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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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 14
 15 **STATE OF CALIFORNIA, BY AND
 16 THROUGH ATTORNEY GENERAL XAVIER
 17 BECERRA; COUNTY OF LOS ANGELES;
 18 CITY OF LOS ANGELES; CITY OF
 19 FREMONT; CITY OF LONG BEACH;
 20 CITY OF OAKLAND; CITY OF
 21 STOCKTON,**

Plaintiffs,

22 v.

23 **WILBUR L. ROSS, JR., IN HIS OFFICIAL
 24 CAPACITY AS SECRETARY OF THE U.S.
 25 DEPARTMENT OF COMMERCE; U.S.
 26 DEPARTMENT OF COMMERCE; RON
 27 JARMIN, IN HIS OFFICIAL CAPACITY AS
 28 ACTING DIRECTOR OF THE U.S. CENSUS
 BUREAU; U.S. CENSUS BUREAU; DOES 1-
 100,**

Defendants.

Case No. 3:18-cv-01865

**FIRST AMENDED COMPLAINT FOR
 DECLARATORY AND INJUNCTIVE
 RELIEF**

(Second Cause of Action – Administrative
 Procedure Act Case)

Dept: 3
 Judge: The Honorable Richard G.
 Seeborg
 Trial Date: None set
 Action Filed: 3/26/2018

INTRODUCTION

1
2 1. The United States Constitution requires that all persons in each state be counted every
3 ten years. U.S. Const. art. I, § 2, cl. 3, and amend. XIV, § 2. The Constitution mandates the
4 “actual Enumeration” of the population for the purpose of apportioning congressional
5 representatives among the states. U.S. Const. art. I, § 2, cl. 3. For this foundational step in our
6 country’s democratic process, the Constitution recognizes no exception based on citizenship
7 status. It is long settled that *all* persons residing in the United States—citizens and non-citizens
8 alike—must be counted to fulfill the Constitution’s “actual Enumeration” mandate. *Id.*; *Fed’n for*
9 *Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C. 1980).

10 2. The U.S. Census Bureau (Bureau), a division of the U.S. Department of Commerce,
11 will conduct the next census, also known as the “decennial census,” in 2020. The census surveys
12 the number of persons in each household and, in the process, gathers certain demographic
13 information about those persons. But not since 1950 has the decennial census asked whether each
14 respondent is a citizen of the United States. Consistent with the modern practice, when in March
15 2017, as required by statute, the Bureau submitted to Congress a report of the proposed subjects
16 planned for the 2020 Census, none related to citizenship or immigration status.

17 3. In a December 12, 2017 letter, late in the census planning process and months after
18 the statutory deadline for reporting proposed subjects, the U.S. Department of Justice requested
19 that the Bureau include a citizenship question on the 2020 Census. While the letter suggested that
20 adding a citizenship question would assist the Department of Justice in enforcing Section 2 of the
21 Voting Rights Act, it did not address whether or how a citizenship question would facilitate the
22 Bureau’s constitutional duty to capture the “actual Enumeration” of the U.S. population. Nor did
23 the letter consider whether adding a citizenship question would serve the Voting Rights Act’s
24 purpose of ensuring fair representation for all communities, ignoring substantial evidence—and
25 the Bureau’s own past admissions—that fewer people would respond to the 2020 Census if it
26 included a citizenship question.

27 4. On March 26, 2018, the Department of Commerce, setting aside decades of practice,
28 announced that the final list of census questions that it will submit to Congress will include a

1 question asking the citizenship status of every person in every household in the United States.
2 The Department of Commerce concedes that it “is not able to determine definitively how
3 inclusion of a citizenship question on the decennial census will impact responsiveness” to the
4 2020 Census. *See* Ex. 1, p. 7 [Letter of Wilbur Ross to Karen Dunn Kelley, dated Mar. 26, 2018].

5 5. Including the citizenship question on the 2020 Census will directly impede the
6 Bureau from procuring the “actual Enumeration” of the U.S. population. Numerous studies—
7 including those conducted by the Bureau—point to the same conclusion: asking about citizenship
8 will repress responses from non-citizens and their citizen relatives. At least four former Bureau
9 directors share the view that inquiring about citizenship status on the census “would likely
10 exacerbate privacy concerns and lead to inaccurate responses from non-citizens worried about a
11 government record of their immigration status.” Brief of Former Directors of the U.S. Census
12 Bureau as Amici Curiae in Support of Appellees at 23-26, *Evenwel v. Abbott*, 136 S.Ct. 1120
13 (2016) (No. 14-940), 2015 WL 5675832.

