

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NATIONAL ASSOCIATION FOR THE	:	Civil No. 3:17CV1682 (WWE)
ADVANCEMENT OF COLORED PEOPLE,	:	
et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
U.S. DEPARTMENT OF COMMERCE,	:	
	:	
Defendant.	:	July 26, 2018

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

The Defendant, the Department of Commerce (Commerce), hereby moves for Summary Judgment in the above captioned case pursuant to FRCP 56. In support of this motion, Commerce submits a Memorandum of Law, Local Rule 56(a)1 Statement, Declarations and Exhibits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2018, the foregoing was filed electronically and served by mail upon anyone unable to accept electronic filing. Notice of this filing will be sent via e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Brenda M. Green

BRENDA M. GREEN

ASSISTANT UNITED STATES ATTORNEY

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("NAACP") et al.,	:	
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Defendant.	:	July 26, 2018

**MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

The Defendant, the Department of Commerce (Commerce), hereby provides the following memorandum of law in support of its motion for summary judgment.

I. PROCEDURAL BACKGROUND

This is a Freedom of Information Act (FOIA) case. The NAACP, NAACP Connecticut State Conference and the NAACP Boston (Plaintiffs) filed this case on October 5, 2017, against Commerce. (Doc #1). The complaint was served on October 6, 2017, Doc. #5; after being granted an Extension of Time, Commerce answered on December 14, 2017. (Doc #13).

This Court entered a scheduling order which defined the Meet and Confer Period as March 19 - April 7, 2018, inclusively, with the flexibility for the parties to agree at any time to extend the Meet and Confer Period, or to terminate the Meet and Confer Period early. The Court further directed that "Plaintiffs and Defendant shall attempt to clarify and narrow the issues in dispute".

Commerce has met and conferred multiple times with counsel for Plaintiffs in an effort to narrow the scope of the documents sought so that a search can be performed with a reasonable amount of effort. Telephonic meet and confers were held at least on November 14, 2017, February 9, 2018, and April 16, 2018. Plaintiffs sent written letters detailing additional records and other information beyond the scope of FOIA that they were still seeking on November 28, 2017, and April 9, 2018. In response, Commerce released additional information on November 14, 2017, February 16, 2018, March 5, 2018, and May 30, 2018. Commerce was willing to continue to attempt to seek answers to Plaintiffs questions, both within and beyond the scope of FOIA, but on June 1, Plaintiffs informed Commerce that they wished to end the meet and confer period due to the pace of production of additional documents and proceed to briefing motions for summary judgment. Nonetheless, in good faith, Commerce provided additional information on July 23, 2018, pinpointing within the extensive public record where information responsive to Plaintiffs' request could be found.

As of the last communication by Plaintiffs on the subject, Plaintiffs were seeking additional information for 11 out of the 12 categories of requested documents. Plaintiffs were seeking, inter alia, a search for draft documents of published memoranda and policy documents, and segregation of factual material from exempt material within said drafts; additional communications with partner community organizations regarding non-existent contracts; and supporting documents for the Lifecycle Cost Estimate for 2020 Census operations.

Without a willingness to narrow the request beyond broad categories of documents sought, Commerce is unable to limit additional searches for responsive documents to a reasonable effort. Commerce has tried in good faith to provide information responsive to the

request that can be located with a reasonable effort and to meet and confer with Plaintiffs on additional searches.

However, the parties have now deemed the Meet and Confer period over. As such, Commerce, in compliance with the scheduling order in this matter, now moves for summary judgment.

II. RELEVANT FACTS

Please see Commerce's Local Rule 56(a)(1) Statement for the relevant facts. The following summary is a brief overview of the case.

The 2020 Census will be the most open and transparent decennial census conducted in history. Information about every single aspect of the planning for the decennial is publicly available. Additionally, the Census Bureau is open and transparent about its preparations for the 2020 Census, and there is a wealth of available information in the public domain that directly relates to the Plaintiffs' requests. To assist the Plaintiff in availing themselves of the wealth of information that has been made publically available the Department of Commerce has provided Plaintiffs over 100 internet links to postings of thousands of pages of operational reports, benchmark updates, budget information and public presentations on census preparations about all aspects of the decennial census. This information has already been provided to the Plaintiff's by Commerce.

On top of the voluminous relevant information that has been made available to Plaintiffs' and the larger public all aspects of the decennial census and the effort Commerce has expended pinpointing where, among gigabytes of data that has been published specific answers to their document requests may be located, Commerce has also provided additional documents

responsive to their request that was not available in the public domain. Commerce also provided Plaintiffs with a Vaughn index of the few documents partially withheld in order to help narrow the issues in dispute in this lawsuit.

In the present matter, the Plaintiffs' request sought 12 categories of documents that spanned planning for electronic responses to the 2020 Census, address canvassing, identification of and outreach planning for hard to reach or hard to count populations, the enumeration of incarcerated individuals, field testing for the 2020 Census, and hiring records for the 2010 and 2020 Censuses.

Based on the attached agency declarations and accompanying materials, Commerce submits that it has satisfied its obligation under FOIA to conduct an adequate search for the records requested by Plaintiffs and has properly withheld records, or partially withheld information within records, exempt from disclosure under FOIA¹. As such, Commerce's Motion for Summary Judgment must be granted.

III. RELEVANT LAW

A. STANDARD FOR SUMMARY JUDGMENT

Rule 56(c) of the Federal Rules of Civil Procedure provides that a court shall render summary judgment when a review of the entire record demonstrates “that there is no genuine issue as to any material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986) (quoting

¹ A Vaughn Index describing each document that Commerce is withholding and specifically identifying the applicable FOIA exemptions in support of Commerce's withholding of these records was provided to Plaintiffs and is attached hereto as Attachment G to Curry Declaration, Exhibit 1.

