dillingham re. apportionment
Attachments: FINAL Letter to Census Bureau Dir. Dillingham re. apportionment, 9-10-20.pdf

---

From: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Sent: Thursday, September 10, 2020 2:41 PM
To: Steven Dillingham (CENSUS/DEPDIR FED) <steven.dillingham@census.gov>; Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>; Steven K Smith (CENSUS/DEPDIR FED) <steven.k.smith@census.gov>; Nathaniel Cogley (CENSUS/DEPDIR FED) <nathaniel.cogley@census.gov>; Benjamin A Overholt (CENSUS/DEPDIR FED) <benjamin.a.overholt@census.gov>; Kevin Quinley (CENSUS/ADCOM FED) <kevin.quinley@census.gov>; Adam Michael Korzeniewski (CENSUS/DEPDIR FED) <adam.m.korzeniewski@census.gov>; Michael John Sprung (CENSUS/DEPDIR FED) <michael.j.sprung@census.gov>; Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; Kathleen M Styles (CENSUS/ADDC FED) <kathleen.m.styles@census.gov>
Subject: Fw: Letter to Dir. Dillingham re. apportionment

Here is a new letter organized by Schatz.

From: Mark G Dorsey (CENSUS/ADCOM FED) <mark.g.dorsey@census.gov>
Sent: Thursday, September 10, 2020 2:02 PM
To: BOC Correspondence Quality Assurance (CENSUS) <boc.correspondence.quality.assurance@census.gov>
Cc: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>; Alan Lang (CENSUS/OCIA FED) <alan.lang@census.gov>; Bina K Saafi (CENSUS/OCIA FED) <bina.k.saafi@census.gov>; Stuart P Durst Jr (CENSUS/OCIA FED) <Stuart.P.Durst.Jr@census.gov>
Subject: Fw: Letter to Dir. Dillingham re. apportionment

Please control.

From: Ito, Trelaine (Schatz) <Trelaine_Ito@schatz.senate.gov>
Sent: Thursday, September 10, 2020 1:55 PM
To: Mark G Dorsey (CENSUS/ADCOM FED) <mark.g.dorsey@census.gov>
Subject: Letter to Dir. Dillingham re. apportionment

Hi Mark,

Attached is a letter from Senator Schatz and 19 of his colleagues to Director Dillingham with specific questions about apportionment following the 2020 Census. I will note the request for a response by Sept. 24.

Please let me know if you have any questions.

Thank you,
Trelaine

Trelaine Ito, MS
Legislative Assistant, Office of U.S. Senator Brian Schatz (D-HI)

722 Hart Senate Office Building
Tel: (202) 224-3934, Fax: (202) 228-1153
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Follow Senator Schatz on Twitter & Facebook


United States Senate

September 10, 2020

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

Dear Director Dillingham:

We write to raise concerns about the data and methodologies that the Census Bureau will use to develop apportionment counts for each of the states. With the president's unconstitutional memorandum excluding undocumented people from apportionment, coupled with your agency's decision to end the 2020 Census count one month early, we also raise serious concerns about a fair and accurate distribution of congressional representation—a fundamental and crucial aspect of our constitutional democracy.[i]

From the time of our founding, the Constitution established a democracy premised on the idea that all persons—no matter where they are from, regardless of whether they can vote—deserve representation in our government. To ensure representation for all, the Constitution, through both Article I, Section 2 and the Fourteenth Amendment, explicitly requires the federal government to accurately conduct an "actual Enumeration" of the people.[ii] The Fourteenth Amendment places a clear duty on the federal government to count the "whole number of persons in each State."[iii] In other words, the federal government must count *all people* living in the United States, whether they are citizens or non-citizens, whether they were born in the United States or in a distant part of the world, whether they are living here in accordance with our laws or not.