14 6. In particular, the State of California and its counties, cities, and residents stand to lose
15 if the citizenship question is included on the 2020 Census. According to 2016 figures from the
16 Bureau’s American Community Survey (ACS), California has more foreign-born residents (over
17 10 million) and non-citizens (over 5 million) than any other state.¹ And a recent study from the
18 University of Southern California’s Center for the Study of Immigrant Integration found that
19 California has the highest number of U.S.-born citizens who live with at least one undocumented
20 family member.² Undercounting the sizeable number of Californian non-citizens and their citizen
21

22
23 ¹ *Selected Characteristics of the Native and Foreign-Born Population – 2012-2016*
24 *American Community Survey 5-Year Estimates*, U.S. Census Bureau,
25 <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last
26 visited Mar. 26, 2018); *Nativity and Citizenship Status in the United States—Universe: Total*
27 *Population in the United States – 2012-2016 American Community Survey 5-Year Estimates*, U.S.
28 Census Bureau,
https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_B05001&prodType=table (last visited Mar. 26, 2018).

² *Keeping Families Together*, Silva Mathema, University of Southern California’s Center
for the Study of Immigrant Integration and Center for American Progress (Mar. 16, 2017),
<https://cdn.americanprogress.org/content/uploads/2017/03/15112450/KeepFamiliesTogether-brief.pdf> (last visited Mar. 26, 2018).

1 relatives will imperil the State’s fair share of congressional seats and Electoral College electors
2 and will cost Plaintiffs billions of dollars in federal funding over the next decade.

3 7. Plaintiffs State of California, by and through Attorney General Xavier Becerra,
4 County of Los Angeles, City of Los Angeles, City of Fremont, City of Long Beach, City of
5 Oakland, and City of Stockton seek a declaration that including the citizenship question on the
6 2020 Census violates the Constitution’s “actual Enumeration” mandate and the Administrative
7 Procedure Act’s (APA) prohibition against “arbitrary and capricious” agency action. Further, to
8 avoid irreparable harm, Plaintiffs seek an injunction prohibiting the Bureau from including the
9 citizenship question on the 2020 Census.

10 **JURISDICTION AND VENUE**

11 8. This Court has jurisdiction under 28 U.S.C. § 1331 (action arising under the laws of
12 the United States), 28 U.S.C. § 1361 (action to compel officer or agency to perform duty owed to
13 Plaintiffs), and 5 U.S.C. §§ 701-706 (APA). An actual controversy exists between the parties
14 within the meaning of 28 U.S.C. § 2201(a), and this Court may grant declaratory relief, injunctive
15 relief, and other relief against the Defendants pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C.
16 §§ 705-706.

17 9. Defendants’ submission of the final census questions to Congress no later than March
18 31, 2018, is a final agency action and is therefore judicially reviewable under the APA. 5 U.S.C.
19 §§ 704, 706.

20 10. Venue is proper in this Court under 28 U.S.C. § 1391(e) because this is a judicial
21 district in which Plaintiffs State of California, City of Fremont, and City of Oakland reside, and
22 the other Plaintiffs consent to this jurisdiction. This action seeks relief against federal agencies
23 and an official acting in his official capacity.

24 **INTRADISTRICT ASSIGNMENT**

25 11. Under Civil Local Rules 3-5(b) and 3-2(c), Plaintiffs allege that there is no basis for
26 assignment of this action to any particular location or division of this Court.

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PARTIES

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2 12. Plaintiff, the State of California, by and through Attorney General Xavier Becerra,
3 brings this action as a sovereign state in the United States of America. The Attorney General is
4 the chief law officer of the State and has the authority to file civil actions in order to protect
5 public rights and interests. Cal. Const. art. V, § 13; Cal. Gov't Code § 12511. This challenge is
6 brought under the Attorney General's independent constitutional, statutory, and common-law
7 authority to bring suit and obtain relief on behalf of the State.