Rule 56). In determining whether there is a genuine issue of material fact, the court must view the evidence, resolve any ambiguities, and draw factual inferences in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). To survive a motion of summary judgment, the non-movant must do more than present evidence that is merely conclusory or speculative. *Id.* The non-movant must offer evidence that demonstrates that there are issues of fact that must be decided by a fact-finder because they may reasonably be decided in favor of either party. *Campanaro v. City of Rome*, 999 F. Supp. 277, 279 (N.D.N.Y. 1998). Factual disputes will not necessarily defeat a motion of summary judgment unless those factual disputes are material to the issues before the court. *Anderson*, 477 U.S. at 248. “Only disputes over the facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.*

B. The Freedom of Information Act (FOIA)

“FOIA . . . was enacted to promote honest and open government, . . . and to ensure public access to information created by the government in order to hold the governors accountable to the governed.” *Wood v. FBI*, 432 F.3d 78, 82 (2d Cir. 2005) (internal citation and quotation marks omitted). “Upon request, FOIA mandates disclosure of records held by a federal agency, see 5 U.S.C. § 552, unless the documents fall within enumerated exemptions, see § 552(b).” *Dep’t of the Interior & Bureau of Indian Affairs v. Klamath Water Users Protective Assoc.*, 532 U.S. 1, 7-8 (2001). These exemptions reflect Congress’ view that in some instances disclosure of information would not be in the public interest. See *Nat’l Records Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004) (“When disclosure touches upon certain areas defined in the

exemptions, however, the statute recognizes limitations that compete with the general interest in disclosure, and that, in appropriate cases, can overcome it.”); *see also Boyd v. Criminal Div. of USDOJ*, 475 F.3d 381, 385 (D.C. Cir.), *cert. denied*, 128 S. Ct. 511 (2007) (“Congress also recognized, however, that disclosure of certain information ‘may harm legitimate governmental or private interests’ and accordingly enacted several exemptions to FOIA disclosure requirements.”) (quoting *Summers v. Dep’t of Justice*, 140 F.3d 1077, 1080 (D.C. Cir. 1998)) (citation omitted).

FOIA requires all United States government agencies to disclose agency records upon any request for records which “(i) reasonably describe such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed.” 5 U.S.C. § 552(3)(A). When responding to a request for records, “an agency shall make reasonable efforts to search for the records in electronic form.” 5 U.S.C. § 552 (3)(C).

Jurisdiction to order the agency to release nonexempt records or material exists only if the court concludes that the agency “(1) improperly, (2) withheld, (3) agency records.” *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 150 (1980). “Unless each of these criteria is met, a district court lacks jurisdiction to devise remedies to force an agency to comply with the FOIA’s disclosure requirements.” *USDOJ v. Tax Analysts*, 492 U.S. 136, 142 (1989).

C. SUMMARY JUDGMENT IN FOIA CONTEXT

FOIA cases are typically resolved on motion for summary judgment. *See Miscavige v. IRS*, 2 F.3d 366, 369 (11th Cir. 1993). Summary judgment is appropriate when “there is no genuine issue as to any material fact” and “the moving party is entitled to judgment as a matter

of law.” Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

“To prevail on a motion for summary judgment in a FOIA case, the defending agency bears the burden of showing that its search was adequate and that any withheld documents fall within an exemption to the FOIA.” *Carney v. Department of Justice, supra* at 812 (2d Cir.1994). “The adequacy of the agency’s search is judged by a standard of reasonableness. *See Grand Cent. P’ship, Inc. v. Cuomo*, 166 F.3d 473, 489 (2d Cir. 1999).” *Peeler v. U.S. Dep’t of Justice*, No. 3:11-cv-1370 (RNC), 2013 WL 5448515, at *3 (D. Conn. Sept. 30, 2013). “Affidavits or declarations supplying facts indicating that the agency has conducted a thorough search and giving reasonably detailed explanations why any withheld documents fall within an exemption are sufficient to sustain the agency’s burden.” *Carney, supra* at 812. 2

By statute, agency affidavits and declarations are “accorded a presumption of good faith.” *Id.* (quoting *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991). *See* 5 U.S.C. § 552(a)(4)(B).

D. ADEQUACY OF SEARCHES UNDER FOIA

“In a FOIA case, where the adequacy of an agency’s search is questioned, the Court may grant summary judgment based on information provided in ‘[a] reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched.’” *Riccardi v.*

2 An agency can show that it has discharged its obligations under the FOIA and is entitled to summary judgment by demonstrating through affidavit(s) or declaration(s) “that it has conducted a search reasonably calculated to uncover all relevant documents.” *Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984) (internal quotations omitted); *see also Oglesby v. U.S. Dep’t. Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) (“to obtain summary judgment the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.”).

United States Dep't of Justice, 32 F. Supp. 3d 59, 63 (D.D.C. 2014) (quoting *Valencia-Lucena v. U.S. Coast Guard*, 180 F. 3d 321, 326 (D.C. Cir. 1999)); see *Carney v. U.S. Dep't of Justice*, 19 F. 3d 807, 812 (2d Cir. 1994) (“In order to prevail on a motion for summary judgment in a FOIA case, the defending agency has the burden of showing that its search was adequate and that any documents fall within an individual who wither participated in the search or coordinated the search.” *Bigwood v. United States Dep't of Def.*, No. 11-CV-0682 (KBJ), 2015 WL 5675769, at * 5 (D.D.C. Sept. 25, 2015). Such affidavits or declarations “are accorded a presumption of good faith”. *Long*, 692 F.3d at 191.

This Court has ruled in *Navigators Insurance Company v. Department of Justice* (*Navigators*), 2016 WL 816625 (D. Conn. February 29, 2016), (Judge Arterton) (Exhibit 3 attached hereto), that:

[i]n a FOIA case, where the adequacy of an agency's search is questioned, the Court may grant summary judgment based on information provided in '[a] reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched.' ” *Riccardi v. United States Dep't of Justice*, 32 F.Supp.3d 59, 63 (D.D.C.2014) (quoting *Valencia–Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C.Cir.1999)); see *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir.1994) (“In order to prevail on a motion for summary judgment in a FOIA case, the defending agency has the burden of showing that its search was adequate and that any withheld documents fall within an exemption to the FOIA.”). “The affidavits or declarations may be submitted by an individual who either participated in the search or coordinated the search.” *Bigwood v. United States Dep't of Def*, No. 11–CV–0602 (KBJ), 132 F.Supp.3d 124, 135, 2015 WL 5675769, at *5 (D.D.C. Sept. 25, 2015). Such affidavits or declarations “are accorded a presumption of good faith.” *Long*, 692 F.3d at 191. “Once the agency has shown that its search was reasonable, the burden is on the requester to rebut that evidence by a showing that the search was not conducted in good faith.” *Moore v. Aspin*, 916 F.Supp. 32, 35 (D.D.C.1996). “This can be done either by contradicting the defendant's account of the search procedure or by raising evidence of the defendant's bad faith.” *Id.* at 35–36.