Furthermore, the framers of the Fourteenth Amendment considered immigrants, undocumented or otherwise, as *people* entitled to equal representation, insisting that the "whole immigrant population should be numbered with the people and counted as part of them."[iv] The Supreme Court has affirmed this constitutional understanding, emphasizing that "the Framers chose to use population . . . as the basis for representation,"[v] and that "representatives serve all residents, not just those eligible or registered to vote."[vi]

Following the Supreme Court's ruling to block this administration's attempt to add a citizenship question to the 2020 Census, the president issued an executive order directing Commerce Secretary Wilbur Ross to collect citizenship information from other governmental sources.[vii] Per this directive, the Census Bureau has amassed a collection of administrative records from various sources—some from existing agreements with federal, state, and local agencies, and others from newly established partnerships.[viii]

However, the collection of citizenship information is not uniform across the country. This raises the prospect that the Census Bureau will have incomplete information as to the citizenship status

of all persons residing in the country. For example, some federal agencies have agreed to share citizenship information with the Census Bureau.[ix] However, a person's immigration status can change over time. The administrative data on a person is only as good as the moment when the agency interacts with that person.[x] For example, a person who entered the country without documentation may have received Deferred Action for Childhood Arrivals protection, or may have started a path to citizenship by serving in the military, or may have been granted asylum protection. Depending on when a person interacts with an agency, their status may be very different from what it is currently.

At the same time, not every state is sharing citizenship data. States such as Iowa, Nebraska, South Carolina and South Dakota agreed to share driver's license and state identification card information.[xi] But states like Pennsylvania, New Hampshire, and Illinois denied the Census Bureau's request to share information.[xii] Furthermore, state administrative data on citizenship can be unreliable and inaccurate.[xiii] As a result, your agency will have arbitrarily collected information based on state officials who decide to share or not information about their citizens, some of which will contain citizenship information, and some will not.

This arbitrary collection of citizenship information implicates the president's unconstitutional attempt to exclude undocumented people from fair representation in the Congress. Apportionment is a geographic division of congressional seats. If only certain states are sharing citizenship information—and the data shared is itself unreliable or inaccurate—and federal data sets do not capture all persons in the country, then the data available to the Census Bureau for apportionment tabulation will be incomplete and run afoul of the Constitution. The resulting reapportionment report submitted to the U.S. House of Representatives by the president will be an inaccurate, arbitrary, and unconstitutional distribution of congressional seats across the country, based on states that either had or did not have citizenship information for selected portions of their population.[xiv] An arbitrary collection of data will produce a bad output based on that data—garbage in, garbage out.

In addition, the *Census Act* prohibits the Census Bureau from using sampling methods to determine apportionment. In 1999, the U.S. Supreme Court rejected the Census Bureau's proposed uses of statistical sampling to calculate the population for purposes of congressional apportionment following the 2000 decennial census.[xv] A similar effort by the agency to use statistical sampling to determine the numbers of undocumented people in each state should be rejected by the courts.

These problems are further exacerbated by the agency's decision to end self-response and non-response follow up operations a month early—from October 31 to September 30.[xvi] The shortened schedule risks the accuracy of the Census Bureau's data products, including the apportionment tabulation, and raises risks that errors will neither be found nor fixed. A federal judge recently issued a temporary restraining order to stop the Census Bureau from winding down or altering 2020 Census field operations until a September 17 hearing.[xvii] Furthermore, the administration's refusal to include statutory deadline extensions in their negotiations with congressional leaders on coronavirus relief legislation, raise questions about their commitment to addressing these concerns.[xviii]

To address some of these concerns, we ask that you provide answers to the following questions:

- In implementing Executive Order 13880, can the Census Bureau collect administrative record data uniformly and universally across the country? If so, how?
- What are the models and methodologies that the Census Bureau is currently developing and studying to tabulate apportionment? Does the agency have enough time to study, test, and implement these apportionment models and methodologies prior to the December 31, 2020 deadline? How will these models and methodologies comply with the *Census Act*'s prohibition on the use of statistical sampling for apportionment purposes?
- An agency document on 2020 Census operations and data processing notes that "A compressed review period creates risk for serious errors not being discovered in the data – thereby significantly decreasing data quality."[xix] The document also notes that "serious errors discovered in the data may not be fixed — due to lack of time to research and understand the root cause or to re-run and re-review one or multiple state files." How will the Census Bureau ensure that its apportionment tabulation does not contain significant errors?
- As the Census Bureau implements the president's July 21, 2020, memorandum, how will you ensure that the apportionment tabulation is developed in a way that is not arbitrary when the agency uses administrative data collected through agreements with other federal, state, and local agencies that is not uniformly shared and may contain errors and inaccuracies?
- To what degree of confidence can the Census Bureau assure the public that its apportionment tabulation is not arbitrary, does not contain significant errors, and is a fair and representative distribution of congressional seats? What is the basis for the agency's confidence, considering many of the quality assurance processes that will be side-stepped or completed hastily under the condensed timeframe?