8 13. The State of California has standing to bring this action because Defendants' actions
9 would cause the State to suffer concrete and substantial harm, and such harm would be redressed
10 by this lawsuit. The State has an interest in ensuring that the 2020 Census counts all Californians.
11 Including the citizenship question on the 2020 Census will cause Californians to be undercounted,
12 threatening the State's fair share of congressional seats and Electoral College electors, and
13 depriving the State of billions of dollars of federal funding.

14 14. Plaintiff County of Los Angeles is a political subdivision of the State of California.

15 15. Plaintiff City of Los Angeles is a municipal corporation organized and existing under
16 the laws of the State of California.

17 16. Plaintiff City of Fremont is a municipal corporation organized and existing under the
18 laws of the State of California.

19 17. Plaintiff City of Long Beach is a municipal corporation organized and existing under
20 the laws of the State of California.

21 18. Plaintiff City of Oakland is a municipal corporation organized and existing under the
22 laws of the State of California.

23 19. Plaintiff Stockton is a municipal corporation organized and existing under the laws of
24 the State of California.

25 20. Defendant Wilbur L. Ross is the Secretary of the Department of Commerce and is
26 sued in his official capacity. Secretary Ross is responsible for fulfilling the Department of
27 Commerce's duties under the Constitution, the APA, and the Census Act.

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1 Two years before the census, the Secretary must submit to Congress the specific questions to be
2 included in the census. 13 U.S.C. § 141(f)(2). The Secretary may only later modify the subjects
3 or questions if he submits a report to Congress finding that “new circumstances exist which
4 necessitate” the modification. 13 U.S.C. § 141(f)(3).

5 27. Defendants’ discretion in taking the census is also subject to the APA. Under the
6 APA, Defendants must ensure that any agency action is not “arbitrary, capricious, an abuse of
7 discretion, or otherwise not in accordance with law,” “contrary to constitutional right, power,
8 privilege or immunity,” or “in excess of statutory jurisdiction, authority, or limitations, or short of
9 statutory right.” 5 U.S.C. § 706.

10 28. Congress and the states use census data for many purposes, including for allocating
11 federal funding and for state legislative districting. *City of Los Angeles v. U.S. Dept. of*
12 *Commerce*, 307 F.3d 859, 864 (9th Cir. 2002); *Wisconsin v. City of New York*, 517 U.S. 1, 5-6
13 (1996). But the only constitutional purpose of the census is to apportion congressional
14 representatives based on the “actual Enumeration” of the population of each state.

15 29. To fulfill this constitutional purpose, as the Bureau itself has recognized, the 2020
16 Census will succeed only if it achieves its aim “to count everyone once, only once, and in the
17 right place.”³

18 **FACTUAL AND PROCEDURAL BACKGROUND**

19 30. Under the direction of the Secretary of Commerce and the Bureau Director, the
20 Bureau conducts the constitutionally required census every ten years by counting all U.S.
21 residents in the place where they live. Besides using the results of the decennial census for the
22 constitutional purpose of determining the number of seats for each state in the House of
23 Representatives, the federal government relies on census data to determine how to distribute
24 billions of dollars of funding each year, including funding for Medicaid, Medicare Part B, the
25 Supplemental Nutrition Assistance Program (SNAP), the State Children’s Health Insurance
26 Program (S-CHIP), and the Highway Planning and Construction Program.

27 ³ *Why We Conduct the Decennial Census*, United States Census Bureau,
28 <https://www.census.gov/programs-surveys/decennial-census/about/why.html> (last visited March 26, 2018).

1 31. In addition to the decennial census, every year the Bureau conducts the ACS. The
2 ACS contains a more expansive set of questions than the decennial census. Unlike the decennial
3 census, the ACS is not required by the Constitution. And while the decennial Census requires an
4 actual enumeration of all U.S. residents, the ACS surveys only a sample of the population.
5 Compared to the decennial census, the ACS gathers more detailed information about U.S.
6 residents.

7 32. The decennial census has not included a question on citizenship since the 1950
8 Census. Since that time, the question has appeared only on the ACS.

9 33. On March 28, 2017, Secretary Ross timely submitted a report containing the subjects
10 proposed to be included in the 2020 Census. The subjects, which were unchanged from the 2010
11 Census, did not include citizenship or immigration status.