Navigator, *Id.* at 2.

Thus, this Court held in *Navigator* that summary judgment is warranted where the “[d]efendant has demonstrated that the searches it conducted were adequate...” *Id.* at 3.³ Further, FOIA requires that agencies “make reasonable efforts to search for the records” requested. 5 U.S.C. § 552(a)(3)(C).⁴

“[T]he adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search [and] the [mere] fact that a particular document was not found does not demonstrate the inadequacy of a search.”

Schoenman v. F.B.I., 763 F. Supp. 2d 173, 204 (D.D.C. 2011) (citations and quotations omitted; first alternation added, second alternation in original). “The narrow focus of the Court’s inquiry necessarily must be the reasonableness of the [agency’s] search. . . . Thus, an agency’s search may be sufficient under FOIA even if it does not uncover every record that a plaintiff believes is relevant and likely to exist in the agency’s files.” *Ferguson v. U.S. Dep’t of Educ.*, No. 09 CIV. 10057 FM, 2011 WL 4089880, at *10 (S.D.N.Y. Sept. 13, 2011) (alternations added; internal

³ See also *Navigator I*, 155 F. Supp. 3d 157 (D. Conn. 2016) where this Court (Judge Arterton) granted *sua sponte* summary judgment on the Defendant’s Count I finding that the Defendant, DOJ’s *Vaughn* index adequately described each of the withheld documents to permit the Court to rule on the DOJ’s claimed exemptions”. *Id.* at 174. However, this Court held that a factual issue pertained to Count II, and the Court directed the Plaintiff to submit a supplemental declarations demonstrating that its original search was reasonably calculated to uncover all relevant documents.

In response thereto, in *Navigator II*, this court held that upon the Defendant’ submission of an additional affidavits in support of Count II, this Court granted summary judgment on Count II in the *Navigator II* opinion. See *generally*, 2016 WL 816625 (D. Conn. 2/29/2016).

⁴ “[T]he term ‘search’ means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.” § 552(a)(3)(D). “When a plaintiff questions the adequacy of the search an agency made in order to satisfy its FOIA request, the factual question it raises is whether the search was reasonably calculated to discover the requested documents, not whether it actually uncovered every document extant.” *Peeler*, 2013 WL 5448515, at *4 (quoting *SafeCard Services, Inc. v. S.E.C.*, 926 F.2d 1197, 1201 (D.C.Cir.1991)).

citations omitted).⁵

IV. ANALYSIS

A. COMMERCE CONDUCTED ANADEQUATE SEARCH FOR RESPONSIVE RECORDS

In their Complaint the Plaintiffs' claim that Commerce failed to fulfill their FOIA request. However, this claim is unfounded. The evidence establishes that Commerce properly responded to the Plaintiffs' June 29, 2017 request that was received on July 6, 2017 thereby discharging its duty under FOIA. Through the detailed and non-conclusory declarations provided by Vernon Curry, the Chief FOIA Officer of the U.S. Census Bureau (*see* Exhibit 1 attached hereto) and Burton Reist, the Chief Decennial Communication and Stakeholder Relations of the U.S. Census Bureau (*See* Exhibit 2 attached hereto), Commerce demonstrated that it conducted a thorough and reasonable search for records responsive to the Plaintiffs' request.

Commerce also provided responsive documents, correctly informed the Plaintiffs that the majority of the documents requested were part of the public record and provided the Plaintiffs numerous hyperlinks to information available publicly on the world wide web, with a detailed index of where the documents responsive to particular categories of their request are posted.

The Plaintiffs sought 12 categories of documents. In summary, the categories requested

⁵ The "failure to return all responsive documents is not necessarily inconsistent with reasonableness: an agency is not expected to take extraordinary measures to find the requested records, but only to conduct a search reasonably designed to identify and locate responsive documents." *Adamowicz v. I.R.S.*, 672 F. Supp. 2d 454, 462 (S.D.N.Y. 2009) (citations and quotation marks omitted). A plaintiff's "belief that additional responsive records exist—even if correct—therefore does not render the [agency's] search inadequate." *Ferguson*, 2011 WL 4089880, at *10 (alternation added); *see also Lane v. Dep't of Justice*, No. 1:02-CV-06555-ENVVVP, 2006 WL 1455459, at *10 (E.D.N.Y. May 22, 2006).

spanned planning for electronic responses to the 2020 Census, address canvassing, identification of and outreach planning for hard to reach or hard to count populations, the enumeration of incarcerated individuals, field testing for the 2020 Census, and hiring records for the 2010 and 2020 Censuses. The requests were phrased quite broadly, such as asking for “all” planning memos, policy documents, instructions, or other guidance related to 2020 Census involving plans to accept electronic responses to the Census questionnaire, address canvassing, and outreach to hard-to-count populations. (Curry Decl. Exhibit 1 at ¶ 5); a copy of the request is included as Attachment A to Curry Decl., Exhibit 1.

The Census Bureau determined that the request did not reasonably describe 2 of the categories of documents sought. Therefore, on August 30, 2017, the Census Bureau sent a letter to the requester seeking clarification of those categories of records, and inviting them to narrow their request in order to enable the Census Bureau to conduct a search for responsive records with a reasonable amount of effort. (Curry Decl. Exhibit 1 at ¶ 6); a copy of that letter is included as Attachment B to Curry Decl., Exhibit 1.

On September 8, 2017, the requesters responded to the letter of August 30, 2017. The requesters provided further information about the 2 categories of documents that were not reasonably described, but declined to narrow any of their requests to enable the Census Bureau to conduct a search for responsive records with a reasonable amount of effort. (Curry Decl. Exhibit 1 at ¶ 7); a copy of that letter is included as Attachment C. to Curry Decl., Exhibit 1.

Accordingly the Census Bureau issued search taskers to the seven operating units which they determined to be most likely to have responsive documents locatable with a reasonable amount of effort, instructing them to search for, identify, and produce responsive documents to

the Census Bureau (Curry Decl. Exhibit 1 at ¶ 9); a copy of the search taskers issued is included as Attachment D. to Curry Decl., Exhibit 1. Those program areas conducted manual and electronic searches for responsive records which included searching personal files, shared drives, and email. (Curry Decl. Exhibit 1 at ¶ 9).