These questions raise serious concerns about one of the most fundamental constitutional activities: the apportionment of congressional representation. With the end of the 2020 Census and the apportionment deadline fast approaching, we request your written response by September 24, 2020. Thank you for your attention to our request.

Sincerely,

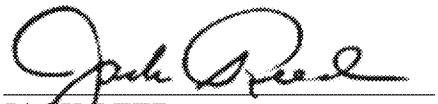
BRIAN SCHATZ
United States Senator

PATRICK LEAHY
United States Senator

RON WYDEN
United States Senator

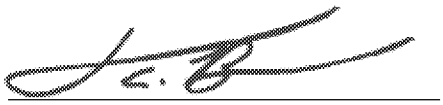
KIRSTEN GILLIBRAND
United States Senator

SHERROD BROWN
United States Senator

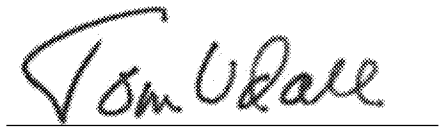


JACK REED
United States Senator

RICHARD BLUMENTHAL
United States Senator



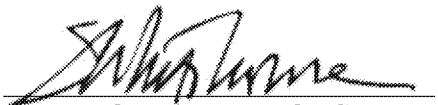
CORY A. BOOKER
United States Senator



TOM UDALL
United States Senator

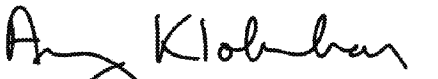
ELIZABETH WARREN
United States Senator

JEANNE SHAHEEN
United States Senator



SHELDON WHITEHOUSE
United States Senator

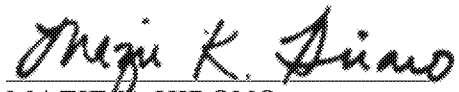
EDWARD J. MARKEY
United States Senator



AMY KLOBUCHAR
United States Senator

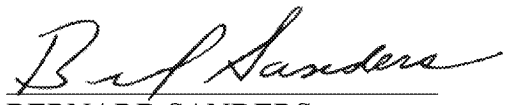
JEFFREY A. MERKLEY
United States Senator

/s/ Martin Heinrich
MARTIN HEINRICH
United States Senator



MAZIE K. HIRONO
United States Senator

TIM KAINE
United States Senator



BERNARD SANDERS
United States Senator

JACKY ROSEN
United States Senator

cc: The Honorable Wilbur L. Ross, Jr.
Secretary
U.S. Department of Commerce

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[i] "Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census," Memorandum, 85 FR 44679, 21 July 2020, https://www.federalregister.gov/documents/2020/07/23/2020-16216/excluding-illegal-aliens-from-the-apportionment-base-following-the-2020-census.

[ii] U.S. Const. art. I, § 2, cl. 3.

[iii] *Id*. Amend. XIV, § 2.

[iv] Cong. Globe, 39th Cong. 1st 432 (1866).

[v] *Utah v. Evans*, 536 U.S. 452, 478 (2002).

[vi] *Evenwel v. Abbott*, 136 S. Ct. 1120, 1132 (2016).

[vii] "Collecting Information About Citizenship Status in Connection With the Decennial Census," EO 13880, 11 July 2019, 84 FR 33821, https://www.federalregister.gov/documents/2019/07/16/2019-15222/collecting-information-about-citizenship-status-in-connection-with-the-decennial-census.

[viii] Hansi Lo Wang, "To Figure Out Who's A Citizen, Trump Administration Is Using These Records," *NPR*, 20 May 2020, https://www.npr.org/2020/05/20/855062093/to-figure-out-whos-a-citizen-trump-administration-is-using-these-records.

[ix] Hansi Lo Wang, "To Produce Citizenship Data, Homeland Security To Share Records With Census," *NPR*, 4 Jan. 2020, https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.

[x] Tye Rush, Suzanne Almeida, Keshia Morris, "Whitewashing Representation: How using citizenship data to gerrymander will undermine our democracy," Common Cause Education Fund, 2019, https://www.commoncause.org/wp-content/uploads/2019/10/WhitewashingRepresentation_WEBFINAL.pdf.

[xi] Hansi Lo Wang, "Four States Are Sharing Driver's License Info To Help Find Out Who's A Citizen," *NPR*, 14 July 2020, https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen.