12 34. Nearly nine months after the subjects for the 2020 Census had been identified, on
13 December 12, 2017, the U.S. Department of Justice sent a letter to the Bureau requesting the
14 inclusion of a citizenship question on the 2020 Census. The Department of Justice's stated
15 rationale for adding a citizenship question was to assist the Department of Justice in enforcing
16 Section 2 of the Voting Rights Act. The letter failed to address the likelihood that a citizenship
17 question would decrease the accuracy of the Census by deterring responses from non-citizens and
18 their relatives and that this consequence would undermine the Voting Rights Act's purpose of
19 ensuring fair representation for all communities.

20 35. On March 26, 2018, setting aside decades of practice, Secretary Ross and the
21 Department of Commerce announced that the final list of census questions that it will submit to
22 Congress will include a question on citizenship status. Specifically, the question will ask, for
23 every member of every household, whether that person is a citizen of the United States.

24 36. Secretary Ross explained that, to address the Department of Justice's request, he had
25 determined that the best option was to add the ACS citizenship question to the decennial census.
26 Secretary Ross speculated that the citizenship question may not cause an undercount because
27 "there is no information available to determine the number of people who would in fact not
28 respond due to a citizenship question being added, and no one has identified any mechanism for

1 making such a determination.” Ex. 1, p. 5. Secretary Ross concluded that “the need for accurate
2 citizenship data” was worth the risk of an undercount. *Id.*

3 37. Notwithstanding the rationale stated in this letter, the Bureau is well aware that
4 adding the citizenship question will directly cause an undercount in the 2020 Census. Its own
5 2017 study revealed “an unprecedented ground swell in confidentiality and data sharing concerns,
6 particularly among immigrants or those who live with immigrants” and that these concerns “may
7 present a barrier to participation in the 2020 Census.”⁴ This apprehension about participating in
8 the census is unsurprising in the current political climate. The studies’ respondents “express[ed]
9 new concerns about topics like the ‘Muslim ban,’ discomfort ‘registering’ other household
10 members by reporting their demographic characteristics, the dissolution of the ‘DACA’ (Deferred
11 Action for Childhood Arrival) program, repeated references to Immigration and Customs
12 Enforcement (ICE), etc.”⁵ These types of concerns are not new to the Bureau. Since at least
13 1980, the Bureau has recognized that, because of immigrants’ fear of how information disclosed
14 on the Census may be used against them, “any effort to ascertain citizenship will inevitably
15 jeopardize the overall accuracy of the population count.” *Fed’n for Am. Immigration Reform*, 486
16 F. Supp. at 568.

17 38. The Bureau is currently conducting its “2018 Census Test” in Providence County,
18 Rhode Island. The 2018 Census Test is a dress rehearsal for the 2020 Census. As the Bureau’s
19 website states, “Throughout the decade, the Census Bureau has conducted extensive research and
20 testing to inform census design. The 2018 Census Test is the culmination of that research,
21 providing a rich environment to test all major components of the 2020 Census. The primary
22 objective of the test is to confirm key technologies, data collection methods, outreach and

23 ⁴ See Mikelyn Meyers, Center for Survey Management, U.S. Census Bureau, Presentation
24 on Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data
25 Quality for the 2020 Census, presented at National Advisory Committee on Racial, Ethnic, and
26 Other Populations Fall Meeting (Nov. 2, 2017),
[https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-
Presentation.pdf](https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf) (last visited Mar. 26, 2018).

27 ⁵ See Ex. 2, Memorandum from Center for Survey Measurement on Respondent
28 Confidentiality Concerns to Associate Directorate for Research and Methodology, U.S. Census
Bureau (Sept. 20, 2017), [https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-
Respondent-Confidentiality-Concerns.pdf](https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf) (last visited Mar. 26, 2018).

1 promotional strategies, and management and response processes that will be deployed in support
2 of the 2020 Census.”⁶ No citizenship question or similar question was included in the 2018
3 Census Test. Having failed to adequately test the question before including it in the 2020 Census,
4 the Bureau will be unable to take sufficient measures to avoid or mitigate the resulting undercount
5 of non-citizens and their citizen relatives if the citizenship question is included in the 2020
6 Census.