During this search, it was reported by the operating units that many of the responsive documents had already been made public by the Census Bureau in an effort to promote transparency in Census Decennial operations. (Curry Decl. Exhibit 1 at ¶ 10).

On October 3, 2017, the Census Bureau provided an interim response to the requester, indicating that 4 of the categories of records sought were publicly available on the Census Bureau's website, and links were provided to help pinpoint specific pages where the information could be accessed. In addition, responsive documents (4 documents comprising 61 pages) were provided for an additional 2 categories of information. (Curry Decl. Exhibit 1 at ¶ 11); a copy of the interim response is included as Attachment E. to Curry Decl., Exhibit 1.

On November 14, 2017, the Census Bureau provided a final response to the requester. The requester was informed that the information responsive to 2 more categories of their request was available online, and links were provided to help pinpoint specific pages where the information could be accessed. Responsive documents (1 document comprising 114 pages, with partial redactions pursuant to FOIA exemptions (b)(5) and (b)(6)) were provided to two more categories of documents. The requester was further informed that no responsive documents could be located for one of the categories of their request. Finally, the requester was informed that responsive documents for one category of their request was being withheld in full pursuant to FOIA exemption (b)(5). Curry Decl. Exhibit 1 at ¶ 12); a copy of the final response is included

as Attachment F. to Curry Decl. Exhibit 1.

In an effort to narrow the issues in dispute prior to briefing motions for summary judgment, an explanation of the information withheld under (b)(5) and (b)(6) were provided to the requesters in a Vaughn index on March 27, 2017. (Curry Decl. Exhibit 1 at ¶ 13. A copy of the Vaughn index is included as Attachment G to Curry Decl. Exhibit 1.

During the litigation, the Census Bureau continued to provide support in seeking additional documents and providing information relevant to Plaintiffs' requests and concerns. Additional searches were initiated in response to specific requests for well-identified documents, such as Plaintiffs' request for a copy of the integrated communications contract awarded to Young & Rubicam. During this period, the Census Bureau undertook additional searches for responsive documents, and they provided additional documents located to Plaintiffs, and compiled lists of links pinpointing where information they had sought was available in the public record. (Curry Decl., Exhibit 1 at ¶ 15). Additional communications from the Department of Commerce's Office of General Counsel is included as Attachments H, I and J. to Curry Decl., Exhibit 1.

It bears repeating that the 2020 Census will be the most open and transparent decennial census conducted in history. Information about every single aspect of the planning for the decennial is publicly available. *See* Reist Decl. Exhibit 2 at ¶ 5. Specifically, extensive information is publicly available covering every category of records sought in the FOIA request underlying this lawsuit. (Reist Decl. Exhibit 2 at ¶ 6). The Census Bureau's 2020 Census Operational Plan documents the current design for conducting the 2020 Census. *See* Reist Decl. Exhibit 2 at ¶ 7.

Burton Reist, Chief of Decennial Communications and Stakeholder Relations of the U.S. Census Bureau, estimates that approximately 1.100 GB of documentation and 50 GB of videos (primarily the quarterly program management reviews) have been posted on the Census Bureau's website related to the planning of the 2020 decennial. *See* Reist Decl. Exhibit 2 at ¶ 5.

Extensive information is publicly available covering every category of records sought in the FOIA request underlying this lawsuit. *See* Reist Decl. Exhibit 2 at ¶ 6.

The Census Bureau's 2020 Census Operational Plan documents the current design for conducting the 2020 Census. The 2020 Census Operational Plan describes design concepts and their rationale, identifies decisions still to be made, and describes significant issues and risks related to the implementation of the Operational Plan. It is publicly available online, and is updated whenever there is a change in strategies resulting from 2020 Census planning, research, and testing activities. *See* Reist Decl. Exhibit 2 at ¶ 7.

The Census Bureau also creates detailed operational plans to complement the 2020 Census Operational Plan, which present the detailed operational design for each operation within the 2020 Census, and includes a summary of the operational processes involved, their inputs, outputs and controls, and the basic mechanisms employed to conduct the operational work. The Census Bureau also creates detailed operational plans to complement the 2020 Census Operational Plan, which present the detailed operational design for each operation within the 2020 Census, and includes a summary of the operational processes involved, their inputs, outputs and controls, and the basic mechanisms employed to conduct the operational work. *See* Reist Decl. Exhibit 2 at ¶ 8.

As soon as a detailed operational plan is completed, it is made publicly available online, and it is updated whenever there is a change in strategies resulting from 2020 Census planning, research, and testing activities. *See* Reist Decl. Exhibit 2 at ¶ 8.

The Census Bureau also publishes the 2020 Census Memorandum Series, which documents significant decisions, actions, and accomplishments of the 2020 Census Program in order to inform stakeholders, document important historical changes, and also to coordinate interdivisional efforts. *See* Reist Decl. Exhibit 2 at ¶ 9.

Memoranda are generally created whenever a) there is a major program level decision that affects the overall design of the 2020 Census Program, or has a significant effect on the 2020 Census operations or systems, b) there is a major policy decision or change that affects the overall design of the 2020 Census Program, or has a significant effect on the 2020 Census operations or systems, or c) the Census Bureau finalizes a report that documents the research and testing for the 2020 Census operations or systems. The 2020 Census Memorandum Series is published online. *See* Reist Decl. Exhibit 2 at ¶ 9.

Since October 2015, the Census Bureau has published a monthly status report documenting the preparations for and status of operations for the 2020 Census Program. These monthly status reports are made publicly available online. *See* Reist Decl. Exhibit 2 at ¶ 10.

Through April 2018, the reports were often around 60 pages long and included a short summary of key program updates for the month. Subsequently, the “key updates” portion has been replaced by a general overview, and the report itself tends to be about 40 pages long. *See* Reist Decl. Exhibit 2 at ¶ 10.

Since the last quarter of 2012, the Census Bureau has conducted quarterly Program Management Reviews for the 2020 Census. These Program Management Reviews are conducted in public, and are regularly attended by congressional staffers, representatives of the media, and other interested parties that follow the operations and progress of the 2020 Census. *See* Reist Decl. Exhibit 2 at ¶ 11.

The Program Management Reviews cover all key management strategies for the conduct of the 2020 Census, including budget, schedule, work breakdown structure, acquisition, performance (outcome), risk, human capital, governance and transition, and communications. *See* Reist Decl. Exhibit 2 at ¶ 11.