[xii] Ibid.

[xiii] ACLU, "ACLU 2020 Census State Administrative Records Comment," 15 Nov. 2019, https://www.aclu.org/letter/aclu-2020-census-state-administrative-records-comment.

[xiv] 13 U.S.C. § 141 (b): The tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.

[xv] *Department of Commerce v. United States House of Representatives*, 525 U.S. 316, (1999).

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

[xvii] Mike Schneider, "Census Bureau stops layoffs for door knockers after order," *AP News*, 8 Sept. 2020, https://apnews.com/3605213c469e941ccd630b7b618d11e7.

[xviii] "In New Letter, Schumer And Pelosi Say Trump Administration's Efforts To Rush Census Count Despite Expert Warnings Are Politically Motivated And Threaten Census Accuracy, Call For Full Disclosure Of Decision-Making Process," Senate Democrats, 4 Sept. 2020, https://www.democrats.senate.gov/newsroom/press-releases/in-new-letter-schumer-and-pelosi-say-trump-administrations-efforts-to-rush-census-count-despite-expert-warnings-are-politically-motivated-and-threaten-census-accuracy-call-for-full-disclosure-of-decision-making-process.

[xix] "Operational and Processing Options to Meet Statutory Date of December 31, 2020 for Apportionment," U.S. Census Bureau, 3 Aug. 2020, https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Census%20Slide%20Deck%20Aug%203%2020.pdf.

From: Ron S Jarmin (CENSUS/DEPDIR FED) [Ron.S.Jarmin@census.gov]
Sent: 9/16/2020 1:40:51 PM
To: Enrique Lamas (CENSUS/DEPDIR FED) [Enrique.Lamas@census.gov]; Christa D Jones (CENSUS/DEPDIR FED) [Christa.D.Jones@census.gov]
Subject: Fw: Follow-up from Friday call

(b) (5) [redacted]

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From: Ron S Jarmin (CENSUS/DEPDIR FED)
Sent: Tuesday, September 15, 2020 2:43 PM
To: Karen Kelley <kkelley@doc.gov>
Subject: Follow-up from Friday call

Karen,

Here's my stab at a list of topics to discuss with Secretary Ross through the end of the year. You should feel free to add any I may have missed. Respectfully, I've attempted to be transparent and frank about how the professional staff of the Census Bureau views these issues.

(b) (5) [redacted]

(b) (5)

[redacted]

Thanks

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From: Misty L Heggeness (CENSUS/ADRM FED) [misty.l.heggeness@census.gov]
Sent: 9/16/2020 9:56:11 PM
To: John Maron Abowd (CENSUS/ADRM FED) [john.maron.abowd@census.gov]; Kimberly L Leonard (CENSUS/PPSI FED) [kimberly.l.leonard@census.gov]
CC: William R Bell (CENSUS/ADRM FED) [William.R.Bell@census.gov]; Shana Banks (CENSUS/PPSI FED) [shana.j.banks@census.gov]; Helen Y Abraham (CENSUS/PPSI FED) [helen.y.abraham@census.gov]
Subject: Re: CVAP is cleared to go
Attachments: 20200907_csac2020presentation_wrb.pptx

Slides attached - without disclaimer.

Misty L. Heggeness, PhD
Special Assistant to the Associate Director and Chief Scientist
Senior Advisor for Evaluations and Experiments
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From: John Maron Abowd (CENSUS/ADRM FED) <john.maron.abowd@census.gov>
Sent: Wednesday, September 16, 2020 5:18 PM
To: Kimberly L Leonard (CENSUS/PPSI FED) <kimberly.l.leonard@census.gov>
Cc: William R Bell (CENSUS/ADRM FED) <William.R.Bell@census.gov>; Shana Banks (CENSUS/PPSI FED) <shana.j.banks@census.gov>; Helen Y Abraham (CENSUS/PPSI FED) <helen.y.abraham@census.gov>; Misty L Heggeness (CENSUS/ADRM FED) <misty.l.heggeness@census.gov>
Subject: Re: CVAP is cleared to go

+Misty who can get the deck for you. Please add the approved disclaimer. We do not have a copy of the final language. Thanks,

John M. Abowd, PhD, Associate Director and Chief Scientist
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On Sep 16, 2020, at 5:00 PM, Kimberly L Leonard (CENSUS/PPSI FED) <kimberly.l.leonard@census.gov> wrote:

Bill,

I just received confirmation that the CVAP slides have been cleared. Please send me the slide deck as soon as possible. If you do not have the disclaimer statement on the title page, we will add it.