7 39. The Bureau plans to finalize the 2020 Census paper questionnaires for print in May
8 2019. Ensuring that the 2020 Census is not compromised by the inclusion of the citizenship
9 question will become more difficult with each passing day, as more of the Bureau’s resources are
10 dedicated to including the question on the census.

11 40. The undercount of Californians in the 2020 decennial census resulting from the
12 citizenship question will cause significant harm to the State of California, its counties, cities,
13 including Plaintiffs County of Los Angeles, City of Los Angeles, City of Fremont, City of Long
14 Beach, City of Oakland, and City of Stockton, and California’s residents. Before the citizenship
15 question was added, California was predicted to retain its current number of seats in the House of
16 Representatives and, consequently, the Electoral College, but only by a very slim margin.
17 Because California has a proportionately large population of non-citizens and relatives of non-
18 citizens compared to other states, the citizenship question will now likely cause California to lose
19 seats for the first time in its history.⁷

20 41. The undercount that will result from the citizenship question will also cause each of
21 the Plaintiffs to lose federal funding. Plaintiffs receive billions of dollars in funding from the
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23

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25 ⁶ 2018 Census Test—About this Test, U.S. Census Bureau,
<https://www.census.gov/programs-surveys/decennial-census/2018-census-test/about.html> (last
visited Mar. 26, 2018).

26 ⁷ Election Data Services, *Some Change in Apportionment Allocations with New 2017*
Census Estimates; But Greater Change Likely by 2020, Dec. 26, 2017,
27 [https://www.electiondataservices.com/wp-](https://www.electiondataservices.com/wp-content/uploads/2017/12/NR_Appor17c2wTablesMapsC1.pdf)
28 [content/uploads/2017/12/NR_Appor17c2wTablesMapsC1.pdf](https://www.electiondataservices.com/wp-content/uploads/2017/12/NR_Appor17c2wTablesMapsC1.pdf) (last visited Mar. 26, 2018).

1 sixteen large federal assistance programs that distribute funds on the basis of decennial census-
2 derived statistics.⁸

3 42. For example, the U.S. Census Bureau estimate of population for City of Los Angeles,
4 last updated as of July 1, 2016, is listed at 3,976,322. The City of Los Angeles has one of the
5 largest populations of immigrants in the country. According to the 2012-2016 American
6 Community Survey data from the U.S. Census Bureau, more than one-third (37.8%) of residents
7 in the City of Los Angeles, are foreign born, which is approximately 1.5 million residents. Los
8 Angeles City residents receive the benefits of federal and state funds, allocated based upon
9 population numbers using data from the decennial U.S. Census, for a variety of crucial programs
10 to promote public health, safety, and welfare for residents of the City of Los Angeles. Just a few
11 examples of these programs include:

- 12 • Medicaid to County of Los Angeles (\$3,217,914,113 during Fiscal Year (“FY”)
13 2015-2016)
- 14 • Federal funding to LAUSD⁹ (approx. \$705,700,000 estimated for FY 2016-2017)
- 15 • Transportation and Infrastructure Funding to the City of Los Angeles Department of
16 Transportation, Bureau of Street Services and Bureau of Engineering, including
17 funds for Bus Maintenance Facility Construction and the San Fernando Road Bike
18 Path to City of Los Angeles (\$413,713,473 as of FY 2017-2018)
- 19 • Department of Homeland Security Urban Area Security Initiative to City of Los
20 Angeles (\$14,049,220 during FY 2017-2018)
- 21 • Internet Crimes Against Children to the City of Los Angeles from the State of
22 California (\$2,056,364 during FY 2015-2016).

23 _____
24 ⁸ Reamer, The George Washington Institute of Public Policy, *Counting for Dollars 2020 –*
25 *California*, Aug. 18, 2017,
<https://gwipp.gwu.edu/sites/gwipp.gwu.edu/files/downloads/California%2008-18-17.pdf> (last
26 visited Mar. 26, 2018).

27 ⁹ The Los Angeles Unified School District (“LAUSD”) is the second largest school
28 district in the United States and includes most of the City of Los Angeles within its boundaries, as
well as independent jurisdictions within the greater Los Angeles metropolitan area. As of
October 2017, approximately 4.8 million people lived within the boundaries served by the
LAUSD.