The agendas of every Program Management Review for the 2020 Census, including supporting materials, are publicly available online. The Census Bureau has also posted videos of every Program Management Review for the 2020 Census. *See* Reist Decl. Exhibit 2 at ¶ 11.

Other significant policy documents, planning documents, and research tools are available on the Census Bureau's website. *See* Reist Decl. Exhibit 2 at ¶ 12. Between the publicly available 2020 Census Operational Plan, the completed 2020 Census Detailed Operational Plans, the 2020 Census Memorandum Series, the 2020 Census Monthly Status Reports, and the 2020 Census Program Management Reviews, every single significant programmatic or policy decision that affects the design of the 2020 Census, or that has a significant effect on the 2020 Census operations or systems, is documented and made publicly available online. *See* Reist Decl. Exhibit 2 at ¶ 13.

Furthermore, reports that document the research and testing for the 2020 Census operations or systems are also made publicly available online. Because the scope of operations

for the 2020 Census is so extensive, the documentation is voluminous, and reflects a significant level of effort to make information available to the public. *See* Reist Decl. Exhibit 2 at ¶ 13.

In an effort to assist Plaintiffs, NAACP in finding the documents it seeks, Reist, in another related lawsuit, made a table mapping more specifically where the information they are requesting that is still in dispute may be located online. The details have been furnished to Plaintiffs. *See* Reist Decl. Exhibit 2 at ¶ 14); a copy of the table is included as Attachment A to Reist Decl., Exhibit 2.

The Census Bureau has approximately 2,500 employees working on the Decennial Program and 15,300 employees overall. *See* Reist Decl. Exhibit 2 at ¶ 15. In addition, the Decennial Program has multiple major contracts working on various aspects of the 2020 Census, and these companies employ hundreds of individuals. *See* Reist Decl. Exhibit 2 at ¶ 15.

To the extent that the Plaintiffs seek a search of emails and documents since 2010, and have asked for a search for and review of all drafts leading up to any final decision to segregate out deliberative process material from the underlying factual information, and a detailed Vaughn index specifying details about all predecisional information withheld, responding to the Plaintiffs' request would be an undue burden on the Census Bureau. *See* Reist Decl. Exhibit 2 at ¶ 15.

In addition to the time spent by the FOIA Office in searching for and producing responsive documents, the Decennial Communication and Stakeholder Relations office alone has already spent over 120 hours to date performing preliminary searches and consulting subject-matter experts in support of responding to Plaintiffs' FOIA request and similar discovery request

in the suit *NAACP, et al. v. Bureau of the Census, et al.*, No. 18-cv-0891-PWG (D. Mary.). *See* Reist Decl. Exhibit 2 at ¶ 16.

Much of the information Plaintiffs desire is beyond the scope of FOIA, as the data sought involve consulting subject-matter experts, providing analysis of documents, and creating new documents.

In support of discovery requests in Plaintiffs' NAACP's related lawsuit, the Decennial Communication and Stakeholder Relations office is undertaking an estimated additional 210 hours to respond to Plaintiffs' request for information. *See* Reist Decl. Exhibit 2 at ¶ 16.

In support of limited jurisdictional discovery in Plaintiffs' related lawsuit, Plaintiffs have submitted a letter indicating a subset of the information they are seeking which they believe is essential for ascertaining whether they have jurisdiction to challenge the Census Bureau's level of preparedness to conduct the 2020 Census. This information overlaps with the information requested in Plaintiffs' FOIA lawsuit. *See* Reist Decl. Exhibit 2 at ¶ 17.

Reist estimates that it would take over 3,600 hours of labor to search for and produce information responsive to Plaintiffs' "targeted" subset of information sought, which would be an undue burden on the agency. To review all the drafts of all planning documents requested by Plaintiffs would require scores, if not hundreds, of man-years of effort. *See* Reist Decl. Exhibit 2 at ¶ 17.

Further Plaintiffs' request is simply one of many FOIA requests related to the 2020 Census. For example, the Census Bureau and the Department of Commerce have received over 50 requests related to the reinstatement of the citizenship question on the 2020 Census, and in the recent past responded to over 7 requests relating to the absence of a question on the 2020 Census

related to sexual orientation and gender identity. And this is simply one question, and lack of question, on an extensive operation to count every individual residing in the United States. *See* Reist Decl. at ¶ 18.

The level of effort sought by Plaintiffs to seek out, review, and document predecisional drafts that are exempt from disclosure under FOIA is unsustainable even for one requester, let alone the hundreds of requests that must be processed by the Census Bureau relating to the 2020 Census. *See* Reist Decl. at ¶ 18.

The 2020 Census is a public exercise, and the Census Bureau has put forth extraordinary effort to achieve transparency and make its planning documents publicly available. Information addressing what Plaintiffs are seeking is publicly available and additional information has been furnished to Plaintiffs where appropriate. To the extent that Plaintiffs seek additional searches for responsive documents, drafts, or an accounting of iterative drafts, Plaintiffs' request would impose an undue burden on the agency. *See* Reist Decl. Exhibit 2 at ¶ 19.

Additionally, Commerce reasonably redacted and segregated the records it withheld and included on the Vaughn Index.⁶ Here, the record clearly supports a finding that Commerce complied with the mandate that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. § 552(b).

⁶ Under FOIA, “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. § 552(b). “This rule of segregation applies to all FOIA exemptions.” *Sussman v. U.S. Marshals Service*, 494 F.3d 1106, 1116 (D.C. Cir. 2007). “Agencies are entitled to a presumption that they complied with the obligation to disclose reasonably segregable material.” *Id.* at 1117.

Commerce has properly redacted information exempt from disclosure under FOIA Exemptions (b)(4), (b)(5), (b)(6). *See* Curry Decl. Exhibit 1 at ¶ 13; a copy of the Vaughn index is included as Attachment G to Curry Decl. Exhibit 1.

Commerce is entitled to summary judgment. Commerce has complied with its obligations under FOIA with respect to the Plaintiffs' FOIA request and having demonstrated that the searches it conducted were reasonable and adequate, as described the agency declarations. *See* Curry Decl. Exhibit 1 and Reist Decl. Exhibit 2. The declarations and supporting attachments provide a reasonable specificity of detail regarding the searches performed and methods applied, as the referenced publicly available hyperlinks to the world-wide web. They demonstrate that Commerce's searches for responsive documents to Plaintiffs' request were adequate and reasonable.⁷

In short, the information sought by the Plaintiffs has either been produce, has been brought to Plaintiff's attention as being publically available, have been or will be produced in a related lawsuit, or is either beyond the scope of FOIA or unduly burdensome to produce.