Thanks in advance!

Kim Leonard
External Stakeholder Program Manager
Office of Program, Performance and Stakeholder Integration (PPSI)
301-763-7281 (office)
(b)(6) *(mobile)*

Estimating Citizen Voting Age Population: An Experimental Product

William Bell

Senior Mathematical Statistician for Small Area Estimation

U.S. Census Bureau

September 18, 2020

This presentation was developed for the September 2020 CSAC meeting. It presents ongoing research to inform interested parties and to encourage discussion. Views expressed are those of the presenter, not those of the United States Census Bureau. This work is a collaborative effort, and would not be possible without major contributions from members of the CVAP Internal Expert Panel, the CVAP Technical Working Group, and the CVAP Implementation Team. Data presented were approved for dissemination by the Census Bureau Disclosure Review Board (CBDRB-FY20-CED006-0031). ~~Results shown here are pre-decisional and still under review.~~

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Census 2020

CVAP Teams

2020 Census Methods Internal Expert Panel

John M. Abowd (chair), William Bell, Michael Berning, J. David Brown, John L. Eltinge, Patrick J. Cantwell, Misty L. Heggeness (coordinator), Howard R. Hogan (until retirement), Jenny Hunter-Childs, Christa Jones (deputy chair), V. Thomas (Tom) Mule, Roberto Ramirez, Joseph Schafer, Victoria Velkoff

Citizen Voting Age Population (CVAP) Technical Working Group

William Bell, J. David Brown (lead), Stephanie (Jamie) Busick, Misty L. Heggeness, Ryan Janicki, Andrew Keller, Darcy Morris, V. Thomas (Tom) Mule, Joseph Schafer, Matthew Spence, Lawrence Warren, Moises Yi

Citizen Voting Age Population (CVAP) Implementation Team

John M. Abowd, Michael Berning, J. David Brown, Stephanie (Jamie) Busick, Michael Clark, Jaya Damineni, Karen Deaver, Michael Hawes, Liza Hill, Cynthia Davis Hollingsworth, Jane Ingold, Andrew Keller, V. Thomas (Tom) Mule, Danielle Ringstrom, Teresa Sabol, David Sheppard, Damon Smith, Steven Smith, Matthew Spence, Thomas Thornton, James Treat (chair), Epaphrodite Uwimana, James Whitehorne

Outline of Presentation

I. Background on CVAP, data sources, and record linkage

II. Summary of main points of the presentation

III. Results related to fitness for use of the data sources

IV. Results for estimation of citizens – testing done using the 2010 Census Edited File as the frame, combining it with admin and survey data sources

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

Citizen Voting Age Population (CVAP) Program

- A special tabulation of the population of U.S. citizens living in housing units and group quarters by voting age (18+), race, and ethnicity, down to census block groups, published by the Redistricting and Voting Rights Data Office, U.S. Census Bureau (RDO@CENSUS.GOV).
- Historically used for research, evaluation, and enforcement of the *Voting Rights Act*, including estimates required by Section 203 (identification of jurisdictions required to provide language support for participation in the electoral process for citizens with limited English capabilities).
- Original CVAP estimates were produced from the 2000 Census long form.
- With elimination of the long form in 2010, for the last decade CVAP has been based on American Community Survey (ACS) five-year estimates, updated annually.
- The post-2020 Census CVAP Special Tabulation estimates will be produced for Census tabulation blocks using 2020 Census and administrative records data, and possibly survey data sources.

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

Race/ethnicity groups for the 2020 CVAP

Not Hispanic or Latino

1. American Indian or Alaskan Native (AIAN) alone
2. **Asian alone**
3. **Black or African American alone**
4. Native Hawaiian or Other Pacific Islander alone
5. **White alone**
6. Some Other Race alone
7. AIAN and White
8. Asian and White
9. Black or African American and White
10. AIAN and Black or African American
11. Remainder of two or more race responses
12. **Hispanic or Latino**

Results here focus on the four largest race/ethnicity groups, which are in bold.