1 43. The City of Oakland also stands to face significant harm if the citizenship question is
2 included on the 2020 Census. Approximately 27.3% of Oakland residents (over 110,000) are
3 foreign born and 14.8% are non-citizens.¹⁰ A 2014 report estimated that 5.3% of the larger San
4 Francisco-Oakland-Hayward metropolitan population were undocumented.¹¹ In addition to
5 representational harm, undercounting Oakland's diverse community will significantly reduce the
6 City's receipt of federal funding in years to come. Because census-based federal funding is
7 aimed at serving low-income and vulnerable households, it is particularly important for
8 traditionally underserved and low-income communities to be properly counted in the census.

9 44. The City of Fremont, with nearly 240,000 residents, is highly diverse and ranks
10 among highest American cities in percentage of residents who are foreign-born. According to the
11 Census Bureau in 2016, Fremont is home to four times as many foreign-born residents (46.4%) as
12 the average American city by percentage. Fremont also has dramatic language diversity, with
13 some 130 languages spoken, and 53% of residents speaking a language other than English at
14 home. Significantly, 20.6% of Fremont residents identified as non-citizens, much higher than the
15 national average of 7%, as reported in the 2016 American Community Survey. A Census
16 question on citizenship will stifle responsiveness to the Census in Fremont's immigrant
17 communities, causing the City to lose out on significant federal and state funds.

18 45. The City of Stockton, home to over 320,000 residents, is the 13th largest city in
19 California and ranks among the most diverse cities in the nation. According to the U.S. Census
20 Bureau, 26% of Stockton residents are foreign-born and 46.1% live in households where a
21 language other than English is spoken. In addition, 41.7% are of Latino descent, 21.8% are of
22 Asian descent, and 11.5% are of African-American descent. Diversity is not just a part of
23 Stockton's data and rich heritage, but a strength that drives its community building, civic
24 engagement, and economic development. A full and accurate counting of all residents, regardless

25 ¹⁰ See *Advanced Search: Place of Birth By Nativity and Citizenship Status – 2012-2016*
26 *American Community Survey 5-Year Estimates*, U.S. Census Bureau,
https://factfinder.census.gov/bkmk/table/1.0/en/ACS/16_5YR/B05002/1600000US0653000 (last
27 visited Apr. 20, 2018).

28 ¹¹ *Estimates of unauthorized immigrant population, by metro area, 2014*, PEW Research
Center, Hispanic Trends (Feb. 13, 2017), <http://www.pewhispanic.org/2017/02/13/estimates-of-unauthorized-immigrant-population-by-metro-area-2014/>.

1 of their race, ethnicity, or immigration status is paramount to Stockton, which relies on Census-
 2 driven Federal and State funds to help sustain its fiscal health and provide essential programs and
 3 services. A citizenship question in the 2020 Census risks suppression of Census response rates,
 4 particularly from historically undercounted communities, like Stockton's immigrant population.

5 46. Plaintiff County of Los Angeles is the largest county in the nation, with more than 10
 6 million residents. It is also one of the country's most diverse counties, with millions of
 7 immigrants calling it home. According to the U.S. Census Bureau, 34.5% of Los Angeles County
 8 residents are foreign-born and 48.5% are of Latino descent.¹² The County of Los Angeles seeks
 9 to ensure a full and accurate counting of all of its residents, regardless of their race, ethnicity, or
 10 immigration status, as is required by the Constitution. A citizenship question on the 2020 Census
 11 will cause an undercount of Los Angeles County's immigrant population, significantly diminish
 12 vital funding the County receives from the federal government, and undermine the County's
 13 ability to effectively serve its residents.

14 **FIRST CAUSE OF ACTION**

15 **(Violation of Constitution's "Actual Enumeration" Mandate; U.S. Const. art. I, § 2, cl. 3)**

16 47. Plaintiffs reallege and incorporate herein by reference each and every allegation and
 17 paragraph set forth previously.

18 48. The Constitution requires the "actual Enumeration" of all people in each state every
 19 ten years for the sole purpose of apportioning representatives among the states. U.S. Const. art. I,
 20 § 2, cl. 3, and amend. XIV, § 2.