V. CONCLUSION

For the foregoing reasons, Commerce respectfully requests that this Court grant its motion for summary judgment dismissing the Plaintiffs' complaint against it in its entirety, with prejudice, together with such other and further relief as this Court may deem just and proper.

⁷ In determining whether an agency satisfied its search obligations, "[t]he relevant inquiry is not 'whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate.'" *Abdelfattah v. DHS*, 488 F.3d 178, 182 (3d Cir. 2007) (per curiam) (quoting *Weisberg*, 745 F.2d at 1485) (emphasis in *Weisberg*); *see also Moayedi v. United States Customs & Border Prot.*, 510 F. Supp. 2d 73, 80 (D.D.C. 2007) ("[I]f searching only one database would be 'reasonably calculated to uncover all relevant documents,' then such search may be deemed adequate.") (quoting *Weisberg*, 745 F.2d at 1485). As noted above, "[a]n affidavit from an agency employee responsible for supervising a FOIA search is all that is needed to satisfy Rule 56(c); there is no need for the agency to supply affidavits from each individual who participated in the actual search." *Carney*, *supra* at 814.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2018, the foregoing was filed electronically and served by mail upon anyone unable to accept electronic filing. Notice of this filing will be sent via e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Brenda M. Green

BRENDA M. GREEN

ASSISTANT UNITED STATES ATTORNEY

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

NATIONAL ASSOCIATION FOR THE	:	Civil No. 3:17CV1682 (WWE)
ADVANCEMENT OF COLORED PEOPLE,	:	
et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
U.S. DEPARTMENT OF COMMERCE,	:	
	:	
Defendant.	:	July 26, 2018

DEFENDANT’S LOCAL RULE 56(a)1 STATEMENT

The Defendant, United States Department of Commerce (Commerce), hereby submits the following Local Rule 56(a)1 statement in support of the summary judgment motion.

1. The Plaintiffs are the NAACP, NAACP Connecticut state conference and NAACP Boston Branch which are §501 (c) (3) non-profit civil rights organizations.
2. The Defendant is the U.S. Department of Commerce. The U.S. Census Bureau and is a unit within the U.S. Department of Commerce.
3. The Decennial Communication and Stakeholder Relations is within the U.S. Census Bureau.
4. The Census Bureau received a FOIA request from Plaintiffs, dated June 29, 2017, on July 6, 2017. It was assigned tracking number DOC-CEN-2017-001479. (Curry Decl., Exhibit 1, ¶ 4).

5. The request sought 12 categories of documents. In summary, the categories requested spanned planning for electronic responses to the 2020 Census, address canvassing, identification of and outreach planning for hard to reach or hard to count populations, the enumeration of incarcerated individuals, field testing for the 2020 Census, and hiring records for the 2010 and 2020 Censuses. (Curry Decl. Exhibit 1 at ¶ 5); a copy of the request is included as Attachment A to Curry Decl., Exhibit 1.
6. The requests were phrased quite broadly, such as asking for “all” planning memos, policy documents, instructions, or other guidance related to 2020 Census involving plans to accept electronic responses to the Census questionnaire, address canvassing, and outreach to hard-to-count populations. (Curry Decl., Exhibit 1 at ¶ 5); a copy of the request is included as Attachment A to Curry Decl., Exhibit 1.
7. The Census Bureau determined that the request did not reasonably describe 2 of the categories of documents sought. (Curry Decl., Exhibit 1 at ¶ 6); a copy of that letter is included as Attachment B to Curry Decl., Exhibit 1.
8. Therefore, on August 30, 2017, the Census Bureau sent a letter to the requester seeking clarification of those categories of records, and inviting them to narrow their request in order to enable the Census Bureau to conduct a search for responsive records with a reasonable amount of effort. (Curry Decl., Exhibit 1 at ¶ 6); a copy of that letter is included as Attachment B to Curry Decl., Exhibit 1.
9. On September 8, 2017, the requesters responded to the letter of August 30, 2017. The requesters provided further information about the 2 categories of documents that were not reasonably described, but declined to narrow any of their requests to enable the Census

Bureau to conduct a search for responsive records with a reasonable amount of effort.

(Curry Decl., Exhibit 1 at ¶ 7); a copy of that letter is included as Attachment C. to Curry Decl., Exhibit 1.

10. The operating units within the Census Bureau most likely to have documents responsive to Plaintiffs' FOIA request are the Decennial Program Office and Human Resources Office. (Curry Decl., Exhibit 1 at ¶ 8);
11. Those units would be the most likely offices to contain responsive documents to the categories requested, which, sought records related to planning for electronic responses to the 2020 Census, address canvassing, identification of and outreach planning for hard to reach or hard to count populations, the enumeration of incarcerated individuals, field testing for the 2020 Census, and hiring records for the 2010 and 2020 Censuses. (Curry Decl., Exhibit 1 at ¶ 8);
12. Other operating units also likely to contain responsive documents locatable with a reasonable amount of effort the Policy Office, Public Relations Office, Front Office, Chief Finance Office, Chief Administration Office. (Curry Decl., Exhibit 1 at ¶ 8);
13. Accordingly, the Census Bureau issued the seven operating units identified above, which they determined to be likely to have responsive documents locatable with a reasonable effort, search taskers instructing them to search for, identify, and produce responsive documents to the Census Bureau (Curry Decl., Exhibit 1 at ¶ 9); a copy of the search taskers issued is included as Attachment D. to Curry Decl., Exhibit 1.
14. Those program areas conducted manual and electronic searches for responsive records which included searching personal files, shared drives, and email. (Curry Decl., Exhibit 1

at ¶ 9).