All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

Data sources available for CVAP

- 2020 Census
  - Census Unedited File (CUF): used in record linkage
  - Census Edited File (CEF): serves as frame for estimation of citizens
- SSA Numident
  - 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) – used to assign Protected Identification Keys (PIKs) for record linkage
  - Information on nativity (country of birth), citizenship and noncitizen legal status
  - Covers large share of population – Nearly 90% of persons in the 2010 Census were successfully found in Numident (Rastogi and O'Hara, 2012)

SSA = Social Security Administration. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

Additional Administrative Sources of Citizenship Data

- Department of State Passport Data (all U.S. passports, citizens)
- USCIS naturalizations (citizens) – all persons naturalized since 2001
  - Exception: children automatically naturalized because their parents naturalized when child did not also get a naturalization certificate
- USCIS lawful permanent residents – green card holders (noncitizens)
- ITINs – individual taxpayer identification numbers (noncitizens)

Very limited additional coverage found from the following sources:

- ADIS – Customs and Border Protection Arrivals and Departures Information System
- SEVIS – Immigration and Customs Enforcement (ICE) Office of Student and Exchange Visitor Information System
- WRAPS – State Dept. Worldwide Refugee Admissions Processing System
- Federal law enforcement records (U.S. Marshals Service, Bureau of Prisons)
- SNAP and TANF data from some states
- Driver's license files from Nebraska and South Dakota

USCIS = U.S. Customs and Immigration Service. ITINs refers to personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers, which is public information. SNAP = Supplemental Nutrition Assistance Program. TANF = Temporary Assistance to Needy Families. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

Survey Data Sources

- ACS (American Community Survey)
- CPS (Current Population Survey)
- AHS (American Housing Survey)
- SIPP (Survey of Income and Program Participation)

 All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

Record Linkage

- 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
- EPIKs: Unduplicated 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, and other data sources, 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).

Record Linkage (continued)

- EPIK linkages provide citizenship information for just 0.11% of the 2018 ACS estimated population, including both primary and secondary source linkages.
- Linkage process assigns separate quality score for each link attempt (combination of linkage variables)
  - SSN verification most reliable
  - Matching including address is more reliable than name and date of birth matching without address
- Create a single quality indicator (probability of correct linkage) from linked records using information on the link attempts and the attempt's quality score. See slides #44-45.
  - Exclude links with Pr(link correct) < .99 from estimation process to minimize linkage error.

Numident = Social Security Administration Numerical Identification file. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

Notes on quality of citizenship data records

- Many administrative sources require documentation of citizenship. We regard these data as highly reliable.
  - Ex. SSA Numident, passport data, USCIS naturalizations
- Data that is not current and indicates a noncitizen can be incorrect since the person may have since naturalized.
  - Currency is not of much concern for data indicating citizens
- Survey data on citizenship is subject to various errors:
  - Incorrect status reported (more frequent for true noncitizens)
  - Out-of-date reports of noncitizen status
  - Imputations for nonresponse to citizenship question on survey
- Record linkage errors can lead to errors in citizenship status for any data source.
  - Apply record linkage quality threshold to minimize linkage errors

SSA Numident = Social Security Administration Numerical Identification file. USCIS = U.S. Customs and Immigration Service. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).

Summary of main points of the presentation

1. Combining the primary administrative data sources provides reliable data on citizenship for a large percentage of the population (91% in tests using 2018 ACS data or 2010 Census data)
   - Administrative sources used included SSA Numident, State Dept. passport data, USCIS lawful permanent residents and naturalizations, ITINs
   - Additional data sources beyond these provide very limited additional coverage
   - Prediction via imputation or modeling is needed for the cases not assigned citizenship status
2. Four approaches investigated for estimation of citizens:
   - Business Rules (BR) plus Hot Deck imputation from BR cases for the Census NBR (non-business rule) cases
     - Business Rules assign citizenship status to Census records based on the citizenship data sources linked to each record (assignments made for 91% of the records in the testing done, leaving 9% for imputation)
   - Business Rules plus Logistic Regression fitted to BR cases, applied to Census NBR cases
   - Business Rules plus Logistic Regression fitted to ACS NBR cases, applied to Census NBR cases
   - Latent Class model using multiple citizenship indicators (including Census BR and NBR cases, ACS data, …)

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 a list of the additional data sources. All original data presented in this presentation have passed Census Bureau Disclosure Review Board approval (CBDRB-FY20-CED006-0031).