21 49. By including the citizenship question on the 2020 Census, Defendants are in violation
 22 of the "actual Enumeration" clause of the Constitution. Because the question will diminish the
 23 response rates of non-citizens and their citizen relatives, California, which has the largest
 24 immigrant population in the country, and the County and City Plaintiffs will be disproportionately
 25 affected by the census undercount. Inclusion of the question thus directly interferes with
 26

27 ¹² *QuickFacts: Los Angeles County, California*, U.S. Census Bureau,
 28 <https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia,CA/POP645216#viewtop>
 (last visited May 2, 2018).

1 Defendants' fulfillment of their constitutional responsibility, as delegated by Congress, to conduct
2 an "actual Enumeration" of the U.S. population.

3 50. This violation harms Plaintiffs and their residents, given that the State is entitled
4 under the Constitution to a proportionate share of congressional representatives based on its total
5 population. The violation will also harm Plaintiffs' interests in receiving federal funds allocated
6 to states, counties, and cities on the basis of the population data collected during the 2020 Census.

7 51. Defendants' violation has caused and will continue to cause ongoing, irreparable
8 harm to Plaintiffs and their residents.

9 52. An actual controversy exists between Plaintiffs and Defendants regarding whether
10 Defendants' inclusion of a citizenship question on the 2020 Census violates the "actual
11 Enumeration" clause of the U.S. Constitution.

12 **SECOND CAUSE OF ACTION**

13 **(Violation of APA; 5 U.S.C. § 706)**

14 53. Plaintiffs reallege and incorporate herein by reference each and every allegation and
15 paragraph set forth previously.

16 54. The APA requires courts to "hold unlawful and set aside" agency action that is,
17 among other things, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
18 with law," "contrary to constitutional right, power, privilege or immunity," or "in excess of
19 statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706.

20 55. Defendants' inclusion of the citizenship question on the 2020 Census is all of the
21 above. Because the question will diminish the response rates of non-citizens and their citizen
22 relatives, California, which has the largest immigrant population in the country, and the County
23 and City Plaintiffs will be disproportionately affected by the census undercount. Inclusion of the
24 question thus directly interferes with Defendants' fulfillment of their constitutional responsibility,
25 as delegated by Congress, to conduct an "actual Enumeration" of the U.S. population, as well as
26 Secretary Ross' statutory duty to "take a decennial census of population" under 13 U.S.C. §
27 141(a). A citizenship question, moreover, would not serve the purpose articulated by the U.S.
28 Department of Commerce, because an undercount of non-citizens and their citizen relatives will

1 decrease the accuracy of census data available to prove voter dilution under Section 2 of the
2 Voting Rights Act. Finally, Defendants failed to follow their own internal agency policies and
3 guidelines, including under the Information Quality Act, in reaching their decision to add the
4 citizenship question.

5 56. Defendants' decision to add a citizenship question to the 2020 Census thus violates
6 the APA's prohibition against "arbitrary and capricious" agency action.

7 57. These violations harm Plaintiffs and their residents, given that the State is entitled
8 under the Constitution to a proportionate share of congressional representatives based on its total
9 population. The violations will also harm Plaintiffs' interests in receiving federal funds allocated
10 to states, counties, and cities on the basis of the population data collected during the 2020 Census.

11 58. Defendants' violation has caused and will continue to cause ongoing, irreparable
12 harm to Plaintiffs and their residents.

13 59. An actual controversy exists between Plaintiffs and Defendants regarding whether
14 Defendants' inclusion of a citizenship question on the 2020 Census violates the APA.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, respectfully request that this Court:

17 1. Issue a declaratory judgment, under 28 U.S.C. §§ 2201 and 2202, that including the
18 citizenship question on the 2020 Census violates Article I, Section 2, Clause 3 of the United
19 States Constitution and the APA.

20 4. Issue a preliminary injunction prohibiting all Defendants and all those acting in
21 concert with them from including a citizenship question on the 2020 Census and from taking any
22 irreversible steps to include a citizenship question on the 2020 Census;

23 5. Issue a permanent injunction prohibiting all Defendants and all those acting in concert
24 with them from including the citizenship question on the 2020 Census;

25 6. Award Plaintiffs costs, expenses, and reasonable attorney fees; and

26 7. Award such other relief as the Court deems just and proper.

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1 Dated: May 4, 2018

Respectfully submitted,

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