15. During this search, it was reported that many of the responsive documents had already been made public by the Census Bureau in an effort to promote transparency in Census Decennial operations. (Curry Decl., Exhibit 1 at ¶ 10).
16. On October 3, 2017, the Census Bureau provided an interim response to the Plaintiffs, indicating that 4 of the categories of records sought were publicly available on the Census Bureau's website, and links were provided to help pinpoint specific pages where the information could be accessed. (Curry Decl., Exhibit 1 at ¶ 11); a copy of the interim response is included as Attachment E. to Curry Decl., Exhibit 1.
17. In addition, responsive documents (4 documents comprising 61 pages) were provided for an additional 2 categories of information. (Curry Decl., Exhibit 1 at ¶ 11); a copy of the interim response is included as Attachment E. to Curry Decl., Exhibit 1.
18. On November 14, 2017, the Census Bureau provided a final response to the Plaintiffs. The Plaintiffs were informed that the information responsive to 2 more categories of their request was available online, and links were provided to help pinpoint specific pages where the information could be accessed. (Curry Decl., Exhibit 1 at ¶ 12); a copy of the final response is included as Attachment F. to Curry Decl., Exhibit 1.
19. Responsive documents (1 document comprising 114 pages, with partial redactions pursuant to FOIA exemptions (b)(5) and (b)(6)) were provided to two more categories of documents. (Curry Decl., Exhibit 1 at ¶ 12); a copy of the final response is included as Attachment F. to Curry Decl., Exhibit 1.

20. The Plaintiffs were further informed that no responsive documents could be located for one of the categories of their request. (Curry Decl., Exhibit 1 at ¶ 12); a copy of the final response is included as Attachment F. to Curry Decl., Exhibit 1.
21. Finally, the Plaintiffs were informed that responsive documents for one category of their request was being withheld in full pursuant to FOIA exemption (b)(5). (Curry Decl., Exhibit 1 at ¶ 12); a copy of the final response is included as Attachment F. to Curry Decl., Exhibit 1.
22. In an effort to narrow the issues in dispute prior to briefing motions for summary judgment, an explanation of the information withheld under (b)(5) and (b)(6) were provided to the requesters in a Vaughn index on March 27, 2017. (Curry Decl., Exhibit 1 at ¶ 13). A copy of the Vaughn index is included as Attachment G to Curry Decl. Exhibit 1.
23. There were some additional communications during the period of time when the FOIA request was being administratively addressed, mostly relating to fees. Those communications are not being attached here as they are not relevant to the claims at issue in Plaintiffs' lawsuit. (Curry Decl. Exhibit 1 at ¶ 14).
24. During the litigation, the Census Bureau continued to provide support in seeking additional documents and providing information relevant to Plaintiffs' requests and concerns. (Curry Decl., Exhibit 1 at ¶ 15).
25. Additional searches were initiated in response to specific requests for well-identified documents, such as Plaintiffs' request for a copy of the integrated communications contract awarded to Young & Rubicam. (Curry Decl., Exhibit 1 at ¶ 15).

26. During this period, the Census Bureau undertook additional searches for responsive documents, and they provided additional documents located to Plaintiffs, and compiled lists of links pinpointing where information they had sought was available in the public record. (Curry Decl., Exhibit 1 at ¶ 15); a copy of additional communications from the Department of Commerce's Office of General Counsel is included as Attachments H, I and J. to Curry Decl., Exhibit 1.
27. Moreover, the 2020 Census will be the most open and transparent decennial census conducted in history. Information about every single aspect of the planning for the decennial is publicly available. (Reist Decl., Exhibit 2 at ¶ 5).
28. Burton Reist, Chief of Decennial Communications and Stakeholder Relations of the U.S. Census Bureau, estimates that approximately 1.100 GB of documentation and 50 GB of videos (primarily the quarterly program management reviews) have been posted on the Census Bureau's website related to the planning of the 2020 decennial. (Reist Decl., Exhibit 2 at ¶ 5).
29. Specifically, extensive information is publicly available covering every category of records sought in the FOIA request underlying this lawsuit. (Reist Decl., Exhibit 2 at ¶ 6).
30. The Census Bureau's 2020 Census Operational Plan documents the current design for conducting the 2020 Census. (Reist Decl., Exhibit 2 at ¶ 7).
31. The 2020 Census Operational Plan describes design concepts and their rationale, identifies decisions still to be made, and describes significant issues and risks related to the implementation of the Operational Plan. (Reist Decl., Exhibit 2 at ¶ 7).

32. The 2020 Census Operational Plan is publicly available online, and is updated whenever there is a change in strategies resulting from 2020 Census planning, research, and testing activities. (Reist Decl., Exhibit 2 at ¶ 7).
33. The Census Bureau also creates detailed operational plans to complement the 2020 Census Operational Plan, which present the detailed operational design for each operation within the 2020 Census, and includes a summary of the operational processes involved, their inputs, outputs and controls, and the basic mechanisms employed to conduct the operational work. (Reist Decl., Exhibit 2 at ¶ 8).
34. As soon as a detailed operational plan is completed, it is made publicly available online, and it is updated whenever there is a change in strategies resulting from 2020 Census planning, research, and testing activities. (Reist Decl., Exhibit 2 at ¶ 8).
35. The Census Bureau also publishes the 2020 Census Memorandum Series, which documents significant decisions, actions, and accomplishments of the 2020 Census Program in order to inform stakeholders, document important historical changes, and also to coordinate interdivisional efforts. (Reist Decl., Exhibit 2 at ¶ 9).
36. Memoranda are generally created whenever a) there is a major program level decision that affects the overall design of the 2020 Census Program, or has a significant effect on the 2020 Census operations or systems, b) there is a major policy decision or change that affects the overall design of the 2020 Census Program, or has a significant effect on the 2020 Census operations or systems, or c) the Census Bureau finalizes a report that documents the research and testing for the 2020 Census operations or systems. (Reist Decl., Exhibit 2 at ¶ 9).

37. The 2020 Census Memorandum Series is published online. (Reist Decl., Exhibit 2 at ¶ 9).
38. Since October 2015, the Census Bureau has published a monthly status report documenting the preparations for and status of operations for the 2020 Census Program. (Reist Decl., Exhibit 2 at ¶ 10).
39. These monthly status reports are made publicly available online. (Reist Decl., Exhibit 2 at ¶ 10).
40. Through April 2018, the reports were often around 60 pages long and included a short summary of key program updates for the month. (Reist Decl., Exhibit 2 at ¶ 10).
41. Subsequently, the “key updates” portion has been replaced by a general overview, and the report itself tends to be about 40 pages long. (Reist Decl., Exhibit 2 at ¶ 10).
42. Since the last quarter of 2012, the Census Bureau has conducted quarterly Program Management Reviews for the 2020 Census. These Program Management Reviews are conducted in public, and are regularly attended by congressional staffers, representatives of the media, and other interested parties that follow the operations and progress of the 2020 Census. (Reist Decl., Exhibit 2 at ¶ 11).
43. The Program Management Reviews cover all key management strategies for the conduct of the 2020 Census, including budget, schedule, work breakdown structure, acquisition, performance (outcome), risk, human capital, governance and transition, and communications. (Reist Decl., Exhibit 2 at ¶ 11).
44. The agendas of every Program Management Review for the 2020 Census, including supporting materials, are publicly available online. The Census Bureau has also posted

videos of every Program Management Review for the 2020 Census. (Reist Decl., Exhibit 2 at ¶ 11).

45. Other significant policy documents, planning documents, and research tools are available on the Census Bureau's website. (Reist Decl., Exhibit 2 at ¶ 12).

46. Between the publicly available 2020 Census Operational Plan, the completed 2020 Census Detailed Operational Plans, the 2020 Census Memorandum Series, the 2020 Census Monthly Status Reports, and the 2020 Census Program Management Reviews, every single significant programmatic or policy decision that affects the design of the 2020 Census, or that has a significant effect on the 2020 Census operations or systems, is documented and made publicly available online. (Reist Decl., Exhibit 2 at ¶ 13).

47. Furthermore, reports that document the research and testing for the 2020 Census operations or systems are also made publicly available online. Because the scope of operations for the 2020 Census is so extensive, the documentation is voluminous, and reflects a significant level of effort to make information available to the public. (Reist Decl., Exhibit 2 at ¶ 13).

48. In an effort to assist the Plaintiffs in finding the documents they seek, Reist, made a table mapping more specifically where online the information they are requesting that is still in dispute may be located. The details have been furnished to Plaintiffs. (Reist Decl., Exhibit 2 at ¶ 14); a copy of the table is included as Attachment A to Reist Decl., Exhibit 2.

49. The Census Bureau has approximately 2,500 employees working on the Decennial Program and 15,300 employees overall. (Reist Decl., Exhibit 2 at ¶ 15).

50. In addition, the Decennial Program has multiple major contracts working on various aspects of the 2020 Census, and these companies employ hundreds of individuals as well. (Reist Decl., Exhibit 2 at ¶ 15).
51. To the extent that the Plaintiffs seek a search of emails and documents since 2010, and have asked for a search for and review of all drafts leading up to any final decision to segregate out deliberative process material from the underlying factual information, and a detailed Vaughn index specifying details about all predecisional information withheld, responding to plaintiffs' request would be an undue burden on the Census Bureau. (Reist Decl., Exhibit 2 at ¶ 15).
52. In addition to the time spent by the FOIA Office in searching for and producing responsive documents, the Decennial Communication and Stakeholder Relations office has already spent over 120 hours to date performing preliminary searches and consulting subject-matter experts in support of responding to Plaintiffs' FOIA request and similar discovery request in the suit NAACP, et al. v. Bureau of the Census, et al., No. 18-cv-0891-PWG (D. Mary.). (Reist Decl., Exhibit 2 at ¶ 16).
53. Much of the information Plaintiffs desire is beyond the scope of FOIA, as the data sought involve consulting subject-matter experts, providing analysis of documents, and creating new documents. In support of discovery requests in Plaintiffs' related lawsuit, the Decennial Communication and Stakeholder Relations office is undertaking an estimated additional 210 hours to respond to Plaintiffs' request for information. (Reist Decl., Exhibit 2 at ¶ 16).

54. In support of limited jurisdictional discovery in Plaintiffs' related lawsuit, Plaintiffs have submitted a letter indicating a subset of the information they are seeking which they believe is essential for ascertaining whether they have jurisdiction to challenge the Census Bureau's level of preparedness to conduct the 2020 Census. (Reist Decl., Exhibit 2 at ¶ 17).
55. This information overlaps with the information requested in Plaintiffs' FOIA lawsuit. (Reist Decl., Exhibit 2 at ¶ 17).
56. Reist, estimates that it would take over 3,600 hours of labor to search for and produce information responsive to Plaintiffs' "targeted" subset of information sought, which would be an undue burden on the agency. (Reist Decl., Exhibit 2 at ¶ 17).
57. To review all the drafts of all planning documents requested by Plaintiffs would require scores, if not hundreds, of man-years of effort. (Reist Decl., Exhibit 2 at ¶ 17).
58. Reist, is informed that Plaintiffs' request is simply one of many FOIA requests related to the 2020 Census. (Reist Decl., Exhibit 2 at ¶ 18).
59. For example, the Census Bureau and the Department of Commerce have received over 50 requests related to the reinstatement of the citizenship question on the 2020 Census, and in the recent past responded to over 30 requests relating to the absence of a question on the 2020 Census related to sexual orientation and gender identity. And this is simply one question, and lack of question, on an extensive operation to count every individual residing in the United States. (Reist Decl., Exhibit 2 at ¶ 18).
60. The level of effort sought by Plaintiffs to seek out, review, and document predecisional drafts that are exempt from disclosure under FOIA is unsustainable even for one

requester, let alone the hundreds of requests that must be processed by the Census Bureau relating to the 2020 Census. (Reist Decl., Exhibit 2 at ¶ 18).

61. The 2020 Census is a public exercise, and the Census Bureau has put forth extraordinary effort to achieve transparency and make its planning documents publicly available. (Reist Decl., Exhibit 2 at ¶ 19).
62. Information addressing what Plaintiffs are seeking is publicly available and additional information has been furnished to Plaintiffs where appropriate. (Reist Decl. Exhibit 2 at ¶ 19).
63. To the extent that Plaintiffs seek additional searches for responsive documents, drafts, or an accounting of iterative drafts, Plaintiffs' request would impose an undue burden on the agency. (Reist Decl. Exhibit 2 at ¶ 19).
64. The NAACP filed a Complaint on October 5, 2017. (Doc #1).
65. The Department of Commerce was served with NAACP's Complaint on October 6, 2017. Summons (Doc #5).
66. The Department of Commerce answered the Complaint with Affirmative Defenses on December 14, 2017. (Doc #13).

Respectfully submitted,

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CERTIFICATION

I hereby certify that on July 26, 2018, a copy of foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Brenda M. Green